

**GOVERNMENT RESPONSE TO THE FINAL REPORT OF THE
REVIEW OF ENVIRONMENTAL AND PUBLIC SAFETY IMPACTS
OF MINING IN THE KALGOORLIE AREA
(FINAL REPORT OF THE COOKE REVIEW)**

I present the Government response to the Final Report of the Cooke Review. The Cooke Review commenced in June 2002, partially in response to issues emerging from the Review of the Mines Safety and Inspection Act 1994 being carried out by Mr Robert Laing and partially to investigate long standing complaints about mining operations in the Kalgoorlie-Boulder area.

The Final Report of the Cooke Review was tabled in Parliament on March 3, 2004. The Final Report contained 25 recommendations supported by four case studies and a significant body of contextual material.

In tabling the Final Report I stated that there would be the opportunity for public comment on the findings and recommendations contained in that document. A public comment period was advertised closing April 5, 2004. A further period of time up to April 16, 2004 was allowed for those respondents who wished to amplify their submissions. Seventeen formal submissions were received and a further twelve respondents provided written feedback. Legal advice was also sought from the State Solicitor's Office on the content of the Final Report and specific recommendations.

A number of the recommendations were progressed immediately including taking action on recommendations 1, 14, 15, 21 and 22.

Many recommendations had a potential state-wide impact and it was decided that broader consultation should be initiated through the Department of Industry and Resources on recommendations 3, 4, 5, 6, 9, 10, 16 and 25.

The establishment of an advisory committee proposed at recommendation 19 and its involvement as suggested at recommendations 23 and 24 is supported.

I now table the Government response to the Final Report of the Cooke Review as well as the February 2004 Enforcement and Prosecution Policy of the Department of Industry and Resources.

**RESPONSE TO THE RECOMMENDATIONS IN
THE FINAL REPORT OF THE COOKE REVIEW
August 2004**

RECOMMENDATION 1

That the concerns of Aboriginal communities, raised by Mr Bob Laing and referred to above, be the subject of a separate investigation, by means to be determined by the Minister for State Development.

The Government is keen to promote a better understanding between Aboriginal communities and the mining industry. The Government will examine how this relationship may be further improved through discussions with peak organisations representing Aboriginal communities and the mining industry.

The Department of Industry and Resources has been advised the Laing Review into the Mines Safety and Inspection Act received one written submission from a remote Aboriginal community and one verbal complaint dealing with adverse environmental impacts of mining activities. It is understood both submitters requested anonymity and later attempts by the Laing Review to contact the individuals involved proved unsuccessful.

It is to be noted that the Government has already taken steps to try and improve the communication processes through its recently released publication "Engaging with Aboriginal Australians"

Response: Recommendation supported. The Department of Industry and Resources will do whatever is possible to locate the two complainants to ascertain the nature and possible resolution of those complaints.

RECOMMENDATION 2

That a detailed review of the Mitchell-McCotter Report be undertaken by the Department of Industry and Resources. The report to be submitted to the Minister for State Development and to include a schedule and assessment of proactive measures which can be taken, to address the issues which continue and are identified within that Report.

The Golden Mile Social Impact Study completed by Mitchell McCotter in June 1991 was a well-constructed document but is now dated. The Golden Mile Social Impact Study gives an excellent background on the Williamstown issue identifying that of the 120 dwellings existing in 1991 about 15 were leasehold, 15 were squatters and 90 were freehold. The comprehensive survey of residents also provides good background to the issues, as they existed in 1991.

The 1991 Report contains a number of recommendations that are not consistent with those in the Final Report of the Cooke Review.

Other recommendations were subsequently rejected by governments of the day. For example, the 1991 Report recommended there be a special residential zoning for Williamstown. In 1998 the City of Kalgoorlie-Boulder prepared a scheme amendment to rezone most of Williamstown from rural to general residential. The amendment was refused by the then Minister for Planning and the present zoning of Williamstown is rural.

The 1991 Report dealt with a number of issues including the rights of squatters and the enforcement of environmental standards.

The five key recommendations of the 1991 Report are:

- 1) that there be a special residential zoning for Williamstown;
- 2) that a special environmental package be implemented for Williamstown including landscaping and revegetation areas;
- 3) that the current restriction on mining within 100 metres of occupied dwellings under the Mining Act be extended to 200 metres;
- 4) that residents be given access to freehold tenure; and
- 5) that there be improved community involvement.

The recommendations contained in the Golden Mile Social Impact Study have been reviewed and have been taken into account in responding to the Final Report of the Cooke Review.

The review of the Golden Mile Social Impact Study identified that the first recommendation has been resolved with the Williamstown area being zoned Rural under the City of Kalgoorlie-Boulder Town Planning Scheme No 1 and that the third, fourth and fifth recommendations were covered in the Final Report of the Cooke Review.

The outstanding issue of an environmental package should be investigated.

Response: Recommendation partially supported. The Government will investigate what the Golden Mile Social Impact Study (Mitchell McCotter Report) referred to as a package involving landscaping and revegetation for Williamstown.

RECOMMENDATION 3

That this issue (mining of freehold land within an urban setting) be immediately examined by government and appropriate measures developed and implemented by amendment to the Act.

This recommendation relates to mining on freehold land and in particular the distinction that exists in the Mining Act between mining on freehold land and mining on crown land.

The Mining Act has separate Divisions for dealing with crown land and private land. There is a limitation for prospecting, fossicking, exploring or mining on crown land that is within 100 metres of an occupied building. There is no directly equivalent provision relating to prospecting, fossicking, exploring or mining on private land although there are limitations in granting a mining tenement under Section 29 of the Mining Act.

The Government accepts there is a need to review this provision and will do so by going through a consultative process that will involve-

- Consultation with the mining industry and local government; and
- Development of a discussion paper; and
- Invitation to communities to comment on the discussion paper.

The Cooke Review assumes that the Mining Act is the appropriate legislation to deal with mining in proximity to urban areas.

Freehold land in an urban setting is subject to land use limitations relating to its zoning, town planning requirements and environmental legislation. The Mining Act in Section 120 requires that the Minister take into account town planning schemes in force under the *Town Planning Development Act 1928* and local laws in force under the *Local Government Act 1995*. The provisions of any such town planning scheme or local laws are not to operate to prohibit or affect the granting of a mining tenement or the carrying out of mining operations authorised by the Mining Act.

An example of this is the City of Kalgoorlie-Boulder Town Planning Scheme No 1, which includes a provision for a mining activity under clause 5.13 and incorporates a Safety Exclusion Zone (SEZ).

Local Authorities around Western Australia have used town planning provisions to manage the interface between urban development and mining.

Response: The recommendation is supported and will be implemented by broad consultation with the community, local government and the mining industry. The Department of Industry and Resources will manage the consultation process – a process that will involve development of a discussion paper as well as opportunities for wide public input.

RECOMMENDATION 4

That s20 (5) of the Mining Act 1978 be urgently amended to stipulate that in cases of open cut mining the minimum distance from an occupied dwelling be no less than 300 metres. The existing provisions of s20 (5) requiring written consent from effected (sic) neighbours be retained. The effect of the amendment should be retrospective to the announcement.

This recommendation goes well beyond the circumstances in Williamstown and would impact on mining operations throughout the State.

With respect to the Williamstown community and KCGM, the Williamstown Residents Committee and KCGM did not support the recommendation. The Williamstown Residents Committee noted in its submission “With regard to Williamstown’s particular circumstances, whilst Mr Cooke, the reviewer, may have been following the Mitchell McCotter proposal for buffer zones, to apply this 300m distance in Williamstown would effectively isolate those properties which fall outside of the 300m. Services would be further eroded if commercial decisions concluded it would not be viable to provide services to Williamstown for a handful of homes”.

The Committee further stated, “We do not believe it is practicable to apply a 300m, or even a 400m, buffer zone in Williamstown. The community is already regarded as a “node” by the City of Kalgoorlie Boulder, which does not believe Williamstown has a future. If further mining activity were to take place in Williamstown, we believe the entire Williamstown community needs to be offered relocation and/or compensation.”

In its submission, KCGM observed “Recommendation 4, if implemented, would have far-reaching and significant impacts on both current and future mining operations in the State...The extension to 300 metres from the current 100 metres zone under Section 25 of the Act would require the immediate closure of the Mt Charlotte mine with the loss of over 80 jobs and annual expenditure of approximately \$27 million per annum in wages, contracts and supplies”.

There are a number of observations that should be made about the history of this provision, the legislative arrangements currently in place and the implications of those recommendations.

These observations are intended to be taken into account in the action that is proposed to be taken as a result of the response to the recommendation.

Originally all mining was defined as underground mining and open cut activity was considered to be quarrying. Mining now has a broader definition and includes open cut exploitation of a mineral resource.

Open cut mining includes mineral sand mining and could include surface mining such as harvesting of salt and gypsum. The existing provision of 100 metres is considered to be appropriate given that mining may be simple earthmoving or dredging that can be carried out with limited impact on nearby property. The specification of a minimum of 300 metres from occupied property could lead to sterilization of economic mineral reserves.

Within a townsite and near townsites there is an expectation of activity on adjoining property. Such activity is controlled by town planning and environmental legislation.

Mining could be considered in the same way as other zoned land but there should be a buffer from activities which create significant nuisance such as noise, vibration and dust.

This buffer does not need to be a sterile zone but could be considered in the same way as if it were zoned for service industry or light industry. The buffer could also be able to be landscaped or include noise bunds.

For example the type of activities permitted within the 100 metres could include:

- a) Any activity that would be permitted in an area zoned service industry or light industry
- b) Benign infrastructure
- c) Provision of fencing and firebreaks
- d) Noise attenuation facilities
- e) Landscaping and site remediation
- f) Prospecting using limited earth disturbance

Benign infrastructure would not include conveyors or haul roads but could include pipelines, parking areas, buildings and service access.

Any requirement for a larger buffer could be dealt with by the town planning scheme in the same way as the Safety Exclusion Zone (SEZ) is incorporated within the City of Kalgoorlie-Boulder Town Planning Scheme No 1. This approach allows for a community by community approach and also for the different requirements for the various types of mining and particular projects.

In other parts of the state, such as Collie and Bridgetown-Greenbushes, these buffers from open cut mining are incorporated into town planning schemes.

The KCGM proposal for a “no-activity zone” could be a short term initiative whilst an amended approach to the 100 metre buffer is being considered.

Response: The recommendation is supported for further investigation by broad consultation with the community, local government and the mining industry. The Department of Industry and Resources will manage the consultation process – a process that will involve development of a discussion paper as well as opportunities for wide public input.

RECOMMENDATION 5

The Mining Act 1978 be amended to require any open cut mining operation to have a safety exclusion zone no less than 50% of its planned depth. In the event of a subsequent Notice of Intent to increase the depth of the mine the SEZ be expanded accordingly. Any application to be evaluated according to specific risk factors and the current and projected size of the population centre both during and beyond the projected life of the mine.

There was little support for this recommendation. Nevertheless given that this issue is able to be considered together with those raised at recommendations 3 and 4 it should be investigated. Action should be incorporated into the consultation for recommendations 3 and 4.

Response: The recommendation is supported for further investigation by broad consultation with the community, local government and the mining industry. The Department of Industry and Resources will manage the consultation process – a process that will involve development of a discussion paper as well as opportunities for wide public input.

RECOMMENDATION 6

That the Act be amended to require any SEZ imposed on an open cut mine to have effect prior to the commencement of any mining development works.

This recommendation had stronger support. Action should be incorporated into the consultation for recommendations 3 and 4.

Response: The recommendation is supported for further investigation by broad consultation with the community, local government and the mining industry. The Department of Industry and Resources will manage the consultation process – a process that will involve development of a discussion paper as well as opportunities for wide public input.

RECOMMENDATION 7

That the current provisions of s20 (5) (c) be strictly enforced by DoIR in respect of any “interference with Crown Land”, other than in the case of open pit mines. Enforcement to be based upon the application of the law by the Department in 1995 concerning the construction of the Cahill Road conveyor.

This recommendation raises two issues – the issue of interpretation and the issue of enforcement. The issue of interpretation is to be dealt with at recommendation 8.

The Department of Industry and Resources issued an Enforcement and Prosecution Policy in February 2004.

It is understood that the Policy formalises internal guidelines that have existed for many years.

The Policy sets out enforcement criteria and the escalating enforcement measures. A copy of the Policy is attached and it should assist in a better understanding of the Department’s approach to enforcement.

The State Solicitor's Office has confirmed that the responsibility for determining whether the Department will prosecute for an alleged breach of Section 20(5) rests entirely with the Department and independently of any complaint or assertion of a breach being made by any person.

The decision to prosecute is an exercise of discretion and factors such as the public interest and the prospects of securing a conviction are relevant to the exercise of the discretion.

Given the strong public interest in this area relating to Department of Industry and Resources activity there should be feedback sought after eighteen months operation of the Policy.

Response: Department of Industry and Resources should investigate and prosecute any breaches of the Mining Act in accordance with its Enforcement and Prosecution Policy. The Enforcement and Prosecution Policy should be reviewed through a broad consultative process commencing in September 2005.

RECOMMENDATION 8

That the KCGM submissions on the definition of "mine" for the purposes of s20 (5) be subject of Crown Counsel opinion. In the event that the submissions are determined to have legal merit the matter be remitted, upon advice to the Minister for a clearer description of the activity intended. The matter then to be progressed by amendment to s20 (5) to reflect the intention of the section, as determined in the Government's considerations.

Response: This recommendation is still being examined.

RECOMMENDATION 9

That the Notice of Intent procedure be amended to require the proponent of mining to specifically address considerations under the revised s20 (5).

The Notice of Intent procedure should be considered in the same manner as recommendations 4, 5 and 6.

Response: The recommendation is supported for further investigation by broad consultation with the community, local government and the mining industry. The Department of Industry and Resources will manage the consultation process – a process that will involve development of a discussion paper as well as opportunities for wide public input.

RECOMMENDATION 10

That the Mining Act 1978 be amended to require publication of all (sic) Notices of Intent to mine in a nominated area of a daily statewide newspaper. Further, the NOI and all supporting documents, including Project Management Plans and Closure Plans to be available from the nearest offices of DoIR and DOE. Specifically, the Regulations to require that all persons intended under s20 (5) of the Act be advised of the availability of the information.

The Department of the Environment released an “Interim Guide to Community Involvement” in December 2003. The Guide was prepared with assistance from both the Chamber of Minerals and Energy and the Chamber of Commerce and Industry. The Guide recommends making as much documentation public as possible and presents a useful starting point for discussion.

The recommendation should be considered in the same manner as recommendations 4, 5 and 6.

Response: The recommendation is supported for further investigation by broad consultation with the community, local government and the mining industry. The Department of Industry and Resources will manage the consultation process – a process that will involve development of a discussion paper as well as opportunities for wide public input.

RECOMMENDATION 11

That KCGM be required to indicate whether increase in mining activity, particularly by open cut methods, is likely within the next 5 years, within 300 metres of any occupied residence in Williamstown.

There is no power in the Mining Act to compel KCGM to provide the information requested.

As part of its submission KCGM “questions the legal basis of recommendation 11” and advised that “it can categorically state that current mine plans do not foresee open cut development in the vicinity of Williamstown”. KCGM also advised that “The area on which Williamstown is situated is one of the most prospective areas in the State sitting as it does across the Golden Mile mineralised zone. Mining activity in the Williamstown area can not be realistically planned in the Williamstown area without written permission from the residents.”

Response: Recommendation not supported as there is no ability to require KCGM to provide the information requested.

RECOMMENDATION 12

If Williamstown has a life of 5 years or more then a one off opportunity for grant of freehold title should be made to all occupiers of Crown Land. This offer should be on the usual terms with associated costs.

Before dealing with this recommendation it would be prudent to conclude the discussions on buffer zones and the potential amendments to the Mining Act.

Action on this recommendation should be deferred until the broader consultation and discussion at recommendations 4, 5, and 6 is completed.

Mapping the location of current leasehold and squatter held properties should proceed to assist with future decision making.

Response: This recommendation will be considered by the Government at the conclusion of the process outlined in recommendations 4, 5, and 6.

RECOMMENDATION 13

If Williamstown has, or is assumed to have, a life of less than 5 years, no action other than the immediate adoption of earlier recommendations is warranted.

See discussion at recommendation 12.

Response: This recommendation will be considered by the Government at the conclusion of the process outlined in recommendations 4, 5, and 6.

RECOMMENDATION 14

That the Minister refer the individual complaints raised out of Williamstown (Sections 6, 9, 10 & 11) and concerning Optimum Resources (Section 12) to the Corruption and Crime Commission for investigation and review. The review to examine the conduct of the Department; make determinations on the merits of each case; and propose improvements for the future. The legal review should have regard for the standards of conduct expected of government officers and consider referral of matters to the Public Sector Standards Commission as appropriate.

This recommendation has been implemented in that the Final Report of the Cooke Review was referred to the Corruption and Crime Commission by the Director General of the Department of Industry and Resources in March 2004.

In the response, dated April 2, 2004, a Senior Reviewer from the Corruption and Crime Commission advised the Director General that “As the report does not appear to make any allegation that would constitute misconduct, as defined by Section 4 of the *Corruption and Crime Commission Act 2003*, and given the Department’s response to the report, the Commission has decided to take no further action in relation to this matter”.

Response: Recommendation implemented.

RECOMMENDATION 15

Any cases of Departmental conduct found to have led to misinformation of the Parliament should be referred to the Legislative Council Privileges Committee.

The claim of misinformation relates to answers to Parliamentary Questions. There are three case studies referred to in the Final Report of the Cooke Review that raise concerns about the accuracy of information generated by the Department of Industry and Resources:

- 1) Mr and Mrs Hounslow, Williamstown
- 2) Mr and Mrs Meyer-Forst, Williamstown and
- 3) Steven Kean, Optimum Resources Pty Ltd

The issues raised in these three case studies relating to the accuracy of responses to Parliamentary Questions have been investigated.

No cases were identified where there was a deliberate intent to mislead Parliament although in a number of instances more complete responses could have been given. Inconsistencies in advice were also discovered and a failure to check back to source documents identified.

It is understood that the Legislative Council Procedure and Privileges Committee would normally only consider dealing with a matter where there was a deliberate intent to mislead Parliament.

Response: The recommendation has been implemented to the extent that the cases identified in the Cooke Review have not revealed any deliberate intention to mislead the Parliament.

RECOMMENDATION 16

That the process outlined above (exchange of claim and counterclaim) be extended to deal with complaints of alleged breach of s20 (5).

The State Solicitor’s Office has confirmed that the responsibility for determining whether a prosecution will be mounted over an alleged breach of Section 20(5) of the Mining Act rests entirely with the Department and independently of any complaint or assertion of a breach being made by any person.

The decision to prosecute is an exercise of discretion and factors such as the public interest and the prospects of securing a conviction are relevant to the exercise of the discretion.

The State Solicitor's Office cautions against "a claim and counterclaim process" due to the risk of prejudicing potential prosecutions.

However, the Government supports the most transparent process being used and to that end, advice will be sought on ways of trying to make the existing processes more transparent.

As outlined at recommendation 7, the Enforcement and Prosecution Policy should be reviewed in a broad consultative process commencing in September 2005.

Response: This recommendation is not supported on legal advice. Further consultation to be initiated with the community and the mining industry on improving transparency in the enforcement and prosecution process.

RECOMMENDATION 17

That the Department be directed (by the Minister) to convene discussions, to be chaired by the Director General, aimed at seeking resolution between the parties (Optimum Resources and KCGM).

This recommendation could confuse the statutory role of Department of Industry and Resources and the common law relationship between KCGM and Optimum Resources.

The Minister may request that the Department assist KCGM and Optimum Resources resolve their dispute but neither the Minister nor the Director General have the power to compel KCGM and Optimum Resources to attend meetings or to resolve their dispute. If both KCGM and Optimum Resources wish to explore the prospect of reaching agreement, the Director General of the Department of Industry and Resources or an agreed independent third party will chair a conference to see if this is possible.

Alternatively, the approach suggested by KCGM in its response to the Cooke Review could be followed. That approach involved the appointment of an independent and expert arbitrator to assess the facts and examine both Optimum Resources and KCGM's evidence so as to make a binding ruling to bring closure to this dispute. It is understood that Optimum Resources do not wish to undergo mediation or arbitration.

Any issue relating to damages suffered by Optimum Resources as a result of the actions of KCGM is a matter between the two parties.

If KCGM is in fact in breach of the Mining Act or tenement conditions this is not a matter that can be resolved by agreement between the parties.

Response: The recommendation, involving a direction by the Minister to the Department to convene discussions, is not supported. Any option to resolve the dispute supported by both parties will be considered.

RECOMMENDATION 18

In the absence of agreement within a reasonable period, to be determined by the Minister, a stop work order be placed on the operation of the Fimiston I and Fimiston II TSF's.

Under the Mining Act and Regulations a stop work order may only be issued by an inspector or senior inspector to the holder of a mining tenement where the inspector or senior inspector is of the opinion:

- a) the tenement holder is not complying with a provision of the Act or of the regulations;
- b) the tenement holder is not complying with the tenement conditions; or
- c) an accident or unexpected event has taken place or may take place at a mine under the control of the tenement holder,

and as a result of that non-compliance or accident or event, there is, or may be a significant adverse effect on the environment.

Response: The recommendation to issue a stop work order based on the absence of an agreement between KCGM and Optimum Resources is not supported as it would be contrary to the provisions of the Mining Act and Regulations.

RECOMMENDATION 19

That a Committee, Chaired by the Minister's nominee and involving both DoIR and DOE, be urgently convened to commence review on the consequences and management strategies for the broader environmental and public safety issues associated with the Super Pit operation.

This recommendation is supported in principle.

The Government will explore the level of support for the establishment of an advisory committee through which views may be exchanged and issues of concern examined. The committee will not assume the statutory functions of government agencies, but rather be a source of information and advice.

Response: The Government to investigate models for an advisory committee.

RECOMMENDATION 20

Pending final report by this Committee to the Minister, no further expansion of the Fimiston Mill be considered.

Expansion of the Fimiston Mill should be dealt with by the normal statutory processes and KCGM should be allowed to pursue productivity and quality improvements that are within the scope of existing approvals

Response: Recommendation not supported. The Fimiston Mill be dealt with in accordance with normal statutory processes.

RECOMMENDATION 21

That the decision to increase the wall height of the Fimiston II TSF be reviewed in the light of this Report.

There is a current application with the EPA to increase the height of Fimiston I Tailings Settlement Facility. Most of the public comments on this recommendation including the response by KCGM interpret this recommendation to relate to the proposal to increase the height of Fimiston I Tailings Settlement Facility by 10 metres.

Given the proximity of Fimiston I and II Tailings Settlement Facilities and the similarities in their operation investigation of one facility will be relevant to the other facility. As the Fimiston I Tailings Settlement Facility is the subject of a contemporary process that has been subject to appeal and given the content of the Final Report of the Cooke Review it is appropriate to obtain expert advice on this matter.

The Government has commissioned an independent hydrogeological and geotechnical review of the proposal to raise Fimiston I Tailings Settlement Facility.

Response: Proceed with independent review.

RECOMMENDATION 22

That this Report (The Final Report of Cooke Review) be referred to the Environmental Protection Authority for inclusion in process for determination of the current application to extend the Super Pit in a southerly direction.

The Final Report of the Cooke Review has already been considered by the Environmental Protection Authority in their assessment of the Southern Landform Extension application.

Response: Recommendation implemented.

RECOMMENDATION 23

That the Committee recommended under Recommendation 18 (19) be required to address the above matters (abandonment strategy for the Super Pit).

The Super Pit is expected to have a life until at least 2017. The proposal to consider an abandonment strategy with a broad representative group is supported.

Response: Recommendation supported.

RECOMMENDATION 24

That the Committee recommended under Recommendation 18 (19) be required to address the development of a consistent and transparent mechanism to address concerns regarding property damage associated with blasting and other sources of vibration from the Super Pit and associated operations. Those considerations to include the effects of dust from those operations.

See comment at recommendation 19. This recommendation is supported provided an effective advisory group can be established and that their activity is focussed on current issues and the provision of advice on the management of these issues into the future.

Response: Recommendation supported.

RECOMMENDATION 25

That the Committee recommended under Recommendation 18 (19) be required to address the development of alternative approaches to self-monitoring for environmental effects of their activities. One alternative to be considered should be the engagement of a State-wide tendering process to permit companies independent of the entity being monitored to undertake this activity. The costs of the monitoring activity should correctly be met by the company being monitored and costing models should be an aspect of the Committee's consideration.

This recommendation has state-wide impacts and should not be investigated by an advisory body with a role confined to one municipality.

This is a broad policy issue that should initially be examined by the Department of the Environment and the Department of Industry and Resources.

Response: The Department of Industry and Resources be requested to confer with the Department of the Environment on this recommendation.