REPORT 20
STANDING COMMITTEE ON LEGISLATION
CLAUSES 11 AND 12 OF THE PETROLEUM AND GEOTHERMAL ENERGY LEGISLATION AMENDMENT BILL 2013

Presented by Hon Robyn McSweeney MLC (Chair)

November 2013
STANDING COMMITTEE ON LEGISLATION

Date first appointed:
17 August 2005

Terms of Reference:
The following is an extract from Schedule 1 of the Legislative Council Standing Orders:

“4. Legislation Committee

4.1 A Legislation Committee is established.

4.2 The Committee consists of 5 members.

4.3 The functions of the Committee are to consider and report on any Bill referred by the House or under SO 125A.

4.4 Unless otherwise ordered, any amendment recommended by the Committee must be consistent with the policy of a Bill.”

Members as at the time of this inquiry:
Hon Robyn McSweeney MLC (Chair)       Hon Sally Talbot MLC (Deputy Chair)
Hon Donna Faragher MLC                  Hon Dave Grills MLC
Hon Lynn MacLaren MLC

Staff as at the time of this inquiry:
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EXECUTIVE SUMMARY, FINDINGS AND RECOMMENDATIONS

EXECUTIVE SUMMARY

1 On 17 September 2013, the Legislative Council referred clauses 11 and 12 of the Petroleum and Geothermal Energy Legislation Amendment Bill 2013 (Bill) to the Standing Committee on Legislation for its consideration and report.

2 This 170 clause Bill amends the Petroleum and Geothermal Energy Resources Act 1967 (PGERA) to provide for the onshore geological storage of greenhouse gas substances (GHG) and the Petroleum Pipelines Act 1969 to provide for the transport of GHG. The Bill also deals with property rights for greenhouse gas storage formation, retention and injection licences and injection, site closure and long-term liability issues.

3 The Bill is the second legislative instrument that provides for the regulation of GHG substances in Western Australia since the Barrow Island Act 2003.

4 Clause 11 of the Bill proposes to insert a section 11(2A) into PGERA and amend section 11(2) of PGERA to provide the Minister for Mines and Petroleum (Minister) with the same power to enter private land and apply the same compensation rights to affected landowners and people with an interest in the land, to that which applies to searching for and conducting petroleum or geothermal energy resource operations.

5 Clause 11 of the Bill will amend section 11 of PGERA to provide:

- A right to access land - The Minister will be provided with the power to enter onto and occupy any land in Western Australia, temporarily or permanently, to carry on ‘GHG operations’ (as defined in the Bill);
- Compensation – Compensation will be payable to occupiers or persons with an estate or interest in the land entered onto by the Minister. Other provisions in PGERA also set out compensation payable.
- A compensation framework – Compensation claims shall be made, dealt with and determined under Part 10 of the Lands Administration Act 1997.

6 The Department of Mines and Petroleum (DMP), in accordance with their land policy, do not propose to rely on the Minister authorising entry onto land under section 11.

7 Section 11 has not been used since PGERA’s enactment. It is seen as a reserve power and a strategic provision. DMP’s policy and practice has been to undertake community engagement, negotiation and agreement with affected private landowners and titleholders that settles compensation before access to land or land is taken.
DMP actively support the principle of consultation and negotiation and recommends a template agreement between parties that clarifies each party’s obligation.

The Pastoralists and Graziers Association of Western Australia supports a code of conduct that enables direct negotiation between the landholder and petroleum and gas companies over matters of individual interest.

The Committee did not identify any substantive issues with clause 11 and considers this clause appropriate.

The amendments proposed by clause 11 will provide the same rights and compensation framework applying to petroleum or geothermal energy resource operations to public and private landowners and occupiers impacted by GHG exploration and operations. It will also provide compensation for future damage.

Whilst clause 12 does not directly relate to GHG operations or compensation, it does specify the rights of GHG licensees and permit holders in regard to GHG exploration and storage activities. The Committee did not identify any issue with clause 12.

FINDINGS AND RECOMMENDATIONS

Findings and Recommendations are grouped as they appear at the page indicated:

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**Finding 1:** The language used to describe land in clause 11 of the Bill and section 11 of the Petroleum and Geothermal Energy Resources Act 1967 is no longer used in the Land Administration Act 1997. Contemporary drafting language to describe land should be adopted.

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**Recommendation 1:** The Committee recommends that the Legislative Council amend clause 11(1) of the Bill (which proposes to insert section 11(2A) into the Petroleum and Geothermal Energy Resources Act 1967) to insert terminology to describe land that is consistent with the terminology used in the Land Administration Act 1997.

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**Recommendation 2:** The Committee recommends that the Legislative Council amend section 11(1) of the Petroleum and Geothermal Energy Resources Act 1967 to insert terminology to describe land that is consistent with the terminology used in the Land Administration Act 1997.

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**Recommendation 3:** The Committee recommends that clause 11 of the Bill be adopted, subject to the amendments proposed in Recommendation 1.
Recommendation 4: The Committee recommends that clause 12 of the Bill be adopted as printed.
CHAPTER 1
INTRODUCTION

REFERRAL AND INVESTIGATIONS

1.1 On 17 September 2013, the Legislative Council referred clauses 11 and 12 of the Petroleum and Geothermal Energy Legislation Amendment Bill 2013 (Bill) to the Committee for its consideration and report by 19 November 2013.

1.2 The Bill amends the Petroleum and Geothermal Energy Resources Act 1967 (PGERA) in relation to the activities of greenhouse gas substance (GHG) operations.

1.3 On moving his motion to refer the Bill, Hon Colin Holt MLC noted that:

The state’s petroleum legislation has been adopted as the vehicle for the bill because greenhouse gas storage uses many of the same technologies as the petroleum industry. Many of the provisions in the bill follow the existing petroleum legislative regime.\(^1\)

I do not think landholder’s rights have always been clear. Let us use this bill to examine that aspect and how we should treat compensation. ...

With regard to negotiating for compensation ... landowners are on an unequal footing when negotiating with a potential geosequestration proponent. They need to be on an equal footing when they negotiate with a multinational petroleum company or large Australian fracking company.\(^2\)

1.4 In late September 2013, the Committee sought submissions from stakeholders and wrote to Hon Bill Marmion MLA, Minister for Mines and Petroleum, Hon Brendan Grylls MLA, Minister for Lands, and Hon Michael Mischin MLC, Attorney General, advising of the inquiry. There was also media coverage of the inquiry. On 16 October 2013, the Committee held public hearings with representatives from the Department of Mines and Petroleum (DMP) and Department of Lands.

1.5 Stakeholders invited to make a submission, submissions received and details of the witnesses who appeared at the public hearings are listed at Appendix 1.

\(^1\) Hon Colin Holt MLC, Legislative Council, Parliamentary Debates (Hansard), 17 September 2013, p4115.

\(^2\) Ibid, p4116.
THE COMMITTEE’S APPROACH AND FOCUS

1.6 The Committee’s objective in undertaking the inquiry was to consider in detail the operational effect of clauses 11 and 12 of the Bill and to present its research, findings and recommendations to the Legislative Council for its consideration, so that the House has this information available when it next considers the Bill.

1.7 In undertaking its role, the Committee has chosen to have regard to the Fundamental Legislative Principles listed at Appendix 2. The principle most relevant to the current inquiry is principle 9 which raises the principle of ‘fair compensation’, although in a different context.

1.8 The Committee’s focus during this inquiry was on the operational effect of the amendments clause 11 proposes to make to section 11 of PGERA. The proposed section 11(2A) provides for the Minister by his officers, agents or workmen to carry on GHG operations, and for such purposes, provides the power to enter upon and occupy, either temporarily or permanently, any vacant Crown land or any other land. The proposed amendment to section 11(2) provides that compensation is payable to the occupier of the land and to any person having an estate or interest therein for any interference with the use of the land by the occupier, with operations carried on thereon or for any damage to or interference with any improvement on the land.

1.9 The Committee examined the powers of the Minister to enter (access) and take private and public land and whether the compensation provided by clause 11 is available for affected private property owners, occupiers and those with an interest in the land.

1.10 The Committee also examined clause 12 of the Bill and the effect of various amendments to several sections referred to in the provision.

1.11 During the inquiry, the Committee considered:

- The existing statutory right of the Crown to ownership of minerals found in the land and the inclusion of the Bill’s ownership by the Crown of potential GHG exploration and injection sites.

- The legal framework that empowers the State to provide compensation to affected landowners and occupiers.

- Compensation available and the statutory process for applying for compensation under the PGERA and Land Administration Act 1997 (LAA) for affected landowners and occupiers.

3 Land taken has a specific meaning in the Land Administration Act 1997. Terminology previously used was resumed or requisitioned. Taking land is distinguishable from the power to enter land proposed by clause 11.
• Submissions received during the course of the inquiry (see Appendix 1).

• The substantial work undertaken by the Parliament of Western Australia, Legislative Council Standing Committee on Public Administration and Finance during its inquiry into the impact of State Government actions and processes on the use and enjoyment of freehold and leasehold land in Western Australia (reported in Report 7, May 2004) (Public Administration Committee’s inquiry) and the subsequent Western Australian Law Reform Commission report⁴ that inquired into compensation for injurious affection for affected private landowners.

• Whether any improvements had occurred to improve access to compensation (through advice and information, codes of conduct and agreements) since the Public Administration Committee’s inquiry.

1.12 To provide context to this inquiry, the Committee provides the following background on the legal basis for compensation and past inquiries on land compensation.

LEGAL BASIS FOR COMPENSATION

1.13 The Western Australian Constitution Act 1889 does not contain a provision similar to section 51(xxxi) of the Commonwealth of Australia Constitution Act, which provides the guarantee that property must be acquired ‘on just terms’ in the event of the Commonwealth acquiring property from the State or any person.

1.14 The High Court decision of New South Wales v Commonwealth (1915) 20 CLR 54 held that the sovereignty of each State Parliament empowers it to take or acquire land with or without payment of compensation.

1.15 Western Australia does, however, provide compensation for land that is accessed or resumed by the Crown. The power vested in this State to take land or interests in land is set out in Part 9 of the LAA and the compensation entitlement of owners of interests in land taken under Part 9 is set out in Part 10 of the LAA. PGERA also sets out compensation payable under that Act and clause 11 of the Bill proposes to apply the compensation process set out in Part 10 of the LAA.

PAST INQUIRIES ON LAND COMPENSATION

1.16 Part 9 and Part 10 of LAA were reviewed in 2004 by the Standing Committee on Public Administration and Finance during its inquiry into the impact of State Government actions and processes on the use and enjoyment of freehold and leasehold

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land in Western Australia. That inquiry comprehensively examined landowner’s rights to apply for compensation and the process of applying for compensation.

1.17 The 2004 Government Response\textsuperscript{5} to the Standing Committee on Public Administration and Finance’s\textsuperscript{6} inquiry reflected a commitment to improve communication and information for affected landowners. The Government Response to the report also supported a Code of Conduct and access agreement between mining companies and farmers that clearly spelt out each party’s obligations and rights. The Department of Lands and DMP informed the Committee that information freely available on their websites detailed the processes and procedures for applying for compensation.\textsuperscript{7}

1.18 The Committee also noted that Mr Gary Fenner, the then Valuer General, advised the Public Administration Committee’s inquiry in 2003, in relation to the price paid to landowners in the event of negotiated purchase (compared to compulsory acquisition):

\textit{from my experience [negotiated] settlements are often as much as fifty percent below the original claims and in the range of twenty to thirty percent above the original offer because of add on items identified during negotiation. This translates in some cases into the full settlement of claims under all heads of compensation and solatium being as much as double the base land value for small areas with a lesser loading on larger areas. Interestingly, the private sector when confronted with the urgent need to acquire land for large projects has used a simple formula of double land value with no add on items.}\textsuperscript{8}

1.19 The Law Reform Commission of Western Australia’s report Compensation for Injurious Affection (July 2008)\textsuperscript{9} also considered provisions of LAA for those seeking compensation for compulsory acquisition by the State.
CHAPTER 2
BACKGROUND

GREENHOUSE GAS OPERATIONS

2.1 A greenhouse gas operation is the process of placing greenhouse gas substances,\(^\text{10}\) deep (2-3,000 metres) underground. Carbon dioxide is a greenhouse gas and is produced from major industrial sources such as fossil fuel fired power stations, oil and natural gas processing, cement manufacture, iron and steel manufacture and the petrochemical industry.

2.2 Diagram 1\(^\text{11}\) provides a schematic representation of GHG operations from capture to storage. It should be noted that this Bill only deals with the exploration for potential GHG sites and processes involved in storage.

\textit{Diagram 1. Carbon capture storage project life cycle}

2.3 A GHG injection operation under the Bill refers to an operation to inject a greenhouse gas substance into an identified GHG storage formation and to permanently store the GHG substance in the identified GHG storage formation and the carrying on of such operations and the execution of such works as are necessary for those purposes or an

\(^{10}\) Mainly carbon dioxide (CO\(_2\)).

operation to monitor a GHG substance injected in an identified GHG storage formation.

2.4 There are three types of GHG storage options in the Bill:

- Potential GHG storage formation. Title holders must notify the Minister if they find their land has a potential GHG storage formation.

- An eligible GHG formation - defined as being suitable to store at least 100,000 tonnes of a GHG. The title holder must advise the Minister.

- An identified GHG storage formation - as declared by the Minister to be a GHG storage formation.

2.5 Permits will be issued for exploration and injection of GHG and gas retention leases. Licenses will be issued for GHG injection into the land.

2.6 The Bill proposes to apply the framework that applies to petroleum and geothermal energy, which involve extracting a resource, to GHG injection operations.

2.7 While DMP acknowledge this difference, they advised that the drilling processes, the technologies used and the activities involved in these processes, are similar. DMP added that the processes of extracting petroleum and GHG operations both involve considerable injection of materials (for example, injecting water into wells) and the same equipment, including drilling equipment and sensors, and tests. In their view, ‘95-plus per cent of all the activities prior to that [GHG injection] are very similar to the petroleum industry’. In DMP’s view, there were many technological reasons for the Bill applying the existing petroleum legislation to GHG operations.

2.8 Hon Lynn McLaren MLC asked DMP for the locations of suitable geologically areas for GHG storage in Western Australia and was directed to the report National Carbon Mapping and Infrastructure Plan - Australia.

2.9 DMP consider that the GHG storage site does not leave a large footprint on the land:

   The size of injection site ... is one hectare or 10,000 square metres, but the actual site itself is probably a quarter-acre block size.

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12 Mr Colin Harvey, Principal Legislation and Policy Officer, Petroleum, Department of Mines and Petroleum, Transcript of Evidence, 16 October 2013, p5.

13 Mr Dominque Van Gent, Coordinator, Carbon Strategy, Department of Mines and Petroleum, Transcript of Evidence, 16 October 2013, p5.

14 The Australian Government, Carbon Storage Taskforce, National Carbon Mapping and Infrastructure Plan - Australia, September 2009, identified the thin coastal strips of the Perth and Carnarvon Basins as ‘highly suitable’ and the larger inland area of the Canning Basin as ‘suitable’ for GHG storage.
2.10 The Pastoralists and Graziers Association of Western Australia (PGA) noted in its submission that more generally, the footprint left by petroleum, oil and gas exploration has ranged from poor oversight of water use, split farm lands, existing tracks often left substantially damaged and directions altered, grid lines and exploration access encouraging illicit use, and long term maintenance of remediation being left to the landholder which may not coincide with farm management systems.16

2.11 The underground storage of GHG is an emerging technology. DMP advised that at ‘the moment, CO2 storage is not an economic sort of proposition’.17

CURRENT GHG LEGISLATIVE FRAMEWORKS

2.12 The current exploration in the South West Hub18 was made possible by relying on section 115 of the Mining Act 1978.19

2.13 This Bill is the second legislative instrument that regulates GHG operations in Western Australia, the first being the Barrow Island Act 2003 which arose specifically from the Gorgon State Agreement. This Act regulates the Gorgon Gas Processing and Infrastructure Project Agreement and the injection and storage of carbon dioxide on Barrow Island produced from offshore gas processing operations.

2.14 Under section 13 of the Barrow Island Act 2003, specific Ministerial approval is required before disposal (or storage) is permitted. That Act also sets out the process of seeking approval and the requirement of the Minister to engage in wide consultation before storage occurs.

2.15 To enable the Barrow Island project to proceed, the Petroleum Pipelines Act 1969 was amended to enable carbon dioxide to be piped to storage areas specified under the Barrow Island Act 2003 and the definition of ‘petroleum’ in the Petroleum Pipelines Act 1969 was amended as follows to include carbon dioxide:

\[(a) \text{ any naturally occurring hydrocarbon, whether in a gaseous, liquid or solid state; or}\]

15 Mr Dominque Van Gent, Coordinator, Carbon Strategy, Department of Mines and Petroleum, Transcript of Evidence, 16 October 2013, p11.

16 Submission No. 2 from the Pastoralists and Graziers Association of Western Australia, 15 October 2013, p2.

17 Mr Jeffrey Haworth, Acting Executive Director, Petroleum, Department of Mines and Petroleum, Transcript of Evidence, 16 October 2013, p4.

18 The South West CO2 Geosequestration Hub project, Western Australia’s first on-shore carbon capture and storage trial project, is a Government industry project led by the Department of Mines and Petroleum.

19 Section 115 of the Mining Act 1978 provides the Director, Geological Survey, or any person acting under his or her instruction with the power to enter land for the purposes of any aerial, geological, geophysical or geochemical surveys of the land and drilling on the land.
(b) any naturally occurring mixture of hydrocarbons, whether in a
gaseous, liquid or solid state; or

(c) any naturally occurring mixture of one or more hydrocarbons,
whether in a gaseous, liquid or solid state, and any one or more
of the following, that is to say, hydrogen sulphide, nitrogen,
helium and carbon dioxide, [emphasis added]

and includes any petroleum as defined by paragraph (a), (b) or (c) of
this definition that has been returned to a natural reservoir.

2.16 This Bill represents a more comprehensive legislative framework for GHG regulation.

2.17 The Bill incorporates many new provisions including changes to the definitions and
references to permanent storage which is outside the scope of this inquiry.
CHAPTER 3
THE BILL

3.1 The Bill proposes to:

- Make amendments to sections of the PGERA and Petroleum Pipelines Act 1969 to facilitate the geological storage of GHG, predominantly carbon dioxide, and provide for the transport of these greenhouse gases via pipelines.

- Amend PGERA to deal with onshore GHG storage, formation property rights, acreage release provisions, explorations, and retention and injection licenses and address injections, site closure and long term liability relating to GHG operations.


- Amend a number of definitions to include GHG and related operations.

3.2 DMP advised that the Offshore Petroleum and Greenhouse Gas Act 2006 (Commonwealth) provided ‘a model for much of the WA GHG Bill’. DMP added:

_The original bill for the Commonwealth offshore GHG regulatory framework did not include provision for the transfer of long-term liability. In this regard, the approach to liability was consistent with the Victorian Acts and the Queensland Act. However, the Commonwealth bill was amended to incorporate provisions on a transfer of long-term liability in order to secure passage by the Parliament based on the reality of the long-term nature of the liability. ... The Commonwealth and proposed WA regulatory framework for GHG activities provides mandatory indemnification by the Commonwealth and WA State Government for specified long-term liabilities._

DEFINITIONS IN THE BILL

3.3 In relation to definitions relevant to clause 11 of the Bill, section 5 of PGERA uses the same definition of petroleum as the Barrow Island Act 2003, with the exception that it includes a specific reference to exclude oil and shale.

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3.4 The definition of GHG in clause 6 of the Bill, which also includes carbon dioxide, is detailed in Box 1. This definition includes the state (liquid or gas) and mixture of the substance, including incidental GHG.

**Box 1**

**Definition of ‘greenhouse gas substance or GHG’ in the Bill**

*greenhouse gas substance* or *GHG* means —

(a) carbon dioxide, whether in a gaseous or liquid state; or

(b) a prescribed greenhouse gas, whether in a gaseous or liquid state; or

(c) a mixture of any or all of the following substances —

i. carbon dioxide, whether in a gaseous or liquid state;

ii. one or more prescribed greenhouse gases, whether in a gaseous or liquid state;

iii. one or more incidental greenhouse gas-related substances, whether in a gaseous or liquid state, that relate to either or both of the substances mentioned in subparagraphs (i) and (ii);

iv. a detection agency, whether in a gaseous or liquid state;

if —

v. the mixture consists overwhelmingly of either or both of the substances mentioned in subparagraphs (i) and (ii); and

vi. in a case where the mixture includes a detection agent — the concentration of the detection agent in the mixture is not more than the concentration prescribed in relation to that detection agent.

3.5 Carbon dioxide falls within the scope of the two definitions of petroleum in two Acts and within the definition of GHG in the Bill. The differences in definitions reflect the evolution of legislative and regulatory frameworks to manage a developing industry.

‘GHG STORAGE FORMATIONS’ AND ‘POTENTIAL GHG INJECTION SITES’ ARE DEEMED TO BE THE PROPERTY OF THE CROWN

3.6 The Committee notes that specific GHG formations are the property of the Crown.

3.7 During the inquiry it was noted that since 1899 the Crown has had the right to minerals under the ground.21

21 Hon Robyn McSweeney MLC, Chair, Standing Committee on Legislation, during the hearing with representatives from the Department of Mines and Petroleum, *Transcript of Evidence*, 16 October 2013, p8.
3.8 Clause 9 of the Bill proposes to amend section 9 of PGERA to provide that ‘GHG storage formations’ and ‘potential GHG injections’ (terms defined in the Bill – see Appendix 3) are deemed to be the property of the Crown. The Bill proposes to amend section 9 of PGERA to provide that:

'all petroleum, geothermal energy resources, geothermal energy, potential GHG storage formations and potential GHG injection sites on or below the surface of all land within this State, whether alienated in fee simple or not so alienated from the Crown, are and shall be deemed always to have been the property of the Crown.'
CHAPTER 4
CLAUSE 11 OF THE BILL

4.1 Clause 11 of the Bill amends section 11 of PGERA as follows (the proposed insertions are underlined and deletions struck out):

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**Proposed amendments to section 11 of PGERA**

11. **Minister may carry on petroleum, geothermal energy or GHG operations Minister may search for petroleum or geothermal energy resources**

(1) The Minister may by his officers, agents or workmen search for petroleum or geothermal energy resources, and conduct all operations deemed necessary for or incidental to searching for, obtaining, refining or disposing of petroleum, geothermal energy resources or geothermal energy produced in Western Australia; and, for such purposes, may enter upon and occupy, either temporarily or permanently —

(a) any vacant Crown land, or

(b) any other land.

(2A) The Minister may by his officers, agents or workmen carry on GHG operations [see definition in Box 3] and, for such purposes, may enter upon and occupy, either temporarily or permanently —

(a) any vacant Crown land, or

(b) any other land.

(2) Where any of the powers conferred by subsection (1) has been exercised in relation to land referred to in paragraph (b) of that subsection subsection (1)(b), or any of the powers conferred by subsection (2A) has been exercised in relation to land referred to in subsection (2A)(b), compensation is payable to the occupier of the land and to any person having an estate or interest therein for any interference with the use of the land by the occupier, with operations carried on thereon for any damage to or interference with any improvement on the land.

(3) Any claim for payment of compensation under this section shall be made, dealt with, and determined under and in accordance with the provisions of Part 10 of the Land Administration Act 1997, as if it were a claim for compensation made originally under that Act.
4.2 As noted earlier in Box 1, the Bill proposes to define GHG to include carbon dioxide in a gas or liquid state and/or a mixture of carbon dioxide and incidental greenhouse gas related substances.

4.3 The Bill also proposes the broad definition of ‘GHG operation’ noted in Box 3. This definition includes several terms further defined in the Bill (see Appendix 3).

**Box 3**

*Proposed definition of ‘GHG operation’*

**GHG operation** means —

(a) A GHG exploration operation; or

(b) An operation to drill for potential GHG storage formations or potential GHG injection sites, and the carrying on of such operations and the execution of such operations and the execution of such works as are necessary for that purpose; or

(c) a GHG injection operation; or

(d) any other kind of operation that is prescribed by the regulations to be a GHG operation,

but does not include —

(e) an operation of the kind described in paragraph (f) of the definition of petroleum operation; or

(f) an operation of a kind that is prescribed by the regulations not to be a GHG operation for the purposes of this definition.

* The definitions of the underlined terms are at Appendix 3.

4.4 This definition contrasts with section 11(1) of PGERA which specifies the activities of ‘searching for, obtaining, refining or disposing’ of petroleum and geothermal energy.

4.5 DMP advised that the power to pass regulations that extend or narrow the scope of the definition of ‘GHG operation’ allows for ‘flexibility in the early stages of GHG legislation and the development of GHG technology’.22

**PUBLIC POLICY CONSIDERATIONS**

4.6 The power conferred to the Minister under section 11 of PGERA is seen by DMP as a reserve power.23 DMP advised that the powers of section 11 have never been used, even under the earlier 1936 Act.24

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4.7 DMP consider the power to conduct GHG operations necessary.

We feel that it is necessary for the government to have that capability [to undertake GHG exploration and precompetitive work], not only for the precompetitive exploration for suitable sites, but also if the government is going to take on the long-term liability for these sites, then it would require this section in evaluating the risks of taking on that long-term liability.25

4.8 With regard to liability and remedies that apply under the common law for landowners, the Committee notes that:

The Australian common law establishes duties and standards of care that, if breached by a geosequestration project proponent, could result in liability for trespass, nuisance and negligence for which the following remedies may be claimed:

- damages for any loss or injury; and

- an injunction to put a stop to, or prevent, such unlawful activities.26

4.9 On liability, DMP advised:

Liability under the common law and statutory law will rest with the holder of an injection licence during the course of the licensed injection and storage activities. Other GHG titleholders may be potentially liable depending on the stage of the GHG operations, such as the holder of a GHG assessment permit (for exploration of storage formations) or a GHG holding lease (for injection within 15 years).

Once there is a valid site closure and a declared closure assurance period, the State is required to indemnify the injection license against specified liabilities. This indemnity occurs whether or not the license is in force.

The scope of the State’s liability is limited by the following four conditions:

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23 Mr Jeffrey Haworth, Acting Executive Director, Petroleum, Department of Mines and Petroleum, Transcript of Evidence, 16 October 2013, p4.
24 Ibid.
• the liability is a liability for damages;
• the liability is attributable to an act done or omitted to be done in the carrying out of operations authorised by the licence in relation to the formation;
• the liability is incurred or accrued after the end of the closure assurance period in relation to the formation; and
• such other conditions (if any) as are specified in the regulations.27

DRAFTING ISSUES – APPLYING LAND DEFINITIONS USED IN THE BILL AND PGERA

4.10 Different terminology is used in the Bill and the LAA (Land Administration Act 1997) to describe land.

4.11 Clause 11 of the Bill and section 11 of PGERA refer to ‘any vacant Crown Land’ and ‘any other land’. The Bill has adopted the existing out-dated language in section 11(1) of PGERA. ‘Any vacant Crown Land’ and ‘any other land’ in effect refers to all lands in the State.

4.12 DMP said that the term ’any vacant Crown Land … relates to the different categories of land in the acts and the different compensation provisions that would apply’ either under sections 17 and 18 for private land and section 21 for lessees of pastoral leases.28

4.13 The Department of Lands, however, advised that the terminology used in clause 11 of the Bill, in particular the term ‘vacant Crown Land’, is no longer used in the LAA. The term used in the LAA is ‘unallocated Crown land’.29

4.14 The Bill refers to the LAA, yet there are inconsistencies in the language used in both legislative instruments.

4.15 The use of language in the Bill and PGERA should be consistent with the LAA.

4.16 The Committee is of the view that clause 11 and section 11 of PGERA should be consistent with the LAA and refer to ‘unallocated Crown land’.

27 Submission No. 3 from the Department of Mines and Petroleum, 25 October 2013, p16.

28 Mr Jeffrey Haworth, Acting Executive Director, Petroleum, and Mr Colin Harvey, Principal Legislation and Policy Officer, Petroleum, Department of Mines and Petroleum, Transcript of Evidence, 16 October 2013, p6.

29 Section 3 of the LAA defines ‘unallocated Crown land’ (formerly known as ‘vacant Crown land’) to mean Crown land in which no interest is known to exist, but in which native title within the meaning of the Native Title Act 1993 may or may not exist, and Crown land which is not reserved, declared or otherwise dedicated under this Act or any other written law.
4.17 The Committee also notes that the effect of clause 11 of the Bill covering ‘*any vacant crown land*’ (‘unallocated Crown land’ in the LAA) as well as ‘*any other land*’ appears to mean that, unusually, the Crown may also seek compensation from itself.

**Finding 1:** The language used to describe land in clause 11 of the Bill and section 11 of the *Petroleum and Geothermal Energy Resources Act 1967* is no longer used in the *Land Administration Act 1997*. Contemporary drafting language to describe land should be adopted.

**Recommendation 1:** The Committee recommends that the Legislative Council amend clause 11(1) of the Bill (which proposes to insert section 11(2A) into the *Petroleum and Geothermal Energy Resources Act 1967*) to insert terminology to describe land that is consistent with the terminology used in the *Land Administration Act 1997*.

**Recommendation 2:** The Committee recommends that the Legislative Council amend section 11(1) of the *Petroleum and Geothermal Energy Resources Act 1967* to insert terminology to describe land that is consistent with the terminology used in the *Land Administration Act 1997*.
CHAPTER 5
NEGOTIATING LAND ACCESS

5.1 The Committee was advised that land access may involve a site assessment (over two months) and may only involve up to one hectare of land that is used for exploration, including access roads to the site.\(^{30}\)

5.2 DMP maintain that the impact of these operations on surface land is considered minimal.

5.3 Under PGERA, before land is accessed, permit holders, holders of drilling reservations and lease or licence holders are not empowered to commence operations unless they have the Minister’s consent in writing\(^ {31}\) and an agreement on compensation is tendered.\(^ {32}\) This involves an agreement on compensation, whether agreed to privately or under PGERA and the LAA between the parties. Where the owner is dead or cannot be found, any payment of compensation may be made to the Minister in trust for the owner.\(^ {33}\) As DMP advised:

\[\text{[The] PGER Act title holder and owner and occupier of the private land which needs to be accessed, can agree as to [the] amount of compensation (if any) for the right to occupy the land.}\] \(^ {34}\)

5.4 These agreements are long standing and are a key element to successful negotiations on compensation matters. In 1999, senior representatives from the Western Australian Farmers Federation (WAFF), The Chamber of Minerals and Energy (CME), PGA and the Association of Mining and Exploration Companies collectively produced a Code of Conduct for the Owners of Farming Properties and Persons Exploring or Mining on Private (Agricultural) Land in the Central Great Southern – refer to Appendix 4. This Code of Conduct explains the rights and obligations of each party.

5.5 The DMP informed the Committee that over the past 18 months, DMP has engaged in a range of community engagement sessions with farmers and industry. Industry and farmers have reached agreements in the Midwest and elsewhere for numerous petroleum operations. The petroleum industry has operated under the existing legislation since 1967. The Australian Petroleum Production and Exploration

\(^{30}\) For further details see Submission No. 3 from the Department of Mines and Petroleum, 25 October 2013, p3.

\(^{31}\) Section 14 of PGERA.

\(^{32}\) Section 20(1) of PGERA.

\(^{33}\) Section 20(2) of PGERA.

\(^{34}\) Submission No. 3 from the Department of Mines and Petroleum, 25 October 2013, p12.
Association Limited (APPEA) is engaged in a roundtable with the PGA and WAFF to look at land access issues and there is a move towards ‘template agreements’. A roundtable of stakeholders was convened recently. APPEA advised:

_The aim of this roundtable is to develop an agreement which improves the process for land access agreements and provides appropriate information for all the stakeholders on landowners’ rights, environmental management and communication between exploration companies and farmers._

5.6 APPEA and CME support the amendments to PGERA proposed by clause 11 (and clause 12) of the Bill, with the CME noting that the regulatory framework in PGERA ‘has been proven to be effective over a number of years’.  

5.7 In 46 years, DMP is only aware of two disputes on land access that have gone to the Magistrates Court of Western Australia (Magistrates Court) under PGERA.  

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35 Submission No. 1 from the Australian Petroleum Production and Exploration Association Ltd (Western Region), 11 October 2013, pp1-2.

36 Ibid, p1, and Submission No. 4 from The Chamber of Minerals and Energy of Western Australia, 24 October 2013 p1.

37 Mr Jeffrey Haworth, Acting Executive Director, Petroleum, Department of Mines and Petroleum, _Transcript of Evidence_, 16 October 2013, p2.
CHAPTER 6
COMPENSATION

6.1 It is relevant to the Committee’s consideration of the operational effect of clause 11 of the Bill to consider the compensation payable and compensation process that will apply to landowners and occupiers impacted by GHG operations.

COMPENSATION AND LAND ACCESS

6.2 The specific compensation provisions in PGERA are sections 17, 18, 19, 20, 21, 22, 23, 24 and 24A.

6.3 Compensation:

is for the landowner and occupier being deprived of possession of the land and for damage to the land. ... damage also extends to any improvements on the property and for severance of the land to be occupied from other land of the owner or occupier. ... It also extends to rights of way and consequential damage.\textsuperscript{38}

6.4 DMP informed the Committee that where land is sought for longer or more permanent access, negotiations for compensation will occur on a commercial basis similar to petroleum and mineral extraction.

\textit{In the case of storage, longer or more permanent access to public or private lands of a site of 1 hectare or less per well site may be required. This will generally be negotiated on a commercial basis similar to petroleum and mineral extraction.}

\textit{The legislation provides sub-surface rights, including access, to the Crown. The existing rights of a land owner remain unchanged, and the legislation provides the rights to negotiate access between landowner and those seeking information and use of the sub-surface.}\textsuperscript{39}

6.5 Section 17 of PGERA deals with damage, rights of way and consequential damages to owners and occupiers of private land. Clause 15 of the Bill proposes to amend section 17(3). The proposed amended Section 17 would read as follows:

\begin{verbatim}
38 Submission No. 3 from the Department of Mines and Petroleum, 25 October 2013, p12.
\end{verbatim}
17. Compensation to owners and occupiers of private land

(1) A permittee, holder of a drilling reservation, lessee or licensee may agree with the owner and occupier respectively of any private land comprised in the permit, drilling reservation, lease or licence as to the amount of compensation to be paid for the right to occupy the land.

(2) Subject to subsections (3) and (5), the compensation to be made to the owner and occupier shall be compensation for being deprived of the possession of the surface or any part of the surface of the private land, and for damage to the surface of the whole or any part thereof, and to any improvements thereon, which may arise from the carrying on of operations thereon or thereunder, and for the severance of such land from other land of the owner or occupier, and for rights-of-way and for all consequential damages.

(3) In assessing the amount of compensation no allowance shall be made to the owner or occupier for any gold, minerals, petroleum, geothermal energy resources or geothermal energy resources, geothermal energy, potential GHG storage formations or potential GHG injection sites known or supposed to be on or under the land.

(4) If within such time as may be prescribed the parties are unable to agree upon the amount of compensation to be paid, either party may apply to the Magistrates Court at the place nearest to where the land is situated to fix the amount of compensation.

(5) In determining the amount of compensation, the Court shall take into consideration the amount of any compensation which the owner and occupier or either of them have or has already received in respect of the damage for which compensation is being assessed, and shall deduct the amount already so received from the amount which they would otherwise be entitled to for such damage.

6.6 Section 18 of PGERA provides for private land owners ‘in the vicinity’ of the permit area, drilling reservation, lease area or licence to be compensated for all loss and damage suffered as a consequence of the activity. Compensation under this section is for damages, depreciation in value, enjoyment, right of way access, improvements for all loss and damage sustained. If compensation cannot be agreed to, the parties may
apply to the Magistrates Court in the same manner provided for under section 17 of PGERA.

6.7 The time for taking any dispute to the Magistrates Court, prescribed in regulation 1 of the Petroleum Regulations 1987, is three months after the day on which notice was given to the landowner/occupier of the intention to commence operations on private land. As DMP added:

*It is important therefore that formal notice given to private property owner/occupier of intention to explore/produce and to be able to demonstrate that such a notice has been served.*

6.8 Section 19 of the PGERA offers compensation for further damage and future damage sustained to the surface of private land. This provides an option for private landowners with concerns about possible future damage to their property incurred by GHG operations.

6.9 By way of contrast, the LAA provides a process to claim compensation where the land is taken and the interest of the landowner to the land is severed. The LAA does not allow for later claims once the compensation is paid. PGERA, however, offers an option to claim for future damage, because the land is accessed for the purpose of GHG operations and is not taken.

6.10 Section 21 of PGERA provides for compensation to lessees of pastoral leases, leases for timber purposes or leases for use and benefit of Aboriginal inhabitants for damage to improvements and consequential damage. Damages can be claimed in the Magistrates Court.

6.11 The PGA’s submission to the inquiry identified the following concerns generally with PGERA:

*[PGERA] excludes pastoral leases from the meaning of private land, effectively treating these leases as crown land for the purposes of defining land open for mining ...*

*places land holders in a subordinate position to those who hold the various types of permits, reservations, leases or licenses required to exploit petroleum and geothermal energy ...*

*when two different industries attempt to use the same land for different purposes, conflict between users can arise.*

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40 Ibid, p12.
In the case of the [PGERA] Act, the government elevates its concession of permits, drilling reservations, leases or licenses above the rights of the land title owner.\(^{41}\)

6.12 Section 22 of PGERA provides for the determination of partial compensation by the Court.

6.13 Section 24 of PGERA lists those matters for which compensation is not payable.

6.14 Compensation is not paid for deprivation of the possession of the surface of the land, for damage to the surface of the land and where the affected lessee is deprived of the possession of the surface of any land, for severance of the land from any other land of the affected lessee and for surface rights of way and easements.

6.15 Compensation is available to native titleholders under 24A of PGERA, which states:

**24A. Liability for payment of compensation to native title holders**

(1) If compensation is payable to native title holders for or in respect of the grant of an authorisation, the person liable to pay the compensation is —

(a) if an amount is to be paid and held in trust, the applicant for the grant of, or the holder of, the authorisation at the time the amount is required to be paid; or

(b) otherwise, the applicant for the grant of, or the holder of, the authorisation at the time a determination of compensation is made.

(2) If, at the relevant time, there is no holder of the authorisation because the authorisation has been surrendered or cancelled or has expired, a reference in subsection (1) to the holder of the authorisation is a reference to the holder of the authorisation immediately before its surrender, cancellation or expiry.

(3) In this section —

- **authorisation** means a permit, drilling reservation, lease, licence, special prospecting authority or access authority;

- **native title holders** has the same meaning as in the Native Title Act 1993 of the Commonwealth.

\(^{41}\) Submission No. 2 from the Pastoralists and Graziers Association of Western Australia, 15 October 2013, p1.
6.16 When asked how section 11 of PGERA impacts on indigenous landholdings and heritage, DMP said that:

Section 11 would if required, operate in the same way as for other types of land tenure. Compliance with the Aboriginal Heritage Act would be a requirement. Compensation as required would be in accordance with s.11(2) and treated as if it was a claim under Part 10 of the LAA 1997.  

**PROCESS OF APPLYING FOR COMPENSATION**

6.17 DMP advised that its policy is to respect landowners’ rights and seek agreement on the basis of the claim for compensation and compensation payable. The negotiations are conducted on a goodwill or voluntary basis and involve a formal process where the landowner does not agree. DMP advised:

[DMP] go out and we seek agreement. ... I cannot just turn up on the property and say, ‘I am here because I have got these powers’. In order to exercise those powers in a situation where the farmer does not agree, there is a very formal process to go through ... The way we are operating is that it is all done on a goodwill or voluntary basis by negotiation.

6.18 Invoking the Minister’s entry powers proposed in section 11 for GHG operations would require DMP seeking the Minister’s approval. DMP, however, advise that they have not relied on this power.

6.19 When asked what process would occur if the Ministerial power to access private landowners’ lands for GHG operations was relied upon, DMP advised that the process they follow would be the same as the process they use when relying on section 115 of the Mining Act 1978. That is, it is ‘just the same as a private titleholder and for the responsibilities of the private titleholder we regard that we have to do exactly the same, and that is getting a land access agreement and negotiation with the landowner’. The same compensation process and provisions will apply to GHG operation claimants if the section 11 power to enter is relied on that currently applies.

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43 Mr Jeffrey Haworth, Acting Executive Director, Petroleum, Department of Mines and Petroleum, Transcript of Evidence, 16 October 2013, p7.
44 Mr Dominque Van Gent, Coordinator, Carbon Strategy, Department of Mines and Petroleum, Transcript of Evidence, 16 October 2013, p7.
45 Section 11 ‘has been there since 1967 and draws on an earlier provision using similar wording from the Petroleum Act 1936, but DMP is not aware of that section 11 ever being enacted or exercised in the time of those acts’; Mr Jeffrey Haworth, Acting Executive Director, Petroleum, Department of Mines and Petroleum, Transcript of Evidence, 16 October 2013, p4.
to petroleum and geothermal compensation claims and claims under Part 9 of the LAA.

6.20 In relation to land used for extended periods, however, DMP stated:

   Where land is being utilised for a more extended period, particularly associated with injection, it is expected that the compensation provisions of the Land Administration Act 1997 will apply.

   This is the preferred approach by landholders and industry based on discussion with stakeholders.  

6.21 It is important to note that section 11 does not trigger a ‘taking order’ (under part 9 of the LAA) because the land is not (using the old terminology) resumed or acquisitioned.

6.22 The Department of Lands’ Statement of procedures for acquiring land for a public work, copied at Appendix 5, details the procedures the Department follows for acquiring land for public work and their procedures under Parts 9 and 10 of the LAA.  

To summarise, the process for landowners to claim compensation under Part 10 of LAA involves:

- Making a claim in the approved form (must be a registered titleholder).
- The agency can ask for further particulars which are to be provided within 30 days.
- If the person does not provide within 60 days, the claim is barred.
- The state agency has to, within 90 days of the claim or the further particulars, prepare a report as to the value of the compensation, and must serve an offer of compensation on the claimant.
- The claimant has 60 days in which to reject the offer.
- If the offer is not rejected, they are deemed to have accepted it.

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48 This statement is also available to the public at the Department of Land’s website at www.lands.wa.gov.au/Documents/LAA-Approved-Form-1094.pdf (viewed on 6 November 2013).
49 With the exception of determined native title holders (Native Title Act 1993), only owners of interests in land that are registered or notified in Landgate of the Registry of Deeds are entitled to claim compensation for their interest from the acquiring authority (section 202 of the LAA). Compensation cannot be awarded to another person of the same land or interest in the land: see Crown Land Administration and Registration Practice Manual (available at www.lands.wa.gov.au/Documents/Crown-Land-Practice-Manual-(complete-manual).pdf, paragraph 10.2.1.1 (viewed on 6 November 2013).
If the offer is rejected then the claimant has three options under the LAA – continue to negotiate an agreed amount, commence a proceeding in court or go to the State Administrative Tribunal (SAT).

Where an offer is not made by the state agency within 120 days, the claimant can commence their own proceedings in court or apply to the SAT.

If the claimant rejects the offer and does not do anything to commence proceedings within 6 months, then the state agency can give 30 days’ notice and itself apply to the SAT to have the matter determined.

If the land had been taken under Part 9 (that is, requisitioned by the Crown), the person is required to be served with a statement of procedures which sets out the process for claiming compensation.

Under the LAA, all types of land and interests in land, including native title rights and interests, can be taken for a public work (a project carried out by the State on behalf of the community, such as the construction of new infrastructure).

Under Part 9 of the LAA, the person whose land has been taken or whose interest has been taken is required to be served with a ‘statement of procedures’ that sets out the process for claiming compensation. This is not required by proposed section 11 of PGERA.

The Department of Lands witness suggested that they would consult with DMP if a GHG operation was undertaken using the Ministerial powers proposed in section 11, and consider the process in Part 10 of the LAA and ‘whether or not it would be appropriate to provide a copy of that statement, with appropriate reservations’.

The procedures for taking land (the term used under the LAA in lieu of ‘resumption’ or ‘compulsory acquisition’) are different for each type of land affected by a Taking Order. Where land or interests in land are taken by the registration of a Taking Order, all rights and interests affecting the land are converted into a claim for compensation.

The Committee was advised that DMP is working with APPEA, PGA and WAFF to develop templates around land access negotiations and compensation. DMP advised that these would be used in conjunction with the APPEA Code of Practice.

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50 Ms Sandra Eckert, General Counsel, Department of Lands, Transcript of Evidence, 16 October 2013, p5. The Crown Land Administration and Registration Practice Manual, available on the Department of Land’s website (see above footnote), explains the process in detail.

51 Ms Sandra Eckert, General Counsel, Department of Lands, Transcript of Evidence, 16 October 2013, p6.

52 Letter from Mr Colin Harvey, Principal Legislation and Policy Officer, Petroleum, Department of Mines and Petroleum, 29 October 2013, p1.
6.28 The PGA does not support the development of prescriptive industry regulation but recommends the development of a code of conduct at the representative body level that acts in the interests of both land holders, petroleum and gas companies, and landholders paying a code of conduct signage fee to encourage participation, with government regulation being the ‘fall back position’.\(^{53}\)

6.29 Since the Public Administration Committee’s 2004 report, progress has been made on key recommendations to improve access to information, such as providing accessible website information and literature, and roundtable meetings between the parties.

6.30 The Western Australian *Code of Conduct for the Owners of Farming Properties and Persons Exploring or Mining on Private (Agricultural) Land in the Central Great Southern*, deals with exploring or mining minerals on private land.

6.31 The Committee did not identify any substantive issue with clause 11 of the Bill and considers the clause appropriate.

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**Recommendation 3**: The Committee recommends that clause 11 of the Bill be adopted, subject to the amendments proposed in Recommendation 1.

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\(^{53}\) Submission No. 2 from the Pastoralists and Graziers Association of Western Australia, 15 October 2013, p2.
CHAPTER 7
CLAUSE 12

7.1 Clause 12 proposes to correct a drafting error in section 15 of PGERA. As the Explanatory Memorandum explains, clause 12:

corrects a minor drafting error to this section, which details the authority conferred by the grant of petroleum and geothermal permits, drilling reservations, retention leases and production licences, where 'area' was not included after drilling reservation.\(^{54}\)

7.2 Clause 12 proposes to amend section 15 to read (the proposed deletion is struck out and the insertion is underlined):

(1) Subject to this Act and to any condition referred to in section 91B(2), but notwithstanding the provisions of any other Act or law, the authority conferred by section 38, 43D, 48C or 62 upon a permittee, holder of a drilling reservation, lessee or licensee is, by virtue of this Act, exercisable on any land within the permit area, drilling reservation area, lease area, or license area, as the case may be, whether Crown land or private land or partly Crown land and partly private.

7.3 The Committee was satisfied with the explanation DMP provided on the technical impact of this amendment. The Committee did not identify any issues in relation to clause 12.

Recommendation 4: The Committee recommends that clause 12 of the Bill be adopted as printed.

Hon Robyn McSweeney MLC
Chairman
19 November 2013

\(^{54}\) Explanatory Memorandum to the Bill, p9.
APPENDIX 1

LISTS OF STAKEHOLDERS INVITED TO PROVIDE A SUBMISSION, SUBMISSIONS RECEIVED AND WITNESSES

Stakeholders invited to provide a submission

1. Pastoralists and Graziers Association of Western Australia
2. The Western Australian Farmers Federation
3. Department of Agriculture and Food
4. Department of Mines and Petroleum
5. Conservation Council of Western Australia
6. Australian Petroleum Production and Exploration Association Ltd (Western Region)
7. The Chamber of Minerals and Energy of Western Australia
8. Property Council of Australia WA
9. The Law Society of Western Australia

Submissions received

1. Australian Petroleum Production and Exploration Association Ltd (Western Region)
2. Pastoralists and Graziers Association of Western Australia
3. Department of Mines and Petroleum
4. The Chamber of Minerals and Energy of Western Australia

Witnesses

Public hearings with the following witnesses were held on 16 October 2013. The transcripts of the hearings are available at the Committee’s website at www.parliament.wa.gov.au/leg

1. Department of Mines and Petroleum
   a. Mr Jeffrey Haworth, Acting Executive Director, Petroleum
   b. Mr Colin Harvey, Principal Legislation and Policy Officer, Petroleum
   c. Mr Dominique Van Gent, Coordinator, Carbon Strategy
   d. Ms Beverley Bower, Petroleum Tenure and Land Access
2. Department of Lands
   a. Ms Sandra Eckert, General Counsel
   b. Mr Tony Richman, Manager, Strategic Policy

55 DMP’s comprehensive response to the Committee questions on notice was treated as a submission.
APPENDIX 2
FUNDAMENTAL LEGISLATIVE PRINCIPLES

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<td>5. Does the Bill confer power to enter premises, and search for or seize documents or other property, only with a warrant issued by a judge or other judicial officer?</td>
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<td>8. Does the Bill confer immunity from proceeding or prosecution without adequate justification?</td>
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<td>9. Does the Bill provide for the compulsory acquisition of property only with fair compensation?</td>
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<td>11. Is the Bill unambiguous and drafted in a sufficiently clear and precise way?</td>
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<td>12. Does the Bill allow the delegation of legislative power only in appropriate cases and to appropriate persons?</td>
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*Western Australian legislation committees have used FLPs as a framework for scrutinising bills since 2004 when the Uniform Legislation and General Purposes Committee (which scrutinised uniform and other bills) considered these principles. During the 37th and 38th Parliaments, the Standing Committee on Legislation and Standing Committee on Uniform Legislation and Statutes Review (established in 2005) continued the practice of considering whether a bill abrogated or curtailed FLPs.*
APPENDIX 3

DEFINITION OF ‘GHG OPERATION’

Clause 6(2) of the Bill proposes to insert the following definitions into section 5 of PGERA. The underlined terms are defined in this Appendix.

GHG operation means —

(a) a GHG exploration operation; or

(b) an operation to drill for potential GHG storage formations or potential GHG injection sites, and the carrying on of such operations and the execution of such operations and the execution of such works as are necessary for that purpose; or

(c) a GHG injection operation; or

(d) any other kind of operation that is prescribed by the regulations to be a GHG operation for the purposes of this definition,

but does not include —

(e) an operation of the kind described in paragraph (f) of the definition of petroleum operation [that is, does not include the injection of carbon dioxide defined in section 3 of the Barrow Island Act 2003]; or

(f) an operation of a kind that is prescribed by the regulations not to be a GHG operation for the purposes of this definition.

GHG exploration operation means an operation to explore for potential GHG storage formations or potential GHG injection sites, and the carrying on of such operations and the execution of such works as are necessary for that purpose.

Potential GHG storage formation has the meaning given in section 6AA(1).

Potential GHG injection site means a place that is a suitable place to make a well or wells to inject a greenhouse gas substance into a part of a geological formation.
**GHG injection operation** means —

(a) an operation to inject a greenhouse gas substance into an identified GHG storage formation, and to permanently store the greenhouse gas substance in the identified GHG storage formation, and the carrying on of such operations and the execution of such works as are necessary for those purposes; or

(b) an operation to monitor a greenhouse gas substance stored in an identified GHG storage formation, and the carrying on of such operations and the execution of such works as are necessary for that purpose.

**Identified GHG storage formation** means the part of a geological formation declared to be an identified GHG storage formation under section 69E(1)(c).

[The proposed section 69E(1)(c) provides the Minister with the power to, in writing, declare part of a geological formation to be an identified GHG storage formation. A copy of the declaration must be published in the Gazette].
APPENDIX 4

CODE OF CONDUCT FOR THE OWNERS OF FARMING PROPERTIES AND PERSONS EXPLORING OR MINING ON PRIVATE (AGRICULTURAL) LAND IN THE CENTRAL GREAT SOUTHERN

A code of Conduct for the Owners of Farming Properties and Persons Exploring or Mining On Private (Agricultural) Land in the Central Great Southern

September 1999

Funded by: The Dept of Workplace Relations and Small business, and Great Southern Development Commission.
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Mineral Exploration Working Party
EXECUTIVE SUMMARY

The Exploration Code was developed in response to the steady increase in exploration activity on private freehold land during the current decade. The document is the end result of an extended period of consultation by a working party, made up principally of mining and farming industry representatives, local government and farm land owners, in the central Great Southern. The code of conduct is essentially a reference for mineral resource companies and private land owners, and covers the main issues associated with any minerals development activity that is anticipated for a farming property. It is a voluntary protocol for the various aspects and phases of mineral exploration and, in an extreme minority of cases, mining which may occur in the region.

The study method followed by the working party was to review the legislation, and similar codes being used in other places and to consult with, and accept submissions from, farmers who had experience with the mining industry. Through a prolonged period of review and redrafting the representatives in the working party have endeavoured to produce a comprehensive, though accessible document. Therefore, while the code is backed by the statutory regulations applying to the industry’s activities, it is primarily a guide to assist farmers and mineral developers come to practical solutions “in the field”.

As any entry, however temporary, to private land for the purpose of minerals investigation is a sensitive issue, this document recommends that a written agreement to govern such activities be drafted by the parties involved. Access agreements can be as comprehensive as necessary; and ideally cover issues such as the duration of the exploration program, communications to facilitate the interaction between exploration and agricultural operations, the care of agricultural, natural resources and farm infrastructures, rehabilitation and any compensation that is determined to be necessary. A soundly prepared Access Agreement negotiated between the farmer and the minerals developer should form the basis of a successful relationship during both exploration and any subsequent mining phase.

Given the importance of Access Agreements to both parties, a significant part of this document is devoted to providing information on the reasons for such arrangements, and on their general structure and provisions.

Access Agreements can be negotiated to cover the separate exploration and mining phases (disjunctive agreements) or both exploration and subsequent mining (a conjunctive agreement). Negotiations between the farmer and explorer will determine which type of agreement best suits their particular circumstances. It is reasonable to assume that most farmers may be reluctant to agree to future mining without specific details of the particular development proposal and what compensation might be due. Similarly, many explorers are reluctant to enter into an agreement to undertake exploration when there is no certainty that further access for mining can be negotiated. Some forms of mineral exploration are very costly and companies may require the security of an agreement that considers access for mining before commencing exploration. This code considers all of the issues associated with each
stage of the exploration and mining phases for inclusion in either type of agreement. As an appendix to the document, the working party has drafted a Framework for a Rural Land Access Agreement that may be used as a guide for a more formal, or expanded, agreement.

In summary, the development of good relationships between those concerned, respectively in agricultural and mineral resource pursuits, will depend on mutual trust, cooperation and good neighbour attitudes, which are in turn built on a sound knowledge of all of the issues involved.
INTRODUCTION

Mineral exploration and mining (described under the broad term of “mineral development activity” in the balance of this document) on agricultural land is an issue that affects both land use and the regional economy. In the central Great Southern region there is a demonstrated need for a Code of Conduct to cover such activity on freehold agricultural land. In order to be useful for everyday application, the document was drafted to cover the issues of land access, exploration programs, compensation, rehabilitation and communication between the mineral development company and the private land owner. It provides guidelines for both farmers and those who are planning exploration and mining on private land. The document is based on the understanding that both parties in the negotiations regarding access will need to be flexible and cooperative.

The Code is the result of extensive consultation between farming and mining industry representatives over a considerable period. Throughout the development of the document both groups have consistently argued for the inherent interests of their respective constituencies. The Code of Conduct is therefore intended to assist mineral developers and land owners to understand the land use issues involved; and to be used as a reference in finding satisfactory practices that would allow for mineral development activity on private agricultural land.

The Code recommends that a written agreement be made between mineral explorers and land owners to cover the conditions under which mineral development activity could be allowed to take place. This can include the provision of compensation, rehabilitation strategies, and the standards of conduct expected between the parties. Such an agreement is referred to here as an Access Agreement, which may, subject to negotiation, be Disjunctive or Conjunctive.
CONTEXT

The statutory context for the Code of Conduct is that all minerals are the property of the Crown. Ownership is vested in the State Government for the benefit of all Western Australians. Minor exceptions in the Mining Act 1978 relate to pre-1899 (ie. pre-Federation) Land Grants. Such exceptions could apply to a few land parcels within the central Great Southern region adjacent to the Perth-Albany railway.

The application of the Code of Conduct is voluntary. The land owner’s statutory right to deny access for exploration on their properties, under defined circumstances, is maintained. The document serves as a pilot project on private and vested land in the five Shires of the central Great Southern region (Katanning, Broomehill, Woodanilling, Kent and Gnowangerup), and could also be used elsewhere in the agricultural region.

This document adopts a simplified description of the exploration, mining and approvals process. Its purpose is to provide Guidelines and a voluntary Code of Conduct, and should not be used as a reference in determining matters of law or as a basis of legal action. The Mining Act and Regulations, and the Land Access Unit of the Department of Minerals and Energy can be consulted for precise and authoritative information. If civil action is contemplated consult your legal adviser.

1. GENERAL PRINCIPLES

1.1 Mineral development activity on private land requires that a high level of cooperation and trust be established between the land owner and mineral company (staff and contractors) seeking access for exploration. In every case, the farmer and those involved in negotiations should have copies of this Code of Conduct in advance of any discussions regarding access to a property.

1.2 The mineral company should maintain close liaison with the land owner and ensure that contractor(s) or sub-contractor(s) conform to the guidelines established in this Code. The company will comply with the requirements of the Mining Act and Regulations concerning the serving of formal notices to the land owner and, if necessary, inform him/her of the compensation or land restoration provisions of those Regulations.

1.3 Although care should be taken to avoid damage to improvements, cultivated land, soil, natural vegetation, crops, livestock, water supplies or the land management system, a written agreement is recommended before any mineral development activity commences. This agreement should establish the basis for programs, compensation for any losses and rehabilitation where necessary. Such an Access Agreement should provide the protocol for notifying the timing, duration and nature of specific exploration programs, intended access routes, and the means
of liaison between the land owner, the mineral company and any contractors/sub-contractors. The agreement should set out the procedure for notification of damage, respective obligations, quantities, payments and completion dates for necessary repairs. If possible, the agreement should cover whether any rehabilitation may be required, and the anticipated work that would be undertaken to effect the defined land use. The conditions of the agreement should focus on practical and reasonable terms in the prevailing circumstances.

1.4 The written agreement on minerals development activity may also formalise other areas of mutual understanding regarding the project. It is useful if a clearly defined basis for cooperation and co-existence is established early, as for the duration of the activity two completely different businesses will be operating from the one property. Issues arising in such circumstances include the strict maintenance of confidentiality, mutual respect for each other’s plant/capital equipment, the communicating of changes in responsibility or management programs (etc), should be practically addressed in the paper. This will go a long way to ensure that a soundly managed minerals project operates alongside, and with a minimum effect on, the farm business.

1.5 While it is hoped that all operational issues could be resolved between the parties in advance, or through reference to the Access Agreement on which both land owner and mineral company have reached a negotiated settlement, this is sometimes not the case. If by chance a difficult issue does arise, both parties can refer it to their respective industry bodies, the Warden’s Court or, as a final step, to the judicial courts for arbitration and determination. The Department of Minerals and Energy has the capacity to offer independent advice to all parties.

2. PRE-EXPLORATION GUIDELINES

2.1 During the pre-exploration phase, trust and cooperation should be established between the mineral company and the land owner. The principal mineral explorer should provide a detailed explanation of the expected scope of the exploration program, the exploration techniques to be employed, the roles and responsibilities of employees/contractors, plus relevant tenement application information. The mineral explorer should endeavour:

2.1.1 to make direct contact with the land owner well before property access is required, discuss the nature and likely duration of the exploration program as it affects the land, and its improvements, and to negotiate an entry agreement.

2.1.2 to ensure that the company officer negotiating with the land owner has the authority to negotiate and finalise the Access
Agreement regarding access/compensation/restoration with minimum delay and has full authority in the field.

2.1.3 complete any other consultations or provide any other information that will secure an Access Agreement.

2.2 At this stage, the farmer and mineral company should be in a position to complete an agreement to cover exploration only (a disjunctive agreement) or both exploration and, if the resource is economic, mining (a conjunctive agreement). This choice will be arrived at after discussion of which regime is suitable for their particular circumstances. If both parties agree to a conjunctive agreement then the document should be drafted to include all of the issues listed under Sections 3 and 6 contiguously. If disjunctive agreements are chosen, the same listed issues should be covered, but under separate agreements.

3. EXPLORATION ACCESS AGREEMENT

3.1 After a full discussion of the proposed exploration program is completed, both parties should be in a position to complete an Exploration Access Agreement. The agreement should be comprehensive and practicable as possible. The land owner and the mineral explorer should agree on such matters as duration of entry, entry routes, access ways, precautions to minimise the risk of disease or weed introduction and compensation for any substantial loss or damage. Overall, discussions should focus on providing a framework for recognising the land owner’s rights and aiding orderly mineral exploration.

3.2 In negotiating and signing the Exploration Access Agreement at this point, both parties are to recognise that, after the geological, geophysical and analytical results of the phased exploration program have been assessed, a mining operation may follow. The experience of many years of mineral exploration in Australia has, however, shown that for every 1000 prospects investigated, about 100 are subject to further testing; of these 10 are subjected to detailed assessment but only 1 becomes an actual mine.

3.3 If a significant area of mineralised ground is delineated as a result of the exploration activities, the definition of a commercially exploitable discovery would be generally undertaken before application was made for a Mining Lease. This phase of intense activity would probably involve geophysics, geochemistry, geological mapping and the drilling of closely spaced holes. While still covered by an Exploration Licence, the most advanced stage of this type of work is classed as mineral resource evaluation and, as such, its purpose should be explained to the land owner at an early stage in the negotiations.
3.4 The Exploration Access Agreement should provide a guideline for any compensation that may be sought by the land owner. Section 123 of the Mining Act defines those matters for which compensation is payable. A copy of that section of the Act is attached at appendix 2. In broad terms, compensation should be paid in the event of any diminution in farm income, or in the value of the property, which occurs as a result of exploration, including mineral resource evaluation, or mining.

4. FOLLOWING THE GRANTING OF A TENEMENT

It is the responsibility of the mineral explorer to undertake the following actions:

4.1 Inform the land owner of the terms of the tenement(s), including duration, conditions of grant, statutory reductions in area, possible extension of term and allowed substitute tenements.

4.2 Provide the land owner with a tenement map and (where appropriate) a detailed location map of the intended exploration grid, or area of activity.

4.3 Discuss these maps with the land owner and obtain identification of features such as gates and other entry points, buried water pipes, contour banks, farm dams, levee banks, irrigation channels, shade tree clumps, erosion and flood-prone land, and the position of tracks and fences.

4.4 Attend particularly to sensitive areas, stock movements and calving or lambing periods.

4.5 Jointly inspect the area with the land owner. Plan exploration activities to cause minimum inconvenience to the land owner, disturbance to stock and generally prevent damage to the property's commercial value.

4.6 Undertake prior to field work commencing, the appointment of a field supervisor with good communication skills and empathy to rural people (and preferably with a knowledge of farming practice) and who is familiar with all technical aspects and requirements of the project.

4.7 Ensure that senior field personnel and any contractors or subcontractors are familiar with the Mining Act and Regulations and the environmental conditions attached to the tenement(s).
4.8 Ensure that the field supervisor knows local regulations and conditions covering such matters as fire or water restrictions, control of disease and noxious weeds.

4.9 Provide the land owner with the names, titles and contact telephone numbers of senior personnel and the field supervisor responsible for the project.

5. MINERAL EXPLORATION GUIDELINES

Productive agricultural land constitutes the livelihood of farmers and therefore mineral explorers must be sensitive to any disturbance to stock and crops that may affect agricultural yields. The mineral explorer should be aware of the infrastructure and productive elements of the farm property on which exploration is to take place. All capital improvements and the natural endowment of soil, water and vegetation (including timber) should be considered. Recommended guidelines are as follows:

5.1 LIVESTOCK

5.2.1 The land owner's current and foreseeable stocking programs should be discussed in detail before commencing any exploration activity.

5.2.2 Stock disturbance should be kept to a minimum. The mineral explorer should take particular care when stock is watering, lambing and calving, or when other stock management work is in progress or is planned for the period of exploration. The land owner should be consulted before any low-flying aircraft are involved in the exploration activity and that flight paths are sited so as to avoid concentrations of stock where possible.

5.2 CROPPING

5.2.1 The land owner's current and foreseeable cropping program should be discussed in detail before commencing any exploration activity; and ways found to minimise disruption.

5.2.2 The exploration program and timetable should be organised so as to minimise the number of paddocks being used and to exclude any areas that have been prepared for cropping. The agricultural program, such as the likely timing of crop management should also be agreed upon in advance.
5.3 **FARM TREES, REMNANT VEGETATION, SOIL AND WATER**

5.3.1 The impact of exploration on trees or vegetation should be minimised. It should be specifically recognised where the land owner has sought to protect areas of remnant bush, which may contain native flora and fauna, through fencing and caveats. Where timber must be removed, it should be effected in accordance with the conditions determined by the Department of Minerals and Energy and after discussion and agreement with the land owner. Such practices must conform with any tree preservation and catchment priority legislation strategy or regulation. A range of statutory requirements are covered in documents such as the Soil and Land Conservation Act, the CALM Act and the National Heritage Trust legislation.

5.3.2 Clearing of lines in timber clumps and tree-belts is an extremely rare occurrence in modern exploration programs. If such access is absolutely necessary, it is preferable to lop branches than to fell trees, or to offset lines away from these areas.

5.3.3 Clearing on steep hillsides and along creek beds should be avoided, especially where there is an obvious tree shade line. All clearing is subject to the appropriate approvals.

5.3.4 Requirements of the Bush Fires Act and local shire council by-laws should be observed. It is essential to liaise with local fire authorities and observe their operational procedures, including the restrictions on vehicle movements during periods of total fire ban.

5.3.5 It is highly desirable to minimise soil disturbance during construction of grid lines and, where possible, restrict the disturbance of vegetation.

5.3.6 Topsoil removed for drill pads and trenches must be stored separately from the subsoil in shallow stockpiles, and replaced where possible before buried seeds germinate and die. Regrowth of natural or seeded vegetation should be undertaken after consultation with the land owner to ensure that the species are compatible with agricultural objectives.

5.3.7 There must be no pollution of water courses, dams and ground water through such contaminants as drilling fluids, fuels, rubbish, detergents or human waste. Under no circumstances should chemicals, oil or their containers, be introduced into surface drainage channels or groundwater systems. The exploration crew should carry rubbish containers for the
appropriate off-farm disposal of all waste generated by their field activities.

5.4 CLEAN VEHICLES FOR WEED AND DISEASE PREVENTION

5.4.1 The mineral explorer should be aware of the problems associated with sampling equipment, vehicular wheels and trucks carrying noxious weeds and possible spread of plant and livestock diseases. The exploration crew should take all practicable measures to minimise risk of exotic weed and disease introduction. Particular care is needed to prevent the spread of die-back disease in areas of native vegetation within or adjoining the private property.

5.4.2 The requirements of the Agricultural and Related Resources Protection Act must be complied with when operating within a declared area.

5.5 DAMAGE BY VEHICLE MOVEMENT

5.5.1 Inform the land owner when heavy mobile equipment will be entering or leaving the property.

5.5.2 During adverse weather conditions, mineral explorers should restrict movement of vehicles and machines that may unduly damage roads or cultivation. Any damage resulting from moving or bogging a vehicle should be repaired as soon as conditions allow.

5.5.3 Wherever possible, drive vehicles on established tracks. Where new tracks are needed, their positions and design should be jointly agreed by the mineral explorer and land owner. Safe driving methods should be applied to all vehicle movements, of either tracked or conventional vehicles.

5.5.4 Confining exploration programs to the dry periods of the year could be a practical solution in some situations.

5.6 PEGGING

5.6.1 Marker pegs should be of a mutually agreed size and material; and be positioned where they are visible to farm workers and do not hinder stock or farm machinery movement. Remove all marker materials, which includes pegs, plastic tapes, stakes, measuring strings, wires and other materials as soon as practicable after the job is completed. These items are hazardous to stock and agricultural practices.
5.7 TRENCHES FOR MINERAL EXPLORATION

5.7.1 The land owner should be consulted about the position and size of any trenches.

5.7.2 Trench excavation should ensure separate sub-soil and topsoil stockpiles for subsequent backfilling and spreading respectively.

5.7.3 Refill trenches as soon as possible after completion of mapping and sampling. Where water is likely to run along trenches, construct check banks to divert water flow from the trench. Re-seed replaced topsoil on completion, and fence off from stock if the land owner considers this precaution necessary.

5.8 GATES AND FENCES

5.8.1 Leave all gates as found, whether they are open or shut. Stock security is a priority at all times.

5.8.2 Any necessary disruption of farm infrastructure and equipment should have the consent of the land owner. The mineral explorer should either have a competent contractor carry out any permanent repairs, or make provision for such work to be done through an agreement with the land owner.

5.8.3 If a new gate or fence (temporary or permanent) is required by the mineral explorer, its position and design should be discussed and agreed with the land owner. The construction should be undertaken by a fencing contractor or by other arrangement, as agreed with the land owner.

5.9 DRILLING

5.9.1 Drilling and associated work requires a high level of cooperation between land owner and mineral explorer. Drill holes should be located to minimise surface disturbance and inconvenience to the land owner while optimising their use in defining mineralised ground.

5.9.2 All drill holes should be back-filled or properly capped (PVC collar and cement plug flush with ground level) and after they have been drilled generally made safe for stock and native animals immediately. After bagging and sampling, excess cuttings should be removed unless other arrangements are agreed. All plastic sample bags should be removed by an agreed date.
5.9.3 The mineral explorer should ensure that drilling sumps are of sufficient capacity to retain drilling slurry during operations. Drill sumps should be filled when they are no longer required.

5.9.4 Saline water flows should be capped or directed to a suitable collection site, as agreed with the land owner and stipulated by the Commissioner of Soil and Land Conservation. Any water (potable or saline) identified by the drilling program should be reported (location, quality, quantity, depth) to the land owner upon the completion of the work. The land owner should be given the opportunity and, when feasible, assisted to develop such water resources.

5.10 GENERAL

5.10.1 A cooperative ‘good neighbour’ attitude by the mineral explorer during the exploration program, would mean that he was alert for means to assist the land owner in farm management. Opportunities could include reporting unusual situations or events, prohibiting contractors from bringing dogs, domestic animals or firearms onto the property, and facilitating infrastructure development while drilling or earth-moving equipment is on the property. Minimising noise near homesteads, stock holding areas (etc) would be consistent with the principle of a shared environment.

5.10.2 Exercise due regard for agricultural activities on the property while conducting the exploration program.

5.10.3 Ensure regular contact with the land owner and provide information about work in progress.

5.10.4 Advise the land owner of any significant changes to the exploration plan or program as soon as possible and before they affect the property’s management program.

5.10.5 Completion of the exploration program on each property should involve a thorough rehabilitation of the site. This work would include removing rubbish, filling trenches and sumps, capping drill holes, and rehabilitating the area to a safe and productive state. The land owner should be invited to inspect all areas subjected to exploration activities. This occasion would probably be the best time to finalise any agreed rehabilitation and to pay any agreed compensation. When this has been completed, each party should sign acknowledgment that all terms of the Exploration Access Agreement have been fulfilled, particularly regarding terms of compensation and rehabilitation.
5.10.6 A courtesy call should be made by the mineral explorer to the land owner before leaving the area.

6. MINING ACCESS AGREEMENT AND GUIDELINES

6.1 This section details issues which should be considered:

6.1.1 If the farmer and mineral company choose to enter into a conjunctive agreement prior to the commencement of any mineral activity; or

6.1.2 If the farmer and explorer have chosen to use disjunctive access agreements and the exploration program results in the identification of economic mineral resources on the private (agricultural) land. At that time the mineral explorer, who holds the rights to develop the discovered minerals, and the land owner should renegotiate the key compensation and operational sections of the original Exploration Access Agreement. The negotiation of a revised agreement will strongly depend on the level of trust and cooperation achieved between the parties during the exploration phase. The mineral explorer will have made a decision on the feasibility of extracting the minerals contained in the deposit as a result of the mineral resource evaluation phase. In most instances this work will have been completed while the deposit was still held under an Exploration Licence.

6.2 It is important to note that without an Access Agreement, which covers conditional mining activity on the mineralised ground identified, the Department of Minerals and Energy cannot advise the Minister for Mines to grant a Mining Lease.

Steps for the preparation of a separate Mining Access Agreement or for inclusion in a conjunctive Access Agreement are as follows:

6.2.1 The land owner should be informed that if a Mining Lease is issued, the title will be for a period of 21 years, and the developer will have the option of two further renewals, each for 21 years. It should also be advised that the developer's right to the minerals can be traded as part of a commercial transaction between the developer and another company.

6.2.2 The land owner should be briefed on the estimated extent of land to be affected by the proposed mining operation, and the area of land which will be covered by the proposed Mining Lease. In most cases, the lease area will comprise a relatively small portion of the ground covered under any original Exploration Licence.
6.2.3 The land owner is not normally given technical information regarding the composition, value and size of the ore body and other feasibility data because of commercial sensitivity and corporate obligations, including statutory regulations. However, these aspects should not prevent a thorough explanation being made by the developer about all the facets of the project that could affect the land and the land owner's interests.

6.2.4 The Department of Minerals and Energy requires that the developer drafts a Notice of Intent (NOI) before approval is given by the Minister for Mines to mine. The NOI outlines the method and duration of mining, the environmental management program and how the ground disturbed will be progressively rehabilitated. It is a key document for the approval process. Its provisions regarding the final use of the land (eg. pasture, water catchment, etc) must be fully understood and acceptable to the land owner. If a disjunctive Mining Access Agreement is being used, the developer could use a draft of the NOI as a basis for discussion with the land owner. In the case where a conjunctive Mining Access Agreement is in place, the signatories would not have had such information (extent of mineralisation, method/duration of mining) at that earlier stage of discussions. This lack of information would have made necessary an agreement that was drafted in more general terms.

6.2.5 The Mineral Exploration Guidelines provisions in regard to livestock, cropping, farm trees, remnant vegetation, weed/disease prevention, vehicle movements and all other factors that affect on farm operations and viability should be examined. While the provisions for the Mining Access Agreement will be similar to those documented for consideration during the exploration phase, the nature and duration of the mining phase may require their re-evaluation in the light of different circumstances.

6.2.6 As with any original Access Agreement, the settlement made by the two parties should clearly document any compensation that is deemed necessary (see Appendix 2). While several of these issues will be similar to those previously dealt with (eg. social disruption and constraints to farm income), the effective alienation of agriculturally productive land requires detailed examination. As a general rule, compensation should be paid in the event of any diminution in farm income (or in the value of the property) which occurs as a result of exploration or mining.
If there is to be any ongoing, or post mining, cost to the land owner such as an assumed public liability in reference to an open pit, this should also receive consideration when drafting the second Access Agreement.

6.2.7 The Mineral Exploration Guidelines (listed under Section 3 of this document) provide a sound basis for arrangements to be considered by land owners and explorers. Similarly, the provisions of the guidelines for preparing a NOI, approved by the Department of Minerals and Energy, the Minister for Mines and the relevant company, are required to be followed during the whole course of the mining operation. The NOI document can be reviewed by the Minister and the Department in light of changed circumstances during the life of each project. The mining operation is regularly inspected by Departmental inspectors to ensure compliance with the agreed conditions and management objectives. The decommissioning phase of the project would require the removal of buildings and the restoration of the ground in keeping with the agreement between the mining contractor and the land owner, as well as under the terms of the NOI and Mining Lease title.

7. GENERAL INFORMATION

Statutory and practical requirements of a possible minerals extraction project from the initial stage of Exploration to final stage of Rehabilitation are outlined below. Also attached is a flow chart of the process and a framework for an Exploration Access Agreement. A Mining Access Agreement would be more complex and project specific.

EXPLORATION

7.1 Literature search of previous mineral survey work.
7.2 Regional surveys (aerial surveys, interpretation of satellite imagery, mapping and drilling along road reserves, satellite maps etc).
7.3 Application for an Exploration Licence (if not sought earlier).
7.4 Preliminary discussions with land owners.
7.5 Granting of a Permit to Enter (for ground surveys and surface sampling).
7.6 Exploration Access Agreement negotiated with the land owner(s).
7.7 Exploration program reviewed by the Department of Minerals and Energy (DME).
7.8 Warden's Court hearing, including presentation of supporting and/or opposing evidence if required.
7.9 Warden's decision and recommendation.
7.10 DME briefs Minister for Mines.

7.11 Refusal or approval (for 5 year period).

7.12 Exploration of licence area in accordance with the negotiated agreement. Project may be abandoned at any stage during 5 year term if progressive results are discouraging.

7.13 Reduction of land held under Exploration Licence (compulsory reduction to 50% of original area after 3 years, reduction to 25% after 4 years). For some cases (eg when government approvals delay the exploration program), there is a provision under the Mining Act where land may be exempted from “drop off” and held under the Licence for a longer period.

7.14 Finalise extent of mineralised ground (by geological mapping, geophysics, geochemical analyses, drilling, etc).

7.15 Closer definition of lateral and vertical limits of mineralisation in some cases.

7.16 Delineation of an economically extractable ore body in a few cases.

7.17 Possible application for extension of term for Exploration Licence.

MINING

7.18 Bulk sampling

7.19 Metallurgical and process studies.

7.20 Feasibility study based on metallurgical, engineering, infrastructure, economic and marketing factors.

7.21 Decision by mineral explorer to proceed to mining phase (based on economics of project).

7.22 Discussions with the land owner(s).

7.23 Application for a Mining Lease (may occur earlier).

7.24 Revised Access Agreement with the land owner(s).

7.25 Mining program reviewed by the DME.

7.26 Warden’s Court hearing (regarding Mining Lease application), including presentation of supporting and/or opposing evidence (if required).

7.27 Warden's decision and recommendations.

7.28 DME briefs Minister for Mines.

7.29 Refusal or approval by Minister for Mines (approval of the Mining Lease will result in the expiry of the Exploration Licence in favour of the granted Mining Lease). Mining Lease has an initial 21 years duration.

7.30 Notice of Intent prepared, which is reviewed by a consultant employed by DME and then evaluated by the DME.
7.31 Mining and post-mining rehabilitation program approved.
7.32 Mining commences. A mining project may be deferred for economic or corporate reasons and a Retention Licence sought for the area covering the mineral resource. The Retention Licence normally has a duration of up to 5 years, and may be renewed for further intervals of up to 5 years.
7.33 Rehabilitation, usually progressive, always to a documented schedule.
7.34 Decommissioning.
Appendix 1

Framework for a Rural Land Access Agreement for Mineral Exploration

This agreement is made this day of 1999 between the private land owner/occupier ("the owner/occupier") and the mineral explorer ("the explorer") described below.

Owner/Occupier: ...............................................................of

Address: .........................................................................and

Mineral Explorer
(Head Office Contact):..............................................................

Address ................................................................................Tel........................................

Mineral Explorer
(Local Contact):....................................................................

Address ........................................................................Tel........................................

Supervisor's Name:.........................................................Tel........................................

Name and address/location:......................................................
of Property ("the property")............................................................

Shire: .........................................................................................

Land Titles (location numbers):
(where available) ......................................................................
Points of Entry ........................................................................

Duration of Agreement..............................................................

Exploration or Prospecting
License Number and
details.................................................................
Methods of Exploration
to be used …………………………………………………………………………..

Terms of Agreement

In consideration of the mutual promises set out below it is agreed that:

1. General
   By this agreement the owner/occupier licenses the explorer to enter and leave
   the property, to conduct exploration for minerals on the property and to bring
   onto and remove from the property such equipment, vehicles, employees and
   contractors as the explorer may reasonably require to conduct such exploration
   for minerals.

   (a) Operations are to be conducted in such a way as to cause minimum damage to
       pasture, crops and other improvements. Any disturbance to stock should also
       be kept to a minimum. All defined areas of remnant vegetation should be
       excluded from activities.

   (b) The Code of Conduct for land holders and mineral explorers endorsed by the
       Pastoralists and Graziers Association, W.A. Farmers Federation, Association
       of Mining and Exploration Companies (Inc), and the W.A. Chamber of Mines
       and Energy, will be observed (attached).

   (c) The explorer shall ensure adequate public liability cover is maintained by
       himself or his subcontractor to satisfy all eventualities including drilling areas,
       workings and costeans.

   (d) That in the event that a mineral deposit which it is judged will support a viable
       commercial mining venture is discovered, that a renegotiation of this
       agreement
       will occur on questions of compensation and any relevant operational matters,
       to enable that venture to proceed.

2. Other Conditions
   “Refer to Rural Exploration Code”
   ……………………………………………………………………………………..

3. Supervision Of Agreement

   A supervisor will be appointed by the explorer, with responsibility for
   ensuring
   that this agreement is observed. He will normally be the senior representative
   of the explorer and will keep in close contact with the owner/explorer.
4. Compensation and Making Good

(a) Any damage to stock, crops and property shall be promptly compensated.
Compensation terms, setting out payments to be made by the explorer to the
owner/occupier for specific types of damage or disturbance are set out below.
(If insufficient space add a separate page headed “Annexure to Rural Land
Access Agreement for Mineral Exploration: Compensation Terms”)

Compensation terms:
..........................................................................................................................
..........................................................................................................................

5. Compliance with the Agreement

(a) In the event of any demonstrated failure to observe the terms of this agreement
the owner/occupier shall:
(i) Notify the field supervisor or head office contact
(ii) Have the right to suspend further entry, and to refer the problem to the
Wardens Court.

(b) Any provision in this agreement which is unenforceable shall not cancel nor
invalidate the remaining provision of this agreement.

6. Special Reference

Major earth disturbing excavations, for example, the construction of costeans
or the use of explosives, which require special approval under the exploration
or prospecting license, are to be subject to negotiation.

Signed by Owner/Occupier ..........................................................

Date .........................

Signed by Mineral Explorer .........................................................

Date ..........................................................
Appendix 2

Summary of Private Land Provisions for Compensation under the Mining Act 1978

Taking into account several sections and subsections of the Mining Act, the owner or occupier of land may be broadly entitled to compensation for:

1. Being deprived of the possession or use, of the natural surface of the land or any part of the land.
2. Damage to the natural surface of the land or any part of the land.
3. Severance of the land or any part of the land from other land of, or used by, that person.
4. Any loss or restriction of a right of way or other easement or right.
5. The loss of or damage to improvements.
7. In the case of private land that is land under cultivation, any substantial loss of earnings, delay, loss of time, reasonable legal or other costs of negotiation, disruption to agricultural activities, disturbance of the balance of the agricultural holding, the failure on the part of the person in the mining to observe the same laws or requirements in relation to that land as regards the spread of weeds, pests, disease, fire or erosion, or as to soil conservation practices, as are observed by the owner or occupier of that land.
8. Any reasonable expense properly arising from the need to reduce or control the damage resulting or arising from the mining.
9. Where the use for mining purposes of aircraft over or in the vicinity of any land (whether or not private land) occasions damage that damage shall be deemed to have been occasioned by an entry on the land thereby affected.

Please note that the above provisions are meant to be used as a guide for any land owner who is engaged in drafting an Access Agreement with exploration or mining interests. The provisions covered are not exhaustive, and both parties to any agreement should consult Sections 35, 123, 124, 125 and 125A (and any other sections that can provide background information) of the Mining Act 1978.
APPENDIX 5

DEPARTMENT OF LANDS’ STATEMENT OF PROCEDURES FOR ACQUIRING LAND FOR A PUBLIC WORK

STATEMENT OF PROCEDURES FOR ACQUIRING LAND FOR A PUBLIC WORK

This is a statement of the procedures under Parts 9 and 10 of the Land Administration Act 1997 for compulsory acquisition of land, compulsory acquisition of interests in land, compensation, rights of appeal and rights as to future disposition of interests in land taken.

This statement does not override the Land Administration Act.

1. INTRODUCTION

The Land Administration Act requires that where an acquiring authority is directly negotiating for the acquisition of land for a public work and the acquiring authority has powers to compulsorily take interests in land, the land owner must be informed of procedures for:

- the taking of those interests in land;
- payment of purchase monies;
- compensation for land taken;
- rights of appeal; and
- rights as to the future transactions for interests in land taken by agreement or compulsorily taken.

Except where there is some urgency for the Government to acquire interests in land, negotiations to purchase the land will normally take place. In most cases, agreement is reached.

The compulsory taking of land and compensation process is designed so that Government can acquire land for public works and give the land owner, if not satisfied with the amount offered, the ability to object, appeal and receive fair compensation for the value of land and improvements or interests in land taken. However, as the laws relating to this are complex, it is highly recommended that independent advice on legal and valuation issues should be obtained by the land owner.

If there is no agreement reached with the land owner on the purchase price, the amount can be determined by the State Administrative Tribunal or a court of competent jurisdiction. It can be agreed that any property valuation costs incurred by the land owner can be paid to the land owner.

2. POWER TO ACQUIRE

The Land Administration Act authorises the Minister for Lands and any delegated Minister or authorised statutory body (known as the “acquiring authority”) to acquire, on behalf of the State, all or part of a person’s interests in land by agreement to purchase or by compulsory taking.

For this proposal the acquiring authority is (insert acquiring authority, e.g., Shire of...)

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3. TAKING OF INTERESTS IN LAND

3.1 Notice of intention to take

The purpose of a notice of intention to take is to make the owner and any other person aware that the land is subject to a proposed public work. It also provides those persons with an opportunity to formally object to the taking.

Where any interest in land is required for a public work and an agreement to purchase that interest has been obtained or that interest is acquired with the consent of the owner, a “notice of intention to take” (NOITT) may or may not be registered on the certificate of title for that interest in land.

If the taking is to occur without the consent of the owner, a NOITT must be registered on the certificate of title for that interest in land except in the cases referred to in paragraphs 3.4.1 and 3.4.2 below.

The NOITT is registered at Landgate. The NOITT gives details of the acquisition and the proposed public work.

As soon as possible after the registration of the NOITT, persons referred to in s.170(5)(b) of the Land Administration Act are served with a copy of the notice and a copy is published in a newspaper with statewide circulation.

No transactions affecting the land or interest in land the subject of a NOITT can be entered into without the prior written consent of the Minister for Lands. A transaction that has been entered into without the prior written consent of the Minister for Lands is void. Further, the land cannot be built on or improved in any way without the Minister for Lands first giving written approval.

A NOITT remains current for twelve (12) months from the date it is registered on the certificate of title. The Minister for Lands may cancel, amend or extend a NOITT by a further notice which must be served, registered and published similarly to the original notice.

3.2 Rights of objection under the Land Administration Act and the Native Title Act 1993 (Cth)

If a NOITT is issued, the:

- land owner;
- native title holder;
- occupier;
- holder of any mining or petroleum rights;
- any management body whose management order will be affected by the proposal,

may lodge an objection to the taking with the Minister for Lands.
3

The objection must:

- specify the full name and address of the objector;
- identify the land;
- specify the nature of the objector’s interest in the land; and
- set out the grounds for objection.

The objection must not, at this stage, deal with the issues of compensation. Compensation issues are dealt with after the taking of the interest. Persons who will be lodging a claim after the taking should note that compensation for hardship cannot form the basis of an objection to the taking.

The Minister for Lands must consider the objections and other representations made to it. Having considered them, it will determine whether the NOITT will stand, be changed, cancelled, or a new NOITT issued in substitution for the first notice.

3.3 Taking of the land

If the Minister for Lands is satisfied that:

- either a NOITT has been registered against the land or interest in the land or, in the case where work has commenced without a taking order in certain circumstances (see paragraph 3.4 below) where the determination of the Minister for Lands under section 186(4) of the Land Administration Act is taken to be a NOITT;

and either

- any objections received do not warrant the cancellation, amendment or substitution of the NOITT;
- every objector has consented in writing to the purchase or taking of the objector’s interests; or
- in the circumstances outlined in paragraph 3.4 below, no NOITT has been issued;

the Minister for Lands may make a taking order consistent with the NOITT, an extract from which will be published once in a daily newspaper circulating throughout the State.

A copy of the taking order and forms for claiming compensation will be forwarded to each land owner, occupier of the land and holder of any mining or petroleum rights in the land.

A taking order comes into effect upon registration of that order at Landgate.
The effect of registration of the taking order is to “take” the land or interest in the land by transferring that land or interest in the land to the Minister for Lands and converting that land or interest in the land taken into a claim for compensation in accordance with the terms of the taking order.

A taking order may, at any time within 90 days after its registration, be cancelled or amended by the registration of an order to that effect. A copy of the order will be published once in a daily newspaper circulating throughout the State as soon as possible after its registration.

When a taking order is cancelled or amended, any person prejudiced by the cancellation or amendment of that taking order is entitled to compensation for reasonable costs incurred in relation to the taking, up to and including the date of taking, and for any actual damage caused by any entry onto the land.

A claim for compensation in these instances must be made to the acquiring authority within 60 days after the date of registration on the certificate of title of the cancelled or amended order, or within such longer period as the Minister for Lands may allow.

If the land owner and the acquiring authority fail to agree on the amount of the compensation in these instances, the amount may be determined in accordance with the compensation provisions of the Land Administration Act, unless another Act waives the requirement for the payment of compensation.

3.4 Entry onto land for the purpose of a taking order in limited circumstances

3.4.1 If the Minister for Lands is satisfied that:

- it is necessary for land to be used for a proposed public work;
- the Minister for Lands is authorised to take interests in land for that work; and
- because of the urgency of the work or the difficulty in tracing the proprietors of the land, it is unreasonable or impractical to delay entry onto the land until the land has been taken in accordance with procedures of the Land Administration Act,

the Minister for Lands may authorise a person to:

- enter the land;
- do anything necessary in order to study the feasibility of the proposed public work;
- do anything necessary as preliminary or ancillary to starting construction of, constructing, the public work; and
- carry out the public work.
The power of the Minister for Lands to authorise commencement of work without a taking order in these limited circumstances applies whether or not:

(a) a NOITT has been issued; or

(b) the land has been entered on under any other statutory power.

The Minister for Lands or an authorised person must, as far as is practicable, before entering the land give to the land owner, the occupier, and to holders of any native title rights and interests, not less than seven (7) days written notice, giving a description of:

- the area of the land to be entered upon;
- what is proposed to be done; and
- the time that it is expected to take.

As soon as practicable after any land has been entered the Minister for Lands must determine the interests in the land to be taken for the public work and may make an appropriate taking order as if this determination were a NOITT.

3.4.2 In the case where there is a special Act authorising the construction of a railway, the Minister for Lands may authorise a person to enter the land within the limits of the railway construction and take all necessary and ancillary action for the purposes of constructing that railway.

In this case, the Minister for Lands or an authorised person must before entering the land:

- give to the land owner, the occupier, and to holders of any native title rights and interests, not less than seven (7) days written notice, giving a description of:
  - the area of the land to be entered upon;
  - what is proposed to be done; and
  - the time that it is expected to take,

and

- advise those persons of the effect of this provision and the procedures under the Land Administration Act, unless they have already been given that advice.
4. COMPENSATION FOR LAND TAKEN

4.1 Persons entitled to compensation and making the claim for compensation

Every person having any interest in land taken under Part 9 of the Land Administration Act (known as the “claimant”) or who has suffered damage by reason of any entry on or occupation of land and the land is not then subsequently taken, is, subject to Part 10 of the Land Administration Act, entitled to compensation from the acquiring authority for the interest taken or the damage suffered. In the case of the category of damage, some person having an interest in the land must, during the time of the entry or occupation, give notice to the acquiring authority that they will require compensation for such damages suffered.

Approved forms for compensation claims are available from the acquiring authority. These forms will be provided at the same time as advice of the taking order is given to all persons with an interest in land taken under Part 9 of the Land Administration Act.

All claims for compensation must be served on the acquiring authority within six (6) months from the date of registration of the taking order. The right to claim compensation ends six months after registration of the taking order unless an extension of time to lodge a claim has been granted.

If a claimant requires a longer period of time in which to make a claim, an application for extension of time can be made to the Minister for Lands. If the Minister for Lands is satisfied that the application is reasonable and has been made in good faith, the Minister for Lands may extend the time.

4.2 Compensation can be paid in land, goods or services

A claimant may request that the claim be satisfied in whole or part by compensation in a form other than money (e.g. by land exchange or the provision of goods or services).

If such a request is made, the acquiring authority must consider the request and negotiate in good faith with the claimant.

4.3 Particulars of the compensation claim

A claim for compensation must be made in the approved form and must state:

- the full name and address of the claimant;
- a full description of the land the subject of the claim;
- the nature and particulars of the claimant’s interest in the land;
- details of any lesser interests or encumbrances in respect of the land; and
- full particulars of the nature and extent of each matter the subject of a claim for compensation, including all deeds and documents necessary to establish the claimant’s title to the land.

If the claimant does not give full particulars of any matter mentioned above in his or
her claim the acquiring authority may, by written notice, require the claimant to give the particulars within thirty (30) days of receipt of the requested notice.

If these particulars are not given within sixty (60) days of receipt of the notice or such extended time as a Judicial member of the State Administrative Tribunal may allow, the claim is absolutely barred.

4.4 What happens if my title is disputed?

If the acquiring authority disputes a claimant’s title to the interest in land, or to some part of the interest, it must serve on the claimant a notice within 60 days after the service of the claim or, if further particulars were demanded, within 60 days after the request for particulars is given.

If the acquiring authority disputes the claimant’s title the claimant may, upon giving eight (8) days written notice to the acquiring authority, apply to a Judge of the Supreme Court for an order:

- for a trial of any factual issues the finding of which will be necessary to determine the question of title; and
- that any legal question arising from the dispute as to the claimant’s title be argued to obtain the opinion of the court.

If the acquiring authority does not dispute the claimant’s title within sixty (60) days of receiving the compensation claim, or within sixty (60) days after the request for further particulars, the acquiring authority is deemed to have admitted the claimant’s title.

4.5 What happens if my title is not disputed or only partially disputed?

If the claim is not disputed or is only disputed in part by the acquiring authority, the acquiring authority must:

- examine the claim within ninety (90) days after the service of the claim on the acquiring authority or,
- examine the claim within ninety (90) days after any particulars requested by the acquiring authority have been supplied by the claimant;

and then prepare a report as to the value of the interest claimed over which there is no dispute and as to the damage sustained by the claimant by reason of the taking.

In the case outlined in paragraph 4.4 above, where the acquiring authority has disputed the claimant’s title and the claimant applies to a Judge of the Supreme Court for an order, the acquiring authority must examine the claimant’s claim within ninety (90) days after the judgment of the Court, and prepare a report as to the value of the interest claimed and as to the damage sustained by the claimant by reason of the taking.
4.6 Dealing with the offer for compensation by the acquiring authority

As mentioned above, the acquiring authority has ninety (90) days from the receipt of the claim or the determination of any disputes to the title, to assess the claim and prepare a valuation report. The acquiring authority must then make an offer of compensation to the claimant as soon as possible after receiving the valuation report.

Before the compensation is fully settled between the parties, both the claim and the offer of compensation may be amended.

4.7 Rejecting an offer for compensation

If the claimant wishes to reject the offer made by the acquiring authority, the claimant must give the acquiring authority written notice in an approved form rejecting the offer within 60 days. If this is not done, then the offer is deemed to have been accepted.

4.8 Resolving the rejection

If the claimant serves the acquiring authority with a written notice rejecting its offer, the compensation payable to the claimant may be determined by any one of the following methods:

- agreement between the acquiring authority and the claimant;
- a legal action for compensation by the claimant against the acquiring authority under Part 10 of the Land Administration Act; or
- referring the claim to the State Administrative Tribunal under Part 10 of the Land Administration Act.

If a claimant rejects the acquiring authority’s offer or amended offer by agreement, and fails to take legal action or refer the claim to the State Administrative Tribunal, the acquiring authority may apply to the State Administrative Tribunal for a direction.

Before an acquiring authority applies to the State Administrative Tribunal for a direction, the acquiring authority must give thirty (30) days notice to the claimant of its intention to do so.

If an acquiring authority has not made an offer for compensation to the claimant within 120 days of service of the claimant’s claim, the claimant may either:

- commence legal action for compensation against the acquiring authority or;
- refer the claim for the compensation to the State Administrative Tribunal.

A claimant may not commence legal action in a court for compensation unless the acquiring authority has been given 30 days written notice of those proceedings. The State Administrative Tribunal or a court will determine the amount of compensation payable in respect of the taking of the interest in land in such circumstances.
5. THE COURT AND THE STATE ADMINISTRATIVE TRIBUNAL

5.1 Composition of State Administrative Tribunal

The State Administrative Tribunal consists of a judicial member or a senior member who is a qualified person, and two assessors, one to be appointed by the claimant and one by the acquiring authority.

5.2 Assessing Compensation

5.2.1 Date from which Compensation is Assessed

Where land or an interest in land is taken by agreement, compensation is assessed as at the date of execution of that agreement, or such other date as agreed.

Where land or an interest in land is taken by way of a taking order, compensation is assessed at the date of registration of the taking order on the certificate of title or such other date specified in the taking order, for example, the date of entry of the land.

5.2.2 Improvements on the Land and Compensation

Where any improvements are made on the land after the registration of a NOITI and the consent of the Minister for Lands was not obtained, no compensation will be paid for such improvements.

5.2.3 Interest on Compensation Payments

Except in the circumstances referred to at paragraph 5.4 below, interest is payable on the compensation payment from the date of service of the compensation claim on the acquiring authority or from the date of entry of the authority on to the land for construction or carrying out of works (whichever is the earliest).

5.2.4 Costs of the Compensation Claim

The costs of an action for compensation in a court are at the discretion of the court. The costs of an action for compensation in the State Administrative Tribunal will be in accordance with Division 4 of Part 5 of the State Administrative Tribunal Act 2004.

5.3 Lessening the Suitability of the Land – Deduction from Compensation

If the State Administrative Tribunal or a court on hearing an action for compensation considers that the claimant has, after registration of the NOITI, done anything to the land which has the effect of making the land less suitable for the purpose of the public work the State Administrative Tribunal or a court can take this into account and deduct such amount agreed by the State Administrative Tribunal or a court from the compensation amount.
If the State Administrative Tribunal or a court considers that the action taken on the land has increased the cost of the public work so that the increase in cost is greater than the value of the land taken the State Administrative Tribunal or a court may order that the claimant pays to the acquiring authority the additional amount and the costs of the inquiry.

5.4 Advance payment of compensation or purchase money

Where a claim for compensation has been made, the acquiring authority may offer to the claimant an advance payment pending settlement of the claim. An amount of up to 90% offered by the acquiring authority may be requested by the claimant in advance in certain circumstances. The balance will be paid at final settlement of the claim.

In the case where the land is acquired by negotiation, payment of the purchase price for that land will be paid at settlement.

Where an acquiring authority has offered the claimant an amount as an advance payment of compensation and this is not accepted by the claimant within thirty (30) days of that offer no interest is payable to the claimant from the date of that offer.

6. RIGHTS AS TO THE FUTURE DISPOSITION OF INTERESTS IN LAND

6.1 Land taken for a public work can be amended to either allow another public work or the designation for the public work can be removed

The Land Administration Act requires that any land taken for a public work must be designated for a specified public work. That designation is shown by being endorsed on the certificate of title or certificate of Crown land title to that land.

Where any land or interest in land is no longer required for the designated public work or any other public work and the Minister for Lands is satisfied that this is the case, the Minister for Lands has power to amend or cancel the designation from the land and the endorsement will also be removed from the certificate of title or certificate of Crown land title. In cases where land is taken without agreement, the Minister for Lands cannot exercise its power to amend or cancel the designation from the land until the requirements in paragraph 6.2 below have been complied with and all persons entitled to exercise an option to purchase the land have declined to do so.

6.2 Option to purchase land no longer required for a public work

In certain cases outlined below, the holding authority must grant the former land owner or the legal representative of the former land owner’s deceased estate (“qualified person”) an option to purchase the land taken for a public work.
A grant of an offer to purchase such land can be made in the following cases where:

6.2.1 the fee simple in the land was taken without agreement under the Land Administration Act or any other Act and either -

- the taking or resumption was done less than 10 years ago; or
- the land has not been used for any public work;

6.2.2 the Minister for Lands proposes to cancel the designation, or change the designation for a public work that is not ancillary or incidental to the purpose for which the land was originally taken;

6.2.3 the land is not a small portion of land that was taken at the request of the former land owner;

6.2.4 the land has not been substantially improved since the taking, and

6.2.5 either -

- the land as a separate lot complies with the requirements of the Town Planning and Development Act 1928; or
- the land can be amalgamated with adjoining land whose fee simple is owned by a qualified person.

Where any one of the above cases apply, the holding authority must –

- publish a notice once in a daily newspaper circulating throughout the State to the effect that the land is no longer required for the public purpose for which it was taken; and
- serve a copy of that notice on each person who appears to be a qualified person.

A qualified person who wishes to apply for an option to purchase the fee simple must apply in writing to the holding authority within thirty (30) days, or such extended period approved by the Minister for Lands after the publication of the notice.

The holding authority must grant an option to purchase the freehold interest to any applicant that the authority is satisfied is qualified.

If there is more than one applicant, the holding authority must satisfy itself as to which of the applicants is qualified and notify any applicant of its decision within sixty (60) days after the application has been made.

The purchase price for the grant of the option will be the current market value of the fee simple as determined by the holding authority on the advice of the Valuer-General.
If any person is aggrieved with the decision of the holding authority in:

- not being granted an option to purchase;
- the priorities of the options being granted;
- the purchase price; or
- the terms and conditions of the option,

that person may, within 21 days of receipt of notice of the decision or longer if approved by the Minister for Lands, lodge an appeal with the Minister for Lands for a review by the Governor under Part 3 of the *Land Administration Act*.

6.3 Request for determination

Where any freehold land has been designated for the purpose of a public work and is not being used for that work, a person who would have been qualified, if the requirements in paragraph 6.2 were to apply, may by notice in writing to the Minister for Lands, require the Minister for Lands to determine whether the land is required for the purpose of the public work or not.

If in such cases the Minister for Lands determines that the land is not required for the public work the Minister for Lands must, in the case where qualified persons have applied, notify the holding authority to proceed with the offering of an option to purchase to such qualified applicants.

7. USE OF APPROVED FORMS

Many of the forms for claiming compensation (and for other purposes) must be in a form approved pursuant to the *Land Administration Act*. Interested parties are advised to ensure that they are using the correct forms.

8. TAKING UNDER OTHER ACTS

Land may also be taken under legislation other than the *Land Administration Act*. That legislation may adopt Parts 9 and 10 of the *Land Administration Act* but with modifications. Persons with interest in land taken under that other legislation are advised to consult the relevant Act.

**DISCLAIMER**

This statement should not be relied upon in determining your rights under Parts 9 and 10 of the *Land Administration Act 1997*.

You should seek independent legal, valuation and other expert advice of a legal or valuation of land nature, as to your rights and liabilities in a taking of land and compensation.