MINERAL RESOURCES AMENDMENT BILL 1997

EXPLANATORY NOTES

GENERAL OUTLINE

Objectives

The objectives of the Bill are to amend the *Mineral Resources Act 1989* to provide for—

- clarification of the definition of "owner" in respect of reserve land;
- clarification of those classes of land deemed to be "reserve" land;
- the inclusion of extraction of mineral from material mined in the definition of "mine" whether or not that extraction takes place on the land where the material is mined;
- clarification that "holder" as defined for prospecting permits does not have that meaning for other parts of the Act;
- priority for exploration permits to be established by the date of lodgement;
- the giving of a copy of the notice of initial entry on exploration permits and mineral development licences to the mining registrar in addition to the landholder before entry is made;
- the environmental management overview strategy (EMOS) and other documentation lodged with a mining lease application to be sufficient for the issue of the certificate of application and that the EMOS in its final form must be approved by the Minister before the grant of the mining lease (and for this to have always been the case);

- the advertisement of a modified certificate of application (notice of application) for a mining lease;
- an extension of time for the holding of conferences between an objector and the applicant where objections are lodged to mining lease applications;
- a reduction in the area of a mineral development licence on the grant of mining leases within the boundaries of the licence; and
- the taxing of costs awarded by the Warden's Court to be carried out by the Registrar of the Warden's Court or the taxing officer of a District Court or the Supreme Court.

Reasons for the Bill

A number of issues are currently impacting on the administration of the exploration and mining industries under the *Mineral Resources Act 1989*. The Bill provides certainty to these industries and other stakeholders.

Administrative Costs to Government

It is expected that the amendments will not create any material incremental costs to Government.

Consistency with Fundamental Legislative Principles

It is considered that the amendments do not infringe fundamental legislative principles as they are machinery amendments for the purpose of clarifying existing provisions or protecting people's rights from any uncertainty that might arise from technical non-compliance.

Consultation

The draft Bill was circulated to the Queensland Mining Council and to affected Government agencies on a confidential basis. The draft Bill was also discussed with representatives of the North Queensland Small Miners Association. General acceptance of the Bill has been indicated.

NOTES ON PROVISIONS

Clause 1 sets out the short title for the Bill.

Clause 2 sets out the Act which is being amended.

Clause 3 amends the section in respect of the schedule number.

Clause 4 updates the section in accordance with current drafting principles and redefines certain words and phrases.

"Mine" is now defined in new Section 6A.

A definition of "rail corridor land" has been added. With the introduction of the *Transport Infrastructure Act 1994* it is necessary to clarify that such land is reserve land for the purposes of the *Mineral Resources Act 1989*. See also amendments to definitions of "owner" and "reserve" in this regard.

"Holder" is amended to clarify that the holder of a tenure does not include a person in the Section 13 definition of "holder". The holder in Section 13 is for the purposes of Part 3—Prospecting Permits only.

As currently defined in Section 13 the holder of a prospecting permit can include a person who is an officer, employee, contractor or agent of the holder. This definition was not intended to extend beyond those activities associated with a prospecting permit. However, the general definition of holder in the legislation currently does extend this definition to all tenures. The amendment will clarify that the extended definition of holder only applies to prospecting permits.

"Owner" has been redefined to remove any ambiguity as to who is the "owner" of reserve land.

In the past where trustees have had the control and management of a reserve, those trustees have been considered the "owners" of the reserve for the purposes of the *Mineral Resources Act 1989.*

In the Warden's Court it was submitted by Counsel acting for the applicants for the "Century" Mining Lease that this interpretation of owner in relation to land where land is a reserve under the *Land Act 1994* is incorrect and that unless the reserve has "vested" in a trustee then the Minister for Natural Resources is the owner. The Warden agreed with the submission.

Legal advice was sought as to whether the placing of a reserve under the control of a trustee was sufficient to operate to vest the reserve in the trustee so as to make the trustee the owner of the reserve for the purposes of the Act. The advice was that it does not so operate and that the land is not vested in the trustee in the relevant sense and therefore the trustee is not the owner of the reserve within the meaning of the Act. It concluded that in the case of reserves under the *Land Act 1994* the Minister for Natural Resources is the owner. The same conclusion could be drawn for reserves gazetted under other Acts.

After consultation with the mining industry and within Government it was concluded that the "owner" of reserve land other than resources reserves under the *Nature Conservation Act 1992*, most Aboriginal and Torres Strait Islander land and rail corridor land, should be the Minister responsible for administering the Act under which it is a reserve.

Resources reserves are administered by State Government Departments as trustees and therefore it is appropriate that they be the "owners" for the purposes of the *Mineral Resources Act 1989.*

For Aboriginal land held under Deed of Grant in Trust (DOGIT) the trustees are currently considered to be the owners for the purposes of the *Mineral Resources Act 1989*. Similarly, for land held under lease pursuant to the *Local Government (Aboriginal Land) Act 1978*, the Local Government is considered to be the owner. These are the appropriate bodies for explorers and miners to deal with and there is no justification for any change from the current situation.

The *Aboriginal Land Act 1991* and the *Torres Strait Islander Land Act 1991* provide that most lands transferred or successfully claimed as Aboriginal or Torres Strait Islander freehold land under those Acts are deemed to be reserves for the purposes of the *Mineral Resources Act 1989* and the grantees are the owners. This situation will continue to be reflected in the *Mineral Resources Act 1989.*

Land set aside as Aboriginal reserve land will be dealt with in the same manner as other reserve land with the "owner" for the purposes of the *Mineral Resources Act 1989* being the responsible Minister.

Thus the amendment clarifies that for reserve land the owner is generally the Minister responsible for the Act under which the land is a reserve, except in the following circumstances where the owner is—

- for roads—the entity having control of the road;
- for resources reserves under the *Nature Conservation Act 1992*—where there is a trustee for the reserve, that trustee;
- for Aboriginal and Torres Strait Islander DOGIT land—the trustees;
- for land held under the *Local Government (Aboriginal Lands) Act 1978*—the Local Government;
- for land transferred or successfully claimed under the *Aboriginal Land Act 1991* or the *Torres Strait Islander Land Act 1991*—the grantees; and
- for rail corridor land—the Minister administering chapter 6 of the *Transport Infrastructure Act 1994.*

The amendments also validate any grants where the consent of the trustees of the reserve was obtained rather than the consent of the Minister. [See Clause 20]

It will be noted that the definition of "reserve" now includes resources reserves under the *Nature Conservation Act 1992*, rail corridor land (to replace land vested in Queensland Railways) and, for the sake of clarity, Aboriginal land and Torres Strait Islander land deemed to be a reserve for the purposes of the *Mineral Resources Act 1989* by the *Aboriginal Land Act 1991* and the *Torres Strait Islander Land Act 1991*.

Clause 5 inserts a new section—Meaning of "mine" to replace the former definition of "mine" so as to provide clarity that when extracting mineral and disposing of any mineral or waste substances such activity constitutes mining.

The intention of the *Mineral Resources Act 1989* has always been that the extraction of mineral from its natural state, whether carried out on the land where it was mined or not, is mining. A decision of the Appeal Court of the Supreme Court ("Gonzo") found that "mine" did not include this process unless it was carried out on the land where the material was mined. In other words the definition was "read down".

In order to ensure proper management of the total operation, including environmental controls, the definition of "mine" is amended to make it clear that the extraction of mineral and disposal of waste materials is mining. It is not intended that the extraction process include any process by

which a mineral is changed to another substance or substances such as occurs in smelters or refineries, or activities such as testing/assaying small quantities of mineral in laboratories (other than laboratories situated on mining leases) and teaching institutions. In other words the refining of bauxite to produce alumina or copper smelting will not become mining.

Clause 6 omits the provisions relating to priority of exploration permits. [See also Clause 7]

Clause 7 replaces the previous provisions relating to priority of exploration permits to provide that when applications are lodged over the same land, priority is established by day of lodgement. Where applications over the same area are lodged on the same day, the Minister will determine the priority on merit.

Clause 8 inserts a new provision to remove the confusion existing in relation to the necessity for the holder of an exploration permit to give a copy of the initial notice of entry to the mining registrar in addition to the landholder.

It was always intended that when the holder of an exploration permit gave the initial notice of entry to the landholder the holder also gave a copy to the mining registrar. There has been some doubt raised as to whether or not the current wording of the legislation is clear in this regard. The amendment is to remove any doubt.

Furthermore, it has been made clear that the notices to be given to the mining registrar must be given before entry is made. If this is not done it does not affect the validity of the notice but a penalty may be imposed.

Clause 9 amends the section to refer only to the renewal of a notice of entry as the initial notice of entry is now provided for in the new section. [Clause 8] Furthermore, it has been made clear that the notices to be given to the mining registrar must be given before entry is made. If this is not done it does not affect the validity of the notice but a penalty may be imposed.

Clause 10 inserts a new provision to remove the confusion existing in relation to the necessity for the holder of a mineral development licence to give a copy of the initial notice of entry to the mining registrar in addition to the landholder.

It was always intended that when the holder of a mineral development licence gave the initial notice of entry to the landholder the holder also gave

a copy to the mining registrar. There has been some doubt raised as to whether or not the current wording of the legislation is clear in this regard. The amendment is to remove any doubt.

Furthermore, it has been made clear that the notices to be given to the mining registrar must be given before entry is made. If this is not done it does not affect the validity of the notice but a penalty may be imposed.

Clause 11 amends the section to refer only to the renewal of a notice of entry as the initial notice of entry is now provided for in the new section. [Clause 10] Furthermore, it has been made clear that the notices to be given to the mining registrar must be given before entry is made. If this is not done it does not affect the validity of the notice but a penalty may be imposed.

Additional provisions have also been added to bring this section into line with those currently existing in respect of the initial notice of entry, ie action necessary where the owner cannot be contacted.

Clause 12 inserts a new provision to provide for the reduction of land under a mineral development licence on the grant of a mining lease.

Provision currently exists in the Act for the reduction in the area of an exploration permit once a mineral development licence or a mining lease is granted over part of the exploration permit. No such provision exists for the reduction in area of a mineral development licence on the grant of a mining lease. The amendment inserts a similar provision in the mineral development licence section to that contained in the exploration permit section to provide for the reduction in area.

Clause 13 amends the section to conform with the provisions relating to mining leases.

The Act is currently inconsistent in that the Minister must approve the disposal of improvements remaining on land formerly the subject of a mining lease whereas the Chief Executive of the Department can approve of such disposal when related to a former mineral development licence. The amendment makes the Act consistent with the approval resting with the Minister.

Clause 14 provides for the environmental management overview strategy (EMOS) and other documentation lodged with a mining lease application to be accepted by the mining registrar if sufficient for the issue of the certificate of application.

The Act presently requires that statements acceptable to the Minister outlining the mining program proposed, giving details of proposals for infrastructure requirements and detailing the applicant's financial and technical capabilities be lodged with an application for a mining lease. The amendment provides that statements lodged with the mining lease application can be accepted by the mining registrar if sufficient to enable the certificate of application to be issued.

When deciding to accept the EMOS and other documentation the mining registrar must have regard to the type of mining activities to be undertaken and their possible impact on the environment.

Further, the present provisions of the *Mineral Resources Act* require an EMOS, satisfactory to the Minister, to be submitted with the application for a mining lease. The current practice is to issue the certificate of application if the EMOS submitted is sufficient for that purpose. The EMOS is finally accepted by the Minister before the grant of the lease after any necessary amendment following examination by the Department's environmental officers, any recommendation by the Warden's Court and any refinement required as a result of a compensation agreement.

The possibility of a mining lease granted following this process being found to be invalid on challenge has been raised.

The amendments provide that the EMOS submitted with an application for a mining lease must be sufficient to enable the mining registrar to issue the certificate of application and for a final EMOS to be approved by the Minister before recommending the grant of the lease by the Governor in Council. [Clause 18]

A number of mining leases have been granted pursuant to the provisions of the *Mineral Resources Act* where the EMOS lodged with the application has been amended prior to the grant of the lease. The grant of such leases could therefore be invalid as the requirements of the Act for the lodgement with the application for a mining lease of an EMOS acceptable to the Minister have not been met. [Clause 20]

Clause 15 corrects an error in a subsection number.

Clause 16 makes provision for the advertisement of a notice of application of a mining lease in lieu of the certificate of application.

The present requirements of the Act in relation to advertising of the certificate of application for mining leases are costly for applicants and do

not provide a readily identified location for interested parties. The amendment allows the advertisement of a modified version of the certificate of application to address these issues.

Clause 17 extends the period for the holding of a conference between the applicant and an objector where an objection has been lodged to the grant of a mining lease.

The present provision of the Act in relation to the holding of conferences relating to mining lease applications is too restricted as it requires any conference to be held before the last day for the lodgement of objections. The amendment provides that where an objection is lodged, a conference with an objector and the applicant can be held at any time before the hearing of the application.

Clause 18 inserts a new section to provide for the Minister to approve a final environmental management overview strategy (EMOS) prior to the grant of a mining lease. This section is to apply whether or not an objection to the grant of a mining lease has been lodged. [See explanation at Clause 14]

Clause 19 amends the section to provide for the Warden to determine that costs awarded in the Warden's Court may be taxed by the Registrar of the Warden's Court or by the taxing officer of a District Court or the Supreme Court and for a party to the action to apply to a Judge of the Supreme Court for a review of the taxation.

Due to the nature and complexity of actions in the Warden's Court, it is appropriate that the Warden have the discretion to determine where costs be taxed.

Clause 20 provides for validation of leases granted where the consent and compensation agreement have been given by the trustees of a reserve instead of the Minister as owner and for the leases granted where the EMOS was not in its final form as at the date of lodgement of the lease application. [See also Clause 4—"Owner" and Clause 14]

Validation is also given to applications for mining leases lodged and for mining leases granted where the consent of the owner of adjoining land was not obtained. In the Mineral Resources Amendment Act 1995 a definition of "restricted land" was inserted to simplify the provisions in various parts of the Act which related to land where the holder of a tenure has no right to enter or have land included in the surface area of a tenure without the

consent of the owner of the land. In the drafting of this definition words were changed which altered the meaning of the previous provisions in the Act so that "restricted land" applied to land surrounding improvements on adjoining land. After consultation with the mining industry it was decided not to amend the definition of "restricted land" to restore it to its original meaning but to give improvements on adjoining land the same protection as those on land contained within a mining tenure. Before the altered meaning given by the definition of "restricted land" was realised mining lease applications were lodged and leases granted without the consent of an adjoining landowner.