

Responsible Mining (Protecting Land, Water and Communities) Bill 2014

Explanatory note

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

Overview of Bill

The object of this Bill is to protect certain land, water and communities from mining and mining-related activities:

- (a) by regulating prospecting for, and the mining of, minerals and petroleum in certain environmentally-sensitive areas, including national parks, state conservation areas, productive agricultural land and near rivers, and
- (b) by preventing planning approval being given to prospecting or mining activities in such areas unless a positive gateway determination has been made by an independent body, and
- (c) by prohibiting prospecting or mining activities from interfering with highly productive aquifers, and
- (d) by providing for the involvement of local councils and communities in the prohibition of other prospecting or mining activities, and
- (e) by ensuring that landholders can refuse to allow the holders of mining authorisations or petroleum titles to carry out prospecting or mining operations on their land, and
- (f) by re-enacting a requirement that the public interest be considered as a relevant ground in making certain decisions about mining rights.

Outline of provisions

Part 1 Preliminary

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 3 months after the date of assent to the proposed Act, unless commenced sooner by proclamation.

Clause 3 defines certain words and expressions used in the proposed Act.

Part 2 Protected land

Clause 4 defines *protected land* to include the following:

- (a) national parks and state conservation areas and land within 2 kilometres of such parks or areas,
- (b) State forests and land within 2 kilometres of such forests,
- (c) the area of operations of the Sydney Catchment Authority and land within 2 kilometres of that area,
- (d) certain urban areas and land within 5 kilometres of such areas,
- (e) productive agricultural land and land within 2 kilometres of such land,
- (f) protected catchment areas,
- (g) Tier 1 Biodiversity land and land within 2 kilometres of such land.

Clause 5 provides for the regulations to declare areas to be protected catchment areas (which are within the definition of *protected land*).

Clause 6 provides for the Minister to declare land to be Tier 1 Biodiversity (which is within the definition of *protected land*).

Clause 7 provides for the keeping of an inventory of protected land.

Clause 8 provides for the resolution of disputes as to whether or not any particular land is protected land.

Part 3 Prohibition on new or renewed prospecting for and mining of minerals or petroleum on protected land

Clause 9 prohibits the granting of any mining authorisation in relation to protected land.

Clause 10 prohibits the renewal of any mining authorisation in relation to protected land.

Clause 11 prohibits the granting of any petroleum title in relation to protected land.

Clause 12 prohibits the renewal of any petroleum title in relation to protected land.

Part 4 Restrictions on mining and prospecting operations on protected land and certain other land

Clause 13 provides that a planning approval is not to be given under the *Environmental Planning and Assessment Act 1979* in relation to development for the purposes of prospecting and mining activities on protected land unless the determining authority has had regard to a gateway certificate issued under proposed Part 5 (which will only be issued if the development meets the relevant criteria specified in proposed section 22).

Clause 14 prohibits any prospecting for, or the mining of, any mineral, or the conduct of any petroleum prospecting or petroleum mining operations, that interferes with highly productive aquifers.

Clause 15 provides that an environmental planning instrument (whether a local environmental plan or a State environmental planning policy) cannot permit the carrying out of prospecting for, or mining of, minerals or petroleum on protected land.

Clause 16 provides that any provision of an environmental planning instrument in force immediately before the commencement of the proposed Act that permits the carrying out of prospecting for, or mining of, minerals or petroleum on protected land ceases to have effect in relation to the protected land.

Part 5 Gateway certificates

Clause 17 establishes the Mining and Petroleum Gateway Panel.

Clause 18 specifies the function of the Gateway Panel, which is to consider applications for gateway certificates.

Clause 19 provides that the Gateway Panel is not subject to the direction or control of the Minister.

Clause 20 provides for the Minister administering the *Agricultural Industry Services Act 1998* and the Minister administering the *Destination NSW Act 2011* to declare land to be critical industry cluster land.

Clause 21 provides for the making of applications for gateway certificates.

Clause 22 specifies the criteria to be considered in determining applications for gateway certificates.

Clause 23 provides for the determination of applications for gateway certificates by the Gateway Panel.

Clause 24 specifies the maximum time for the determination of applications for gateway certificates.

Clause 25 provides for the Gateway Panel to request further information before determining an application for a gateway certificate.

Clause 26 provides that a gateway certificate remains current for 5 years.

Clause 27 provides for the giving of notice of the determination of applications for gateway certificates.

Part 6 Independent Mining and Petroleum Authority

Clause 28 establishes an Independent Mining and Petroleum Authority and provides that the Authority is, in the exercise of its functions, not generally subject to the control and direction of the Secretary or the Minister.

Clause 29 specifies the functions of the Independent Authority.

Clause 30 empowers the Independent Authority to require the production of a statement of information.

Clause 31 empowers the Independent Authority to obtain documents.

Clause 32 provides for the Independent Authority to make reports on the results of assessments that it makes.

Part 7 Community vetoing of prospecting and mining

Clause 33 provides that a local council may request the Minister administering the *Environmental Planning and Assessment Act 1979* to make a local environmental plan that prohibits prospecting and mining activities.

Clause 34 provides that that Minister must make a local environmental plan in response to any such request.

Clause 35 provides that a local environmental plan made in accordance with proposed section 33 prevails over any other environmental planning instrument (whether a local environmental plan or a State environmental planning policy) to the extent of any inconsistency.

Clause 36 provides that any environmental planning instrument (whether a local environmental plan or a State environmental planning policy) that is inconsistent with a local environmental plan required to be made under the proposed Part is without effect.

Part 8 Miscellaneous

Clause 37 provides for the making of regulations under the proposed Act.

Clause 38 provides for the making of savings and transitional regulations.

Clause 39 provides that offences under the proposed Act may be dealt with summarily before the Local Court.

Clause 40 provides for the delegation of the Secretary's functions.

Schedule 1 Amendment of Mining Act 1992 No 29

Schedule 1 [3] makes it clear that the holder of a prospecting title (an exploration licence or assessment lease) must not carry out prospecting operations on any particular area of land without the consent of each landholder of that area of land. Prospecting operations must not be carried out unless there is an access arrangement agreed between the holder of the prospecting title and all the landholders of the area of land concerned. The ability to prospect under arrangements determined by an arbitrator (when the landholder does not agree) is omitted.

Schedule 1 [1], [2], [4], [5], [9], [10], [12], [15], [18], [20] and [23] omit redundant references about arbitrators and the determination of access arrangements by arbitrators in cases where the landholder does not consent to the prospecting operations.

Schedule 1 [6] provides that the overall principles to be observed by the holder of a prospecting title in negotiating an access arrangement are that the landholder should not be in an overall worse position financially as a consequence of the holder of the prospecting title exercising the holder's rights under the *Mining Act 1992*, and that the landholder's land should not be in an overall worse condition environmentally as a consequence of the holder of the prospecting title exercising the holder's rights under that Act.

Schedule 1 [7] provides that, if the holder of a prospecting title contravenes an access arrangement, a landholder of the land concerned may deny the holder access to the land until the holder ceases the contravention or the contravention is remedied to the reasonable satisfaction of the landholder.

Schedule 1 [8] provides that the holder of the prospecting title must pay the legal costs of the landholder incurred in connection with the holder of the prospecting title seeking access to land, including, but not limited to, the negotiation and making of an access arrangement. **Schedule 1 [5]** makes a consequential amendment.

Schedule 1 [11] removes the procedure for a variation of an access arrangement to be determined by an arbitrator.

Schedule 1 [13] removes the procedure for a replacement access arrangement to be determined

by an arbitrator when there is a change in landholder.

Schedule 1 [14] inserts a note relating to the payment of interest and penalty tax whenever a payment of royalty is late.

Schedule 1 [16] makes it an offence for a person, while holding office or exercising functions under the *Mining Act 1992*, to have a beneficial interest in an authority, a mineral claim or an opal prospecting licence (whereas at present a person is only prohibited from actually holding an authority, claim or licence). **Schedule 1 [17]** re-inserts a provision requiring the public interest to be a relevant ground for making certain decisions about mining rights, in place of a fit and proper person test.

Schedule 1 [19] provides for immunity for landholders relating to the exercise of any power or right by or under any other Act, in connection with a power or right exercised under the *Mining Act 1992* or an authority under that Act.

Schedule 1 [21] provides that the amendments made by Schedule 1 that relate to access arrangements do not apply if an access arrangement determined by an arbitrator was in force immediately before the commencement of the proposed Act. Such an access arrangement will continue to be valid. The amendments about legal costs do not apply in respect of legal costs relating to an access arrangement for which notice was given before the commencement of the amendments.

Schedule 1 [22] is consequential on the creation of an indictable offence by Schedule 1 [16].

Schedule 2 Amendment of Petroleum (Onshore) Act 1991

No 84

Schedule 2 [1] inserts a definition of *rehabilitation*. The term is defined to mean the treatment or management of land, or of water, that may have been damaged or adversely affected by activities under a petroleum title, so that it is returned to its original condition or to an improved condition, including (but not limited to) the levelling, regrassing, reforestation or contouring of any part of the land the subject of the title, and the filling in or sealing of excavation and drill holes.

Schedule 2 [2] prohibits the Minister from suspending a condition of a petroleum title relating to environmental management, the conservation or protection of the environment or the rehabilitation of any land or water.

Schedule 2 [7] makes it clear that the holder of a prospecting title (an exploration licence, assessment lease or special prospecting authority) must not carry out prospecting operations on any particular area of land without the consent of each landholder of that area of land. Prospecting operations must not be carried out unless there is an access arrangement agreed between the holder of the prospecting title and all the landholders of the area of land concerned. The ability to prospect under arrangements determined by an arbitrator (when the landholder does not agree) is omitted.

Schedule 2 [4], [5], [9]–[13] and [18]–[20] extend the operation of a Part about access arrangements for prospecting titles so that it also applies to petroleum mining operations under production leases and make it clear that the holder of a production lease must not carry out prospecting operations on any particular area of land without the consent of each landholder of that area of land.

Schedule 2 [3], [6], [8], [21], [23] and [33] omit redundant references to arbitrators and to access arrangements being determined by arbitrators in cases where the landholder does not consent to the prospecting operations.

Schedule 2 [15] provides that the overall principles to be observed by the holder of a prospecting title or production lease in negotiating an access arrangement are that the landholder should not be in an overall worse position financially as a consequence of the holder of the prospecting title or production lease exercising the holder's rights under the *Petroleum (Onshore) Act 1991*, and that the landholder's land should not be in an overall worse condition environmentally as a consequence of the holder of the prospecting title or production lease exercising the holder's rights under that Act.

Schedule 2 [16] provides that, if the holder of a prospecting title or production lease contravenes an access arrangement, a landholder of the land concerned may deny the holder access to the land

until the holder ceases the contravention or the contravention is remedied to the reasonable satisfaction of the landholder.

Schedule 2 [17] provides that the holder of the prospecting title or production lease must pay the legal costs of the landholder incurred in connection with the holder of the prospecting title or production lease seeking access to land, including, but not limited to, the negotiation and making of an access arrangement. **Schedule 2 [14]** makes a consequential amendment.

Schedule 2 [22] removes the procedure for a variation of an access arrangement to be determined by an arbitrator.

Schedule 2 [24] removes the procedure for a replacement access arrangement to be determined by an arbitrator when there is a change in landholder.

Schedule 2 [25]–[27] modify provisions about restrictions on the rights of holders of production leases over land that is under cultivation. The amended provisions will apply those restrictions to land that has been determined to be agricultural land in accordance with the amended section.

Schedule 2 [28] inserts provisions about audits. The provisions:

- (a) describe the nature of an audit and provide for regulations to be made with respect to the accreditation of auditors and the carrying out of audits, and
- (b) enable the Director-General to impose mandatory audit conditions on petroleum titles, and
- (c) provide for the certification of an audit report, and
- (d) make it an offence (of strict liability) to provide false or misleading information to an auditor or in an audit report and also make it an offence for an auditor not to include in an audit information that is materially relevant, and
- (e) require information to be supplied for audit purposes even if it may incriminate the person concerned and authorise the use of information contained in an audit for the purposes of planning and environment protection legislation, and
- (f) make provision for the mandatory audit of the Department's performance in administering the *Petroleum (Onshore) Act 1991*, the *Mining Act 1992* and the proposed Act, monitoring the implementation of those 3 Acts and enforcing the conditions of petroleum titles and mining authorities.

Schedule 2 [29] makes it an offence to fail to pay any royalty and enables the Minister to charge interest on the amount of any unpaid royalty.

Schedule 2 [30] enables the Director-General to publish environmental information about the impact of petroleum prospecting and mining activities obtained by the Director-General or the Independent Authority.

Schedule 2 [31] prohibits a person who holds office in an official capacity for the purposes of the *Petroleum (Onshore) Act 1991* from holding directly or indirectly a beneficial interest in a petroleum title (and not merely from holding a petroleum title, as at present). The provision does not prevent the Director-General from being the holder of an exploration licence on behalf of the Crown.

Schedule 2 [32] provides for the proposed offence relating to failure to pay a royalty to be dealt with on indictment.

Schedule 2 [34] provides for immunity for landholders relating to the exercise of any power or right by or under any other Act, in connection with a power or right exercised under the *Petroleum (Onshore) Act 1991* or a petroleum title under that Act.

Schedule 2 [35] provides that the amendments proposed to be made by Schedule 2 that relate to access arrangements do not apply if an access arrangement determined by an arbitrator was in force immediately before the commencement of the proposed Act. Such an access arrangement will continue to be valid. The amendments relating to legal costs do not apply in respect of legal costs relating to an access arrangement for which notice was given before the commencement of the amendments.

Schedule 3 Amendment of Criminal Procedure Act 1986

No 209

Schedule 3 makes amendments consequential on the creation of indictable offences by Schedule 1 [16] and Schedule 2 [31].

