



New South Wales

# Mining and Petroleum Legislation Amendment Bill 2014

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

This Bill is cognate with the *Criminal Assets Recovery Amendment Bill 2014*.

## Overview of Bill

The object of this Bill is to amend mining, petroleum and planning laws to address further issues raised in the Independent Commission Against Corruption's reports on the investigations known as Operation Jasper and Operation Acacia. In particular, this Bill:

- (a) standardises provisions dealing with the basis on which administrative functions affecting mining authorities and petroleum titles may be exercised, and
- (b) removes the public interest test as a ground on which certain administrative decisions about mining rights and petroleum titles may be made, and replaces it with a test based on whether the applicant or other relevant person is a "fit and proper person", and
- (c) prevents an application for development consent under the *Environmental Planning and Assessment Act 1979 (the Planning Act)* to mine coal from being made or determined unless the applicant is the holder of a mining authority for coal on the land (to prevent development consent being used to avoid the mining exploration licence process), and
- (d) provides that the grant, renewal or transfer of a mining lease or petroleum title can be refused on the ground that the applicant is not a fit and proper person despite planning approval for integrated development, State significant development, State significant infrastructure or a Part 3A project under the Planning Act, and
- (e) makes it clear that the public interest can be taken into account in deciding whether or not to approve a transitional Part 3A project under the Planning Act, and

- (f) extends the operation of provisions of the *Mining Act 1992* that relate to the conditions of a mining authority so that they will apply to the preserved conditions of the exploration licences cancelled by the *Mining Amendment (ICAC Operations Jasper and Acacia) Act 2014*.

The Bill also amends the Planning Act to include notes about the effect of the above amendments and makes a consequential change to the requirements for the content of applications for development consent under that Act.

## Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on the date of assent to the proposed Act.

## Schedule 1 Amendment of Mining Act 1992 No 29

### Standardisation of basis for making administrative decisions concerning mining rights

**Schedule 1 [1]–[10] and [12]–[22]** standardise provisions about the basis on which administrative functions affecting mining rights may be exercised so that the grounds for taking administrative action must be established to the satisfaction of the decision-maker.

**Schedule 1 [25]** inserts a savings and transitional provision that extends the operation of the amendments to a decision with respect to a matter that was pending on the commencement of the amendments and a decision based on conduct that occurred, or on a matter that arose, before that commencement.

### Interrelationship between mining laws and planning laws

**Schedule 1 [23]** inserts a section that provides that an application for development consent under the Planning Act for consent to mine for coal cannot be made or determined unless the applicant is the holder of an authority under the *Mining Act 1992* that is in force in respect of coal and the land where the mining is proposed to be carried out. The provision also applies to the modification of a development consent. The section provides that a mining lease that is for mining purposes only is not an authority that can be relied on for the purposes of making an application under the Planning Act in compliance with the section. **Schedule 1 [25]** inserts a savings and transitional provision that extends this amendment to applications for development consent that are pending on the date of assent to the Bill.

**Schedule 1 [24]** inserts (as section 380A (4)) a provision that overrides various provisions of the Planning Act so as to allow the grant, renewal or transfer of a mining lease to be refused on the ground that the Minister is of the opinion that the applicant is not a fit and proper person, even if the mining lease is necessary for the carrying out of State significant development, State significant infrastructure or a transitional Part 3A project or has been approved as integrated development. **Schedule 1 [11]** inserts a note drawing attention to that new provision in a provision about development consent. **Schedule 1 [25]** inserts a savings and transitional provision that extends this amendment to development consents already granted.

### Introduction of “fit and proper person” considerations in making certain decisions about mining rights

**Schedule 1 [24]** omits an existing public interest test (under which the public interest is a relevant ground for making certain decisions about mining rights) and inserts instead a section that provides that certain decisions about mining rights may be made on the ground that, in the opinion of the decision-maker, a relevant person is not a fit and proper person. This does not limit any other

ground on which such a decision may be made. The relevant decisions to which the new section applies are as follows:

- (a) a decision to refuse to grant, transfer or renew a mining right,
- (b) a decision to cancel a mining right or to suspend operations under a mining right,
- (c) a decision to restrict operations under a mining right by the imposition or variation of conditions of a mining right.

**Schedule 1 [25]** inserts a savings and transitional provision that extends the operation of the fit and proper person test to a decision with respect to an application or other matter that was pending on the commencement of the amendment and a decision based on conduct that occurred, or on a matter that arose, before that commencement.

#### **Application of Act to preserved conditions**

**Schedule 1 [26] and [27]** extend provisions of the Act that apply to conditions of an authority to include the preserved conditions of the exploration licences cancelled by the *Mining Amendment (ICAC Operations Jasper and Acacia) Act 2014*. This extends an existing provision provided for the limited application of provisions to those preserved conditions.

### **Schedule 2 Amendment of Environmental Planning and Assessment Act 1979 No 203**

**Schedule 2 [1]–[11]** insert notes into various provisions of the Act to draw attention to the new provisions that will allow a mining lease under the *Mining Act 1992* or a production lease under the *Petroleum (Onshore) Act 1991* to be refused on the ground that the applicant is not a fit and proper person and that will prevent the making or grant of an application for development consent to mine coal or petroleum unless an appropriate mining authority or petroleum title is held.

**Schedule 2 [12]** makes it clear that the public interest can be taken into account in deciding whether to approve a project under Part 3A of the Act, whether or not the Director-General's report on the project gives consideration to or makes any recommendation about the public interest or any particular aspect of the public interest.

### **Schedule 3 Amendment of Environmental Planning and Assessment Regulation 2000**

**Schedule 3** amends the requirements for the documents that are required to accompany an application for development consent so that, in the case of development comprising the mining of coal, documentary evidence will be required showing that the applicant holds an authority under the *Mining Act 1992* for coal on the land concerned or has the written consent of the holder of such an authority to make the application.

### **Schedule 4 Amendment of Mining Amendment Act 2008 No 19**

**Schedule 4** removes uncommenced amendments to the *Mining Act 1992* concerning the taking into account of environmental performance in decision-making under that Act. Those amendments will become redundant as a result of the amendments made by Schedule 1, to the extent that the new fit and proper person test includes consideration for the conduct of a person, or a body corporate of which the person is a director, under relevant environmental legislation.

## **Schedule 5      Amendment of Petroleum (Onshore) Act 1991 No 84**

**Schedule 5 [1] and [2]** amend provisions that authorise the cancellation or suspension of a petroleum title so that the grounds that need to be established to justify cancellation or suspension are required to be established to the satisfaction of the Minister. **Schedule 5 [4]** inserts a savings and transitional provision that extends the operation of the amendments to a decision with respect to a matter that was pending on the commencement of the amendments and a decision based on conduct that occurred, or on a matter that arose, before that commencement.

**Schedule 5 [3]** omits an existing public interest test (under which the public interest is a relevant ground for making certain decisions about petroleum titles) and inserts instead a section that provides that certain decisions about petroleum titles may be made on the ground that, in the opinion of the Minister, a relevant person is not a fit and proper person. This does not limit any other ground on which such a decision may be made. The relevant decisions to which the new section applies are as follows:

- (a) a decision to refuse to grant, renew or transfer a petroleum title,
- (b) a decision to cancel a petroleum title or to suspend operations under a petroleum title,
- (c) a decision to restrict operations under a petroleum title by the imposition or variation of conditions of a petroleum title.

The new section also provides that it overrides various provisions of the Planning Act so as to allow the grant, renewal or transfer of a petroleum title to be refused on the ground that the Minister is of the opinion that the applicant is not a fit and proper person, even if the petroleum title is necessary for the carrying out of State significant development, State significant infrastructure or a Part 3A project or development that has been approved as integrated development.

**Schedule 5 [4]** inserts a savings and transitional provision that extends the operation of the fit and proper person test to a decision with respect to an application or other matter that was pending on the commencement of the amendment and a decision based on conduct that occurred, or on a matter that arose, before that commencement.