



## MINISTER FOR MINES & PETROLEUM; HOUSING

Your Ref: Petition No 7  
Our Ref: 42-22848

Hon Simon O'Brien MLC  
Chairman  
Standing Committee on Environment and Public Affairs  
Parliament House  
PERTH WA 6000

Dear Mr O'Brien

*Simon*

### **PETITION NO. 7 - LEGACY OF MINING**

Thank you for your letter dated 19 September 2013 relating to the recent consultation process coordinated by the Department of Mines and Petroleum (DMP) on proposed changes to the mining legislation in Western Australia. As you have highlighted, these changes were set out in the departmental document "*Proposed Amendments to the Mining Legislation*" (Consultation Paper) released on 27 August 2013.

At the time that officials from DMP presented to the Standing Committee on Environment and Public Affairs (21 August 2013), the proposed amendments were within the State Cabinet process. The Consultation Paper was then released following Cabinet's consideration.

The proposed legislative amendments, as set out in the Consultation Paper, are a demonstration of the ongoing commitment of the Government to introduce appropriate transparency to the environment regulatory process, and to streamline the regulatory system.

The proposed amendments are consistent with enabling the strategies set out in DMP's "*Strategy Paper: Transparency in Environmental Regulatory Decision Making (31 October 2011)*", and the Ministerial Advisory Panel's "*Reforming Environmental Regulation in the WA Resources Industry (December 2012)*". I am advised that both of these documents were provided to the Committee by DMP officials during their presentation on 21 August 2013.

On the specific questions that you have raised I can provide the following detail:

**Why will the public release of information be determined by Departmental policy rather than statutory requirement?**

The Consultation Paper proposes that the mining legislation be amended to provide the Director General of DMP with the ability to make certain environmental approval and reporting information publicly available, rather than establishing a statutory requirement to do so.

DMP has advised me that the text in the Consultation Paper of “...rather than establishing a statutory requirement to make it so...” does not intend to propose that the release of information will occur outside of a statutory process: the opposite is the case. The statement in the Consultation Paper merely proposes that amendments will not be prescriptive in requiring certain information to be released. The removal of prescriptive legislative requirements is a key opportunity in reducing red tape and improving regulatory effectiveness.

In practice, the Consultation Paper proposes that the *Mining Act 1978* and the *Mining Rehabilitation Fund Act 2012* are amended to include a general power that regulations can be made under both of these Acts to enable environmental information to be released publicly.

It is proposed that the resulting regulations would set out various detail of what type of information would be released, and how this might occur. The inclusion of detail regarding administrative processes is generally included in regulations rather than the primary legislation. Therefore the proposal is consistent with the general practices of legislative drafting.

Considering this context, the proposal would be that the form and nature of information released under both Acts would be through statutory requirements (i.e. set out in regulations).

I appreciate that the statement “...*The details of how and which plans/information/data may be made available will be determined by way of DMP policy...*” may have been worded differently. I am advised by DMP that the document intended to suggest that DMP would make recommendations to the Government on appropriate regulations under both Acts based upon the policies of Government for transparency (including those of DMP). This is in contrast to prescriptive or blanket provisions for publication.

It is worth also considering that the proposal outlined in the Consultation Paper will allow the expanded ability to release information, but as a minimum would preserve the existing public transparency already provided within both the *Mining Act 1978* and *Mining Rehabilitation Fund Act 2012*.

**What information will the policy apply to?**

As described above, the proposals in the Consultation Paper would mean that the release of information would be established in regulations under the *Mining Act 1978* and *Mining Rehabilitation Fund Act 2012*.

As set out in the Consultation Paper, the information which the proposal was intended to apply to would include an approved Programme of Work, Mining Proposal, Mine Closure Plan, or any information submitted to comply with environmental reporting requirements (such as annual environmental reports, or assessment information under the *Mining Rehabilitation Fund Act 2012*).

The public consultation period closed on 27 September 2013, and DMP is currently reviewing the public submissions received. Following completion of that process, the Department will provide me with a report regarding the proposed amendments. A decision will then be made by Government regarding whether to proceed with any of these proposed amendments.

I thank you for the opportunity to provide clarification on this matter.

Yours sincerely

A handwritten signature in black ink, appearing to read "Bill Marmion". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

**HON BILL MARMION MLA  
MINISTER FOR MINES AND PETROLEUM; HOUSING**

- 3 OCT 2013