

CROSS BENCHES BRIEFING NOTE

MINING AND PETROLEUM LEGISLATION AMENDMENT (LAND ACCESS) BILL 2010

Background:

Minerals and petroleum are, in most cases, the property of the Crown. The State Government has an obligation to facilitate exploration for the benefit of the people of NSW. Mining makes a major contribution to the economy of NSW through supporting regional economies, and providing jobs, infrastructure, investment and royalties.

Organisations seeking to explore for minerals and petroleum often need to access private property. The *Mining Act 1992* and the *Petroleum (Onshore) Act 1991* set out the requirements to access private property for exploration. An exploration titleholder must enter into an access arrangement with the landholders before they can start exploring. These arrangements may be negotiated between the parties, but where agreement is not reached, the matter is referred to an arbitrator to determine an appropriate arrangement.

The NSW Supreme Court was recently asked to consider the validity of access arrangements between two landholders in the Liverpool Plains district and a subsidiary of BHP Billiton. The land in question was subject to a mortgage.

The Supreme Court held that the access arrangement was invalid, because the *Mining Act* required the company to have an access arrangement in place with each of the "landholders" of the property, including the mortgagee (the bank). The mortgagee banks were not party to the access arrangement, and therefore the arrangements were determined to be invalid.

Exploration companies currently make access arrangements with the owner or occupier of the property, as this person is directly affected by the proposed exploration activity. The Supreme Court decision, therefore, calls into question the validity of hundreds of access arrangements where there is more than one "landholder" as defined by the *Mining Act*.

What the bill does:

The *Mining and Petroleum Legislation Amendment (Land Access) Bill 2010* amends the *Mining Act 1992* and the *Petroleum (Onshore) Act 1991*. In particular, the Bill:

- Amends the definition of "landholder" so that an exploration company only needs to make an access arrangement with a person who has exclusive possession of a property or a right to exclusive possession;
- Removes the requirement for exploration companies to negotiate access arrangements with "secondary landholders" such as easement holders or mortgagees;
- Retains the right for "secondary landholders" to claim compensation if their interests are adversely affected during exploration;
- Provides an exploration company with the flexibility to make more than one access arrangement where there is more than one landholder for a property;

IAN MACDONALD MLC

MINISTER FOR MINERAL AND FOREST RESOURCES

Contact: Jamie Gibson

Telephone: 9230 3034