NSW GOVERNMENT | Trade & Investment Resources & Energy

Government response to the review of the arbitration framework under the Mining Act 1992 and the Petroleum (Onshore) Act 1991

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Contents

Background:

On 15 April 2014, the NSW government commissioned Mr Bret Walker SC to undertake an independent review of the land access arbitration processes relating to exploration under the *Mining Act 1992* (Mining Act) and the *Petroleum (Onshore) Act 1991* (Petroleum (Onshore) Act).

To support and inform the review, targeted consultation was undertaken across a range of stakeholders and submissions were also invited from the public.

The outcome of the review resulted in a report, *Examination of the Land Access Arbitration Framework* (the Walker Report), which made 31 recommendations to improve the arbitration land access framework. Mr Walker also made a further recommendation that the Government examine related issues outside the scope of the current review. The NSW government has endorsed all the recommendations in the Walker Report relating to the current arbitration framework and committed to a process of implementation commencing immediately where possible.

The government intends to implement the recommendations progressively including through administrative means where necessary, while legislative amendments are prepared.

The following summary outlines a comprehensive process of implementation including short and longer term implementation strategies.

Recommendation 1.

That the *Mining Act* and the *Petroleum (Onshore) Act* be amended to provide appointment of panel arbitrators for a maximum of three years.

Summary of response and action proposed

Under the current legislation, the Minister is able to determine the conditions of appointment for a member of the Arbitration Panel. However, the legislation is silent on the maximum timeframe for appointment.

The government will set a maximum appointment term of three years to improve the transparency of the appointment process. This will be done initially by the Minister setting conditions of employment for arbitrators through an expression of interest process inviting application from persons wishing to be considered for appointment to the Arbitration Panel referred to in the *Mining Act* and *Petroleum (Onshore) Act.* The legislation will subsequently be amended to impose the three-year cap on tenure.

Proposed timing

Complete and ongoing:

The Minister will shortly commence an expression of interest process for new arbitrator appointments. It is intended that the expression of interest process will be advertised in nationwide newspapers during August 2014.

It is anticipated that amending legislation to prescribe the three year maximum term will be introduced to the NSW Parliament during 2015.

Recommendation 2.

Continue to have the Minister make the process of appointment, but strengthen the process with new regulations under both the *Mining Act* and the *Petroleum (Onshore) Act* that set out:

a) Eligibility criteria that includes minimum qualifications for all land access arbitrators including members of the Arbitration Panel;

b) Notice provisions such as in both statewide and national circulating newspapers and arbitration accreditation bodies seeking suitably qualified arbitrators for the Arbitration Panel;

c) Establishing an assessment panel to evaluate Arbitration Panel candidates based on eligibility criteria. The assessment panel is to include people independent of the Division of Resources and Energy such as the NSW Land and Water Commissioner and an eminent legal practitioner experienced in arbitration; and

d) Expanding the conditions of appointment to include performance requirements set in procedural guidelines.

As part of the appointment process candidates will be required to notify facts and circumstances such as personal or professional connections that may be relevant to possible perceptions of conflict or bias.

Summary of response and action proposed

The government will strengthen the appointment process to enhance governance and improve transparency. Recommendations 2(a)-(c) will be achieved initially through a nationwide Expression of Interest process. Candidates will be required to meet eligibility criteria, notify of any potential conflict of interest or bias and maintain consistent minimum qualifications and undertake continuous education and training consistent with accreditation requirements.

The performance requirements for panel arbitrators under Recommendation 2 (d) will be addressed as part of the broader procedural guidelines being developed for Arbitrators (see Recommendation 12). The Division of Resources and Energy (Resources and Energy) is engaging specialist resources to develop the procedural guidelines for arbitrators under the new

eligibility criteria. The new guidelines will subsequently be incorporated into new regulations which will need to be developed.

Proposed timing

Implementation of Recommendations 2(a)-(c) is under way with an expression of interest process covering statewide and national circulating newspapers and arbitration accreditation bodies to commence in August 2014. It is intended that a new panel will be constituted before the end of 2014. It is also intended that performance measures under new procedural guidelines will be developed before the end of 2014.

New regulations dealing with Recommendation 2 will be made during 2015.

Recommendation 3.

The process for appointing panel arbitrators is to follow the principles outlined in the Appointment Standards for Boards and Committees in the NSW Public Sector.

Summary of response and action proposed

The Public Service Commission has developed Appointment Standards for Public Sector Boards and Committees which are based on the principles of merit, fairness, diversity and integrity.

Applying these principles to the appointment process for panel arbitrators will ensure consistency with accepted government practice. This can be achieved administratively through development of appointment instruments and conditions which comply with the public sector standards and guidelines. There is no need for regulatory change.

Proposed timing

Recommendation 3 is complete as the expression of interest process for appointment of panel arbitrators complies with the Public Service Commission Guidelines.

Recommendation 4.

Provide factual information on the Resources and Energy website on the process for appointing an arbitrator to the panel. Once appointed, the contact details and qualifications of the panel arbitrators should also be made publicly available on the Resources and Energy website. These details are to be updated regularly. Consistent with Recommendation 10, a public register with any notifications of any possible conflict or bias should also be made available.

Summary of response and action proposed

Information on the arbitration process will be published on the Resources and Energy website to better inform the public of the process. The information will also enhance public knowledge and understanding of how arbitrators are sourced, selected and what qualifications, experience and training are determined to be satisfactory.

The government will implement a public register of arbitrators to enhance transparency and confidence in the appointment process.

Proposed timing

Resources and Energy will commence work to develop user-friendly website information on the arbitration process immediately. However, it is likely that the majority of materials will be published once the new arbitration panel is up and running. It is anticipated that the complete package of website materials will be available by the end of 2014.

Once appointed, panel arbitrators will have their contact details and qualifications listed on the Resources and Energy website and this will be addressed through the expression of interest process being undertaken.

Work will commence on developing a public register of panel arbitrators during 2014 with a view to legislative change during 2015.

Recommendation 5.

Establish a new Arbitration Panel consistent with the eligibility criteria in Recommendation 7, and increase the number of appointments to 10.

Existing panel appointments should be terminated with immediate effect, except where they have commenced but not yet completed an arbitration. Members of the current panel should be welcome to apply to the new Arbitration Panel.

Recommendation 6.

Amend the regulations to provide for the eligibility criteria for panel arbitrators.

Recommendation 7.

A person should be eligible to be appointed to the panel if they:

- are an accredited arbitrator through a recognised body such as the NSW Law Society, the Institute for Arbitrators and Mediators or the National Mediator Accreditation System; and
- have extensive arbitration experience

In addition, a person must either:

- have extensive resources or agricultural industry experience; or
- be a legal practitioner who is eligible for appointment to the Supreme Court, with considerable litigation experience.

Summary of response and action proposed

The expression of interest process being undertaken by the Minister for Resources and Energy will establish a new panel. Appointments will be made to the panel following an independent assessment based on key eligibility criteria. This will ensure appropriate skill levels and contribute to the confidence of the parties involved in the arbitration.

The appointment of existing panel arbitrators currently hearing arbitration matters will not be terminated but instead will continue with current arbitrations. Existing arbitrators may apply to be appointed as an arbitrator under the new process.

In determining the key eligibility criteria under Recommendation 7, the government is conscious of the need to maintain an effective pool of practitioners to deliver timely arbitration services to the parties. The Minister for Resources and Energy will review the proposed eligibility criteria set out in Recommendation 7 to ensure it continues to achieve the objectives of the arbitration scheme and does not unnecessarily restrict entry by otherwise suitably qualified arbitrators.

Proposed timing

The new panel will be constituted by the end of 2014.

New regulations will be made to prescribe the eligibility requirements at a later stage, following any ministerial review of how the new requirements are working in practice. The establishment of the new panel by the end of 2014 is not reliant on these regulation amendments.

Recommendation 8.

That Resources and Energy induct panel arbitrators and provide annual seminars to provide updates on the *Mining Act* and the *Petroleum (Onshore) Act* and any related policy initiatives.

Recommendation 9.

That panel arbitrators maintain consistent minimum qualifications and be required to undertake continuous education and training consistent with accreditation requirements.

Summary of response and action proposed

Resources and Energy will develop appropriate induction of arbitrators through the new appointment process (see Recommendation 2) which includes requirements for minimum and continuing education levels as part of the selection criteria.

Given the range of concerns expressed in submissions regarding the need for continuous training and education of arbitrators, Resources and Energy will facilitate ongoing education through development of a suite of web based information materials and practice notes for arbitrators. This will include education tools to keep arbitrators abreast of legislative changes and policy developments.

Proposed timing

Induction of newly appointed arbitrators will occur immediately following their appointment (before the end of 2014). It is intended that Resources and Energy facilitated seminars will commence within 12 months (by mid-2015).

Recommendation 10.

That Resources and Energy develop appropriate policy guidance on the governance arrangements pertaining to land access arbitrations that includes:

- practices and procedures for dealing with conflicts of interest and bias. This should include the procedures for mediators and arbitrators to declare conflicts of interest and bias and recuse themselves if appropriate, and for parties to request an arbitrator or mediator to recuse themselves due to a perception of conflict of interest or bias.
- public disclosure requirements for panel arbitrators. A public register should record relevant employment and financial dealings. Refer to Recommendation 2.
- procedures for arbitration process costs to be remitted to Resources and Energy, except by prior agreement of all the parties.

Summary of response and action proposed

There was a consensus among submissions that the governance arrangements for the land access arbitration framework need improvement with a clear lack of public information on the issue apart from minimal guidance in the *Mining Act.*

Governance will be enhanced in this area by development of detailed policy guidance particularly around maintaining qualifications and on managing conflict of interest or bias in the arbitration process. Resources and Energy will engage specialists to develop the guidance information to be placed on the Resources and Energy website.

Proposed timing

Development of guidance material is expected to be complete by the end of 2014.

Recommendation 11.

That the procedure where the Secretary appoints panel arbitrators on a strict rotational basis is published in procedural guidance referred to in Recommendation 12.

Recommendation 12.

That procedural guidance is prepared under the regulations of the *Mining Act* and *Petroleum (Onshore) Act* (section 148 and section 69K respectively) dealing with the following matters:

- Objectives and principles for arbitration
- Role and scope of the arbitrator
- Providing for teleconferencing or video conferencing as an alternative to face to face arbitrations
- Stages and timeframes for the arbitration framework
- Form and content requirements for submissions
- Check list of documents to be provided to the landholder by the explorer, including relevant insurance details
- Explorer providing draft access arrangement upfront ready to sign
- Baseline report, which is generally to be conclusive
- Process for site visits
- Landholder providing list of significant improvements
- Non-binding view of what is a significant improvement (if this is in dispute)
- Recording of proceedings
- Interim determinations
- Final determinations
- Summary reasons for decisions.

If the current regulation making powers under the legislation are not sufficient to enable what is envisaged then they should be amended accordingly.

Summary of response and action proposed

The government agrees that maintaining the current practice where arbitrators are appointed from the Arbitration Panel on a strict rotational basis, continually moving though the list and then starting again, should be maintained. The process has benefits in avoiding any undue influence in the appointment process. This process will be included in the procedural guidelines to be published by Resources and Energy. It is also intended to retain the ability for the parties to agree on an arbitrator.

Important procedural guidance materials for arbitrators will be developed and included in the regulations of the *Mining Act* and *Petroleum (Onshore) Act* to provide certainty and predictability in the process while still accommodating exceptional circumstances. In developing some aspects of the procedural guidance material, stakeholders may be consulted, including, for example, regarding guidance on site visits.

Proposed timing

The recommendation(s) will be implemented in stages with development of guidance material to occur during 2014 in consultation with recognised specialists and key stakeholders, where appropriate.

Procedural guidance materials will subsequently be incorporated into the regulations, likely to be developed during 2015.

Recommendation 13.

That the *Mining Act* and the *Petroleum (Onshore) Act* be amended to provide a separate mediation process. This amendment should also provide that a person who acts as a mediator may not be an arbitrator, except with the agreement of both parties.

Summary of response and action proposed

The current process governing land access arrangements provides for an arbitrator to conciliate or mediate before they commence formal arbitration. The government agrees that mediation

should remain part of the process but that it should be separate from the arbitration process to preserve the confidentiality of mediation and prevent admissions made during mediation from affecting judgments in an arbitrated determination. It is intended to amend the legislation to clarify that a mediator does not also act as the arbitrator, unless both parties agree in writing.

Proposed timing

The recommendation will be implemented through amendments to the legislation. It is anticipated that amending legislation will be introduced to NSW Parliament during 2015.

Recommendation 14.

That the *Mining Act* and the *Petroleum (Onshore) Act* be amended to provide a site inspection by a mediator or an arbitrator.

Summary of response and action proposed

To facilitate the drafting of a land access arrangement, site visits to the land in question are often helpful. They assist arbitrators to gain greater insight into the issues in dispute and are a common occurrence in court proceedings. The government supports amendments to the legislation to provide for a site inspection by the mediator or arbitrator.

Proposed timing

The recommendation will be implemented through amendments to the legislation. It is anticipated that amending legislation will be introduced to NSW Parliament during 2015.

Recommendation 15

That the *Mining Act* and the *Petroleum (Onshore) Act* be amended to provide that parties negotiating and arbitrating a land access arrangement must do so in good faith.

Summary of response and action proposed

All parties to the arbitration should be required to negotiate and arbitrate a land access arrangement in good faith as this assists the arbitrator in managing the arbitration process to achieve a fair outcome. The government supports making this an explicit legislative requirement.

Proposed timing

The recommendation will be implemented through amendments to the legislation. It is anticipated that amending legislation will be introduced to NSW Parliament during 2015.

Recommendation 16.

That the *Mining Act* and the *Petroleum (Onshore) Act* be amended to provide the parties with the right to legal representation.

Summary of response and action proposed

The government considers that access to legal representation is an essential requirement for a well-functioning arbitration process and to ensure that timeframes and documentation requirements are met. Further, the involvement of lawyers, themselves bound by professional rules and discipline, will enhance the arbitration process.

Proposed timing

The recommendation will be implemented through amendments to the legislation. It is anticipated that amending legislation will be introduced to NSW Parliament during 2015.

Recommendation 17.

That the *Mining Act* and the *Petroleum (Onshore) Act* be amended to provide that every determination by an arbitrator, whether they have been appointed or agreed to by the parties, be published on the Resources and Energy website.

Summary of response and action proposed

The government supports making land access determinations by arbitrators publically available in the interests of transparency.

Proposed timing

The recommendation will be implemented through amendments to the legislation. It is anticipated that amending legislation will be introduced to NSW Parliament during 2015.

Recommendation 18.

That the Secretary of the department approve a list of experts to undertake proposed baseline reporting for arbitrations.

Summary of response and action proposed

Baseline reports provide a 'snap shot' of current conditions and protect both landowners and explorers by giving the parties certainty over the starting position, pre-exploration. Where a landowner raises concerns with an expert nominated by the explorer, the explorer will be required to choose an expert from a list of experts approved by the Secretary of NSW Trade & Investment. In the absence of fraud, the baseline report will be deemed conclusive for the purposes of establishing the condition of the landowner's land pre-exploration under the access agreement.

The recommendation will be implemented following consultation with stakeholders and other government agencies.

Proposed timing

A departmental policy on the criteria for approving the list of experts will be developed and it is intended to have the list in operation by mid-2015.

This recommendation should be considered in light of other recommendations (Recommendation 25) regarding legislative change to include the costs of experts in the landowner costs to be payable by explorers.

Recommendation 19.

Continue the current arrangements where the Land and Environment Court determines significant improvements.

Summary of response and action proposed

The legislation already provides for the Land and Environment Court to determine what constitutes a "significant improvement" and this will continue.

Proposed timing

No action required: The recommendation is already in operation under the legislation.

Recommendation 20.

That the Land and Environment Court be requested to consider procedures, perhaps by practice direction, to ensure special expedition of any necessary determinations of what constitutes a significant improvement.

Summary of response and action proposed

The government acknowledges the benefits of expediting determinations concerning what constitutes a significant improvement on the land and supports this recommendation in principle, subject to the agreement of the Land and Environment Court. Resources and Energy will consult further with the Department of Attorney General and Justice on this recommendation.

Proposed timing

Ongoing consultations with the Department of Attorney General and Justice.

Recommendation 21.

That new processes are implemented in relation to significant improvements to:

- ensure that any dispute over significant improvement is identified early in the process (consistent with the new procedural guidelines in Recommendation 12);
- provide that the arbitrator can make a non-binding view on which part of the land constitutes a significant improvement, and then can progress the arbitration; and
- provide that the arbitration process be put on hold if a significant improvement dispute goes to the Land and Environment Court, and recommences once the Court has made an order.

Summary of response and action proposed

The government will look to implement the recommendation immediately in part, by including significant improvements in practice notes and guidance material to be published on the Resources and Energy website. Consistent with other recommendations in this area, consultation with the Department of Attorney General and Justice will be required. It is intended that the proposed interaction between determination of a significant improvement and an arbitration will be achieved in due course through amendments to the legislation.

Proposed timing

It is intended that the policy practice notes and guidance material for arbitrators will be available by the end of 2014 and that subsequent legislative change will occur during 2015.

Recommendation 22.

That *Mining Act* and the *Petroleum (Onshore) Act* be amended to introduce a regulation making power to declare what does and does not constitute a significant improvement. This should be complimented by guidance material.

Summary of response and action proposed

The government accepts the consensus among submissions that more guidance could be given on what constitutes a significant improvement and favours a principle based, non-prescriptive approach to guide the parties. It is intended to amend the legislation to provide a regulation making power to declare the types of improvements that are and are not significant improvements. Including these in regulations will give more certainty to the parties and avoid the current confusion and reliance on court decisions. Guidance material on the legislative position will also be made available and subsequently incorporated into arbitrator induction programs.

Proposed timing

The recommendation will be implemented through a combination of policy guidance material and legislative reform. It is anticipated that changes to the legislation to introduce a regulation making power to prescribe what constitutes a significant improvement will be introduced to the NSW Parliament during 2015. Guidance material will be published once the new laws commence.

Recommendation 23.

That *Mining Act* and the *Petroleum (Onshore) Act* be amended to provide that a landholder cannot unreasonably withhold consent in relation to significant improvements or improvements.

Summary of response and action proposed

The government supports changes to the legislation to provide that a landowner cannot unreasonably withhold consent. Such changes will assist all parties and help to avoid perverse outcomes which may be worse for the landowner. This may include, for example where the landowner withholds consent for a significant improvement resulting in the explorer obtaining access by disturbing a larger part of the property to avoid the significant improvement.

Proposed timing

The recommendation will be implemented through amendments to the legislation. It is anticipated that amending legislation will be introduced to NSW Parliament during the first quarter of 2015.

Recommendation 24.

That the *Petroleum (Onshore) Act* be amended to align with the concept of significant improvement contained in the *Mining Act.*

Summary of response and action proposed

The government supports efforts to harmonise the terminology under the *Mining Act* and *Petroleum (Onshore) Act* to provide certainty and predictability for explorers and landowners. Historically, land access arrangements under the two pieces of legislation have travelled together. However, due to an apparent oversight, the addition of the word “significant” in the *Mining Act* was not carried across in the *Petroleum (Onshore) Act.*

Proposed timing

The recommendation will be implemented through amendments to the legislation. It is anticipated that amending legislation will be introduced to NSW Parliament during 2015.

Recommendation 25.

That the *Mining Act* and the *Petroleum (Onshore) Act* be amended to provide that a landholder is entitled as part of the negotiation and arbitration of an access arrangement to have the following costs paid by an explorer:

- Their time spent negotiating and arbitrating the access arrangement up to a capped amount;
- Their legal costs up to a capped amount; and
- Costs of any experts the landholders engage as part of this negotiation and arbitration process up to a capped amount.

Consideration should be given to enabling variable caps depending on the nature of the proposed exploration.

Summary of response and action proposed

The current compensation provisions do not allow land owners to recoup the costs of negotiating or arbitrating an access arrangement or initial legal costs incurred. As ‘one-off’ participants in the process, land owners consider this inadequate. It has also been suggested that the costs of negotiating and arbitrating a land access arrangement are the costs of doing business for an explorer and should be paid for by explorers not landowners.

The government will engage an independent expert to establish appropriate cost and fee structures and to set cost and time caps in the process to ensure costs being recovered are reasonable and encourage the parties to be efficient. Consultation with stakeholders will take

place on what the proposed independent fees, costs and caps should be. It is intended that the specific categories of reasonable costs payable to landowners by explorers (and the associated cost caps) will be incorporated into legislation. The caps will be implemented once the legislation commences.

Proposed timing

The recommendation will be implemented through amendments to the legislation. It is anticipated that amending legislation will be introduced to NSW Parliament during 2015.

Recommendation 26.

That the *Petroleum (Onshore) Act* be amended to clarify that the provisions in that Act relating to the measure of compensation by the Land and Environment Court apply to compensation determined by an arbitrator in an access arrangement.

Summary of response and action proposed

Compensation is a key part of the exploration process which allows exploration on private land. Currently there are minor differences in the way the *Mining Act* and the *Petroleum (Onshore) Act* address the interaction between arbitration and the compensation scheme.

The government will seek to harmonise the two acts by clarifying that the provisions in the *Petroleum (Onshore) Act* relating to the measure of compensation by the Land and Environment Court also apply to compensation determined by an arbitrator in an access arrangement. This will ensure the arbitration process interacts with the compensation scheme under the *Petroleum (Onshore) Act* in the same way as it does under the *Mining Act*

Proposed timing

The recommendation will be implemented through amendments to the legislation. It is anticipated that amending legislation will be introduced to NSW Parliament during 2015.

Recommendation 27

That the *Petroleum (Onshore) Act* be amended to mirror the requirements of clause 74 of the *Mining Regulation 2010* in relation to the matters an arbitrator needs to take into account in making an assessment of compensation.

Summary of response and action proposed

The *Mining Regulation* contains guidance by setting out the factors to be considered when assessing compensation, such as the nature, quality, area and particular characteristics of the land concerned and the proximity to building, structure, road, track or other facility, amongst others. The *Petroleum (Onshore) Regulation* does not currently set out such factors despite the two legislative regimes operating in harmony. The Act will be amended to mirror the provisions in the *Mining Regulation*.

Proposed timing

The recommendation will be implemented through amendments to the legislation. It is anticipated that amending legislation will be introduced to NSW Parliament during 2015.

Recommendation 28.

That Resources and Energy prepare guidance in relation to assessing and determining compensation.

Summary of response and action proposed

The Department of Trade and Investment has previously developed a land access arrangement template and associated guidance material relating to compensation rates. The material was

developed in consultation with the NSW Minerals Council and NSW Farmers. It is intended that this material will be reviewed as part of the overall process of developing new procedural guidelines for arbitrators. This body of work will be undertaken by specialist practitioners in consultation with key stakeholders.

Proposed timing

It is intended that the new procedural guidelines for arbitrators (including compensation matters) for arbitrators will be developed before the end of 2014.

Recommendation 29.

That the review and appeal processes under the *Mining Act* and the *Petroleum (Onshore) Act* remain the same.

Summary of response and action proposed

This current legislative position which provides for the court to conduct merits review of access arrangements and to resolve questions of law is appropriate and will be maintained.

Proposed timing

No action required. The recommendation is already in operation under the legislation.

Recommendation 30.

That explorers be required always to pay the costs of the landholder (whatever the outcome of the review) if a matter is heard in the Land and Environment Court, unless the Land and Environment Court determines that the landholders were unreasonable, and then only to the extent that such conduct increased the costs.

Summary of response and action proposed

Consistent with other recommendations relating to the operation of the Land and Environment Court, the Division of Energy and Resources will consult with the Department of Attorney General and Justice in relation to costs, prior to making any legislative changes.

Proposed timing

Legislative amendments to occur during 2015.

Recommendation 31.

That the Division of Resources and Energy undertake performance reviews every two years of the arbitration framework (not individual arbitrations) and consider, for example:

- The number of inductions and seminars offered to arbitrators;
- The number of land access arrangements determined through arbitration or the Land and Environment Court;
- Timeliness of arbitrations consistent with specified timeframes;
- Whether recordings made of arbitrations;
- The number and type of complaints received;
- The number and type of concerns relating to conflict or bias and how they have been addressed; and
- The number of land access arrangements determined through arbitration that are placed on the Division of Resources and Energy website.
- Whether panel arbitrators are maintaining continuous education consistent with their accreditation requirements.

These performance reviews are to be made publicly available.

Summary of response and action proposed

Land access arrangements are largely a private matter between the explorer and landholder. However, the Division of Resources and Energy, on behalf of government, has a service delivery responsibility to ensure that stakeholders have confidence in the arbitration system and that its operation continues to meet the objectives of the legislation. A key way to do this is through robust and regular monitoring and review.

Proposed timing

Within two years.

Recommendation 32.

That the government consider the following issues that were outside the scope of the review and respond to them separately:

- Landholders accessing security deposits or the creation of a landholder rehabilitation fund in the event of an explorer causing damage;
- Whether an exploration licence should be terminated if an access arrangement was breached;
- Issues of fatalities associated with living near mining, particularly coal seam gas and unconventional gas drilling;
- Crown ownership of resources and whether the Crown should continue to own them after extraction;
- The scope of the definition of prospecting under the *Mining Act* and whether it should be amended to include environmental assessments to avoid companies having to enter into an access arrangement and obtain an s252 permit.

Summary of Response and action proposed

The above issues fall outside the scope of the Walker Review into land access arrangements and will be considered by the government separately following implementation of the recommendations regarding the arbitration process.

Proposed timing

For further consideration.