

NATURAL RESOURCES AND OTHER LEGISLATION AMENDMENT BILL 2004

EXPLANATORY NOTES

FOR

AMENDMENTS TO BE MOVED IN COMMITTEE BY THE HONOURABLE *Stephen Robertson* MP

Title of the Bill

Natural Resources and Other Legislation Amendment Bill 2004

Objectives of the Amendments

Policy objectives of the proposed amendments are to:

- Validate the grant of and applications for mining leases and mineral development licences under the *Mineral Resources Act 1989* (the MR Act) in respect of land that was excluded from the grant of a relevant exploration permit by virtue of a native title exclusion clause which had the effect of:
 - Rendering the exploration permit merely an external boundary as all the land within the permit is excluded (the ‘shell’ exploration permit); or
 - Creating ‘holes’ of excluded land within the external boundary of the exploration permit (the ‘Swiss cheese’ exploration permit).
- Extend the operation of the interim arrangements for the new coal seam gas regime contained in the *Mineral Resources Act 1989* and the *Petroleum Act 1923* (the Mineral Resources and Petroleum Acts) from 1 July 2004 to 31 December 2004 which is after the

expected date of assent to the Petroleum and Gas (Production and Safety) Bill 2004;

- Remove any statutory requirement for the former purchaser of the Irvinebank State Treatment Works to be issued with a Permit to Occupy over part of the State Treatment Works site known as the bank building under the *Irvinebank State Treatment Works Repeal Act 2003* (the Irvinebank Repeal Act);
- Allow the Chief Executive of the Department of Natural Resources, Mines and Energy to decide not to make an annual valuation under the *Valuation of Land Act 1944* (the Valuation of Land Act) in situations of unusual circumstance; remove a potential inconsistency of approach in determining the period for not making an annual valuation; and provide transitional provisions to allow the amendment to apply for the annual valuation to be effective 30 June 2004 and to also allow for the making of a late valuation; and
- Remove from the Bill a minor amendment to the MR Act because it has instead been addressed in the Vegetation Management and Other Legislation Amendment Bill 2004.

Achievement of the Objectives

The policy objectives will be achieved by making the following amendments:

Proposed amendment to the MR Act (tenure validation)

The policy objectives will be achieved by operational means using the amended legislation. The nature of the amendment is to validate those applications for, and grants of, mineral development licences and mining leases made prior to the commencement of this legislative amendment where the land the subject of the pre-requisite tenure (namely, the exploration permit) was wholly or partly excluded by a condition of the permit. Given that prior to the grant of an application for a mineral development licence or mining lease, the relevant provisions of the *Native Title Act 1993* (Commonwealth) must be complied with, the amendment is technical in nature.

***Proposed amendments to the Mineral Resources and Petroleum Acts
(coal seam gas)***

Extending the application of the new coal seam gas regime by amending the Mineral Resources and Petroleum Acts to provide for the prescribed day for the expiry of the relevant parts in the Mineral Resources and Petroleum Acts to be changed from 1 July 2003 to 31 December 2004.

Proposed amendments to the Irvinebank Repeal Act

Removing section 4 of the Irvinebank Repeal Act, requiring the Department of Natural Resources, Mines and Energy (NRM&E) Chief Executive to issue a Permit to Occupy over the Queensland National Bank building to the former purchaser of the Works, and making consequential amendments.

Proposed amendments to the Valuation of Land Act

Recent events have demonstrated that unusual circumstances can arise that compromise the Department's ability to make an annual valuation. There is no existing provision that allows the Chief Executive to not make an annual valuation in these circumstances, or to allow for a late valuation to be made. Further, given the potential impacts of a late annual valuation on local government budgeting, the Bill also provides transitional arrangements directing that, where a late valuation is made, rates and land rental will be based on the last preceding (2003) valuation.

The objectives will be achieved by providing a legislative provision that allows the Chief Executive to decide not to make an annual valuation in these circumstances and removing a potential inconsistency in approach by excluding the requirement for a regulation to be made to extend the period for not making an annual valuation. Transitional provisions allow for the Chief Executive, if the unusual circumstances cease, to make a late annual valuation to be effective 30 June 2004. Where a late annual valuation has been made, the transitional provisions direct that rates and State land rental will be based on the last preceding (2003) valuation.

Proposed MR Act minor amendment

The MR Act minor amendment relates to the omission of a proposed amendment to the MR Act concerning the definition of "offshore area" in section 4(5) of that Act. The proposed amendment has instead been

addressed in the Vegetation Management and Other Legislation Amendment Bill 2004.

Alternative Ways of Achieving Policy Objectives

Alternative ways of achieving the policy objectives of the proposed amendments are:

In relation to the MR Act (tenure validation)

The other policy option is to reject the applications for mineral development licences and mining leases, and to rely on the administrative law principle of the presumption of validity in respect of the granted mineral development licences and mining leases. However, without this legislative amendment, the subject applications may not proceed to grant on the basis that they do not in all respects comply with the MR Act. In addition, the granted mineral development licences and mining leases are exposed to legal challenge. Failure to take this legislative action could lead to actions against the State for damages.

In relation to the Mineral Resources and Petroleum Acts (coal seam gas)

The only other option is make no change and allow the interim arrangements to expire. This would allow the grant of applications for petroleum leases and mining leases under existing legislation with no consideration of the coal seam gas policy framework and is not considered a viable alternative.

In relation to the Irvinebank Repeal Act

Retrospectively repealing section 4 is the only course of action available because of the action of section 20(2) of the *Acts Interpretation Act 1954*, which provides for the repeal or amendment of an Act not to affect a right, privilege or liability acquired, accrued or incurred under that Act. By making the repeal of section 4 retrospective, any accrued right Mr Hilla has to be granted a Permit to Occupy is removed.

Proposed amendments to the Valuation of Land Act

There is no existing provision that allows the Chief Executive to not make an annual valuation where a situation of unusual circumstance exists or to make a late annual valuation.

Proposed MR Act minor amendment

The only alternative is to do nothing. However because the amendment originally proposed for the Bill has instead been addressed in the Vegetation Management and Other Legislation Amendment Bill 2004, this course is not a viable option.

Estimated Cost for Government Implementation

No significant costs have been identified. However in relation to the Valuation of Land Act amendments, the final decision as to how to proceed with the delivery of the annual valuation for 2004 has not yet been made. Under different options there would be some potential costs and savings and these will be taken into account in the assessment of these options.

Consistency with Fundamental Legislative Principles

In relation to the MR Act (tenure validation)

The act of validating the particular applications for and grants of mineral development licences and mining leases may be considered to have retrospective effect; however, this is justified on basis that the amendment creates certainty for the relevant tenure holders and applicants. Without this legislative amendment, the subject applications may not proceed to grant on the basis that they do not in all respects comply with the MR Act. In addition, the granted mineral development licences and mining leases are exposed to legal challenge. There is no imposition of obligations upon any person nor any adverse effects on the rights and liberties of individuals.

In relation to the Mineral Resources and Petroleum Acts (coal seam gas)

The proposed amendment does not infringe fundamental legislative principles.

In relation to the Irvinebank Repeal Act

Notwithstanding the former purchaser of the Irvinebank State Treatment Works (Mr Hilla) having already rejected the offer of a Permit to Occupy, there is a breach of fundamental legislative principles under paragraph (g) of section 4(3) of the *Legislative Standards Act 1992* to the extent that the Bill, retrospectively, takes away a right presently enjoyed by Mr Hilla.

In relation to the Valuation of Land Act

The amendment has a retrospective effect, to allow the Chief Executive (at a time after 31 March 2004) to direct that the annual valuation to be effective 30 June 2004 not be made. It also provides for a late valuation to be made. This retrospectivity is only required for 2004 – the preceding valuation will remain in force and will preserve existing relativities. Local Governments will levy rates on existing valuations and can utilise rating tools to manage their budget processes within a defined social policy agenda.

Property owners should not be adversely affected if the annual valuation for 2004 is not made, as substantial increases in market values would not be reflected in a new valuation.

There is no imposition of obligations upon any person or any adverse effects on the rights and liberties of individuals, and thus, the amendments do not breach fundamental legislative principles.

Proposed MR Act minor amendment

The proposed amendment does not infringe fundamental legislative principles.

Consultation

In relation to the MR Act (tenure validation)

Consultations were held with the Queensland Resources Council, formerly the Queensland Mining Council, and the Queensland Indigenous Working Group. The Department of the Premier and Cabinet, Queensland Treasury and the Department of Justice and Attorney-General were also consulted. These agencies agree to the introduction of this validating legislation.

In relation to the Mineral Resources and Petroleum Acts (coal seam gas)

The Departments of the Premier and Cabinet and Treasury have been consulted. There is agreement.

In relation to the Irvinebank Repeal Act

The Departments of the Premier and Cabinet, Treasury and the Environmental Protection Agency have been consulted. There is agreement.

In relation to the Valuation of Land Act

The Office of State Revenue (Treasury) and the Department of Local Government, Planning, Sport and Recreation have been consulted regarding this amendment. There has been no other specific stakeholder consultation however past consultation with stakeholders delivered a strong appreciation of their issues.

In relation to the MR Act minor amendment

Not applicable

NOTES ON PROVISIONS

Clause 1

The purpose of this clause is to insert after clause 1 of the Bill a new clause 1A that provides for part 3A of the Bill to be taken to have commenced on 11 September 2003, that is, to make the operation of the new part 3A retrospective to the date of assent to the Irvinebank Repeal Act. The reasons for retrospectivity are that:

- Paragraph (c) of section 20(2) of the *Acts Interpretation Act 1954* provides for the repeal or amendment of an Act not to affect a right, privilege or liability acquired, accrued or incurred under that Act. By making the repeal of section 4 retrospective, accrual of Mr Hilla's right to a Permit to Occupy is circumvented.

- Because it seems likely that under section 4 of the Repeal Act the Chief Executive must issue a Permit to Occupy to Mr Hilla whether he wants one or not, the Chief Executive may be seen to have failed to carry out a statutory obligation.
- Should Mr Hilla decide to apply for a permit to occupy before the Bill is enacted, retrospectivity will place beyond doubt the State's right to cancel a Permit so issued in satisfaction of such application.

Clause 2

Clause 2 inserts new part 3A which contains the amendments to the Irvinebank Repeal Act in new clauses 5A-5E as described below.

New clause 5A

New clause 5A provides for new part 3A to amend the Irvinebank Repeal Act.

New clause 5B

New clause 5B amends certain definitions in section 2 of the Irvinebank Repeal Act consequential to the repeal of section 4 of the Irvinebank Repeal Act by new clause 5C.

New clause 5B(1) omits from the definition of "relevant authority" in section 2 reference to the permit mentioned in section 4 of the Irvinebank Repeal Act.

New section 5B(2) includes lot 18 on plan HG765 (the Queensland National Bank building) in the definition of "site" in section 2.

New clause 5B(3) omits the definition of "land" in section 2.

New clause 5C

New clause 5C provides for the repeal of section 4 of the Irvinebank Repeal Act. This is the key amendment to the Irvinebank Repeal Act, removing the obligation of the Chief Executive of the Department of Natural Resources, Mines and Energy to issue to Mr Hilla a Permit to Occupy over the Queensland National Bank building. Repeal of section 4 is justified by Mr Hilla having been offered a Permit to Occupy, but having

refused to accept the offer. Removal of the obligation contained in the section will free the State to deal appropriately with the asset.

New clause 5D

New clause 5D removes from section 7 of the Irvinebank Repeal Act reference to the occupation of the land (as formerly defined, and on which the Queensland National Bank building is situated) by Mr Hilla.

New clause 5E

New clause 5E omits from the Irvinebank Repeal Act the schedule containing a plan showing the land (as formerly defined).

Clause 3

Clause 3 inserts new parts 6A and 6B which contain the amendments to the *Mineral Resources Act 1989* and the *Petroleum Act 1923* in new clauses 53A to 53E as described below.

In part 6A

New clause 53A

New clause 53A provides for new part 6A to amend the *Mineral Resources Act 1989*.

New Clause 53B

New Clause 53B inserts new section 418D in the *Mineral Resources Act 1989* after section 418C. Section 418D deals with the validation of those mineral development licences and mining leases granted or applied for prior to the commencement of this legislative amendment.

Section 418D(1) provides that a mineral development licence or mining lease granted before the commencement of this section which is wholly or partly in respect of land within the external boundary of an exploration permit which was subject to a condition to the effect that land subject to native title was excluded from the permit is taken to have been validly granted.

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Section 418D(2) provides that an application for a mineral development licence or a mining lease, to the extent that the application comprises land that was excluded from the pre-requisite exploration permit is taken to be valid if it was lodged before the commencement of this section and the application would have complied with the *Mineral Resources Act 1989* in all other respects.

Section 418D(3) defines the term “relevant land” as that land excluded by reason of a condition of the permit to the effect that land subject to native title is excluded from the permit.

New clause 53C

New clause 53C provides for section 722A (definitions for part 18A of the *Mineral Resources Act 1989*) to be amended by changing the definition of “prescribed day” from 1 July 2004 to 31 December 2004, to extend the operation of the interim coal seam gas provisions until after the Petroleum and Gas (Production and Safety) Bill 2004 has been passed into law.

In part 6B

New clause 53D

New clause 53D provides for new part 6B to amend the *Petroleum Act 1923*.

New clause 53E

New clause 53E provides for section 151 (definitions for part 10 of the *Petroleum Act 1923*) to be amended by changing the definition of “prescribed day” from 1 July 2004 to 31 December 2004, to extend the operation of the interim coal seam gas provisions until after the Petroleum and Gas (Production and Safety) Bill 2004 has been passed into law.

Clause 4

Clause 4 inserts new clauses 56A-56D into the Bill after clause 56.

New clause 56A

New clause 56A redrafts section 37 in the Valuation of Land Act to extend the existing provisions currently contained in section 37 (which

allow the Chief Executive to not make an annual valuation) to allow the Chief Executive to not make an annual valuation for reason of unusual circumstance. The new provision would only apply when the unusual circumstance compromises the Department's ability to make an annual valuation – for example civil disturbance, extreme climatic conditions, computer failure, industrial action or changes in the way valuations are made.

For reasons of operational efficiency and consistency of approach, new clause 56A also removes the requirement for a regulation (where there is no indication of significant change to values) to extend the maximum period of time for the making of an annual valuation from within 3 years to within 5 years. Consequent to this amendment, the period for consideration of the overall program for annual valuations has also been amended from 3 years to 5 years.

New clause 56B

New clause 56B replaces the existing heading for Part 9 for the transitional provision required for the *Natural Resources and Other Legislation Amendment Act 2001*, with a more general heading for Part 9 and creates a sub-heading entitled, in part, 'Division 1' to include this transitional provision. This general heading will now allow for all transitional provisions to be included under this part.

New clause 56C

New clause 56C replaces the existing heading for Part 10 for the transitional provision required for the *Valuation of Land Amendment Act 2003*, with the sub-heading entitled, in part, 'Division 2' to include this transitional provision under Part 9.

New clause 56D

New clause 56D inserts a new section 102 in the Valuation of Land Act under a sub-heading entitled, in part, 'Division 3', that contains the transitional provision required for this amendment. The transitional provisions allow for the following:

- The 'unusual circumstance' provision can be applied, retrospectively, to the annual valuation due to be effective 30 June 2004.

- Where the Chief Executive has determined that an annual valuation cannot be made because of unusual circumstance, and the unusual circumstance ceases, the Chief Executive can make an annual valuation at a later time, for land tax purposes.
- Where a late valuation is made there is no requirement to display the valuations.
- The delivery of the annual valuation to the relevant authorities and valuation notices to affected owners once the late annual valuation is made.
- The late annual valuation will be effective from 30 June 2004.
- When a late valuation is made the last preceding valuation will remain in force and be effective for rating and State land rental.

Clause 5

Clause 5 omits, at page 32, lines 2 to 4 in the Bill that were to have amended the definition of “offshore area” in section 4(5) of the MR Act. The proposed amendment is omitted from the Bill because it has instead been addressed in the Vegetation Management and Other Legislation Amendment Bill 2004.