



New South Wales

# Mining and Petroleum Legislation Amendment Bill 2017

## Explanatory note

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

## Overview of Bill

The object of this Bill is to amend the *Mining Act 1992* (the ***Mining Act***), the *Mining Regulation 2016* (the ***Mining Regulation***) and the *Petroleum (Onshore) Act 1991* (the ***Petroleum Act***) as follows:

- (a) to clarify how ancillary mining activities (currently known as “mining purposes”) that are carried out in connection with mining leases and mineral claims are to be regulated under the Mining Act,
- (b) to make further provision in relation to the giving of enforceable undertakings under the Mining Act and the Petroleum Act and the enforcement of those instruments,
- (c) to make further provision in relation to offences under the Mining Act and the Petroleum Act regarding the furnishing of false or misleading information,
- (d) to make other miscellaneous amendments regarding the administration and enforcement of the Mining Act and the Petroleum 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.

### **Amendments relating to ancillary mining activities**

The Bill makes a number of amendments to the Mining Act and the Mining Regulation relating to ancillary mining activities that are carried out in connection with mining leases and mineral claims under that Act to clarify how those activities are regulated under that legislation.

**Schedule 1 [1], [4], [5], [28], [31] and [32]** and **Schedule 2 [1]** make amendments to change the term “mining purpose” to “ancillary mining activity”. **Schedule 1 [31]** amends the Dictionary to the Act to define *ancillary mining activity* to mean any activity prescribed by the regulations as an ancillary mining activity for the purposes of this definition. **Schedule 2 [1]** makes an amendment to provide that the activities currently prescribed as “mining purposes” become “ancillary mining activities”.

**Schedule 2 [3]** amends the Mining Regulation to make it clear that the environmental management, protection and rehabilitation of land on which another ancillary mining activity is being or has been carried out is an ancillary mining activity for the purposes of the legislation.

**Schedule 1 [2]** substitutes section 6 of the Mining Act. Currently, section 6 of the Mining Act provides that a person must not carry out the following specified activities except in accordance with an authorisation under the Mining Act that is in force in respect of the land where the purpose is carried out:

- (a) the construction, maintenance or use of any reservoir, dam (including a tailings dam), drain or water race, other than any reservoir, dam, drain or water race principally used for purposes not connected with mining or any other activities regulated by or under an authorisation,
- (b) opal puddling,
- (c) the removal, stockpiling or depositing of overburden, ore or tailings to the extent that it is associated with mineral extraction or mineral beneficiation.

Proposed new section 6 permits a person to carry out one of those specified activities (a *designated ancillary mining activity*) on land outside an authorisation area without an authorisation under the Mining Act if the designated ancillary mining activity is not in the immediate vicinity of or does not directly facilitate a mining lease or a mineral claim.

Proposed section 6 (2) provides that a person must not, on land that is not within the mining area of a mining lease, carry out a designated ancillary mining activity, that is in the immediate vicinity of and that directly facilitates the mining lease concerned, except in accordance with:

- (a) a condition of the mining lease that regulates the carrying out of the activity, or
- (b) another mining lease in respect of an ancillary mining activity or activities only that authorises the carrying out of the activity.

Proposed section 6 (3) and (4) make similar provision with respect to mineral claims. **Schedule 1 [29]** provides that regulations may be made specifying circumstances in which an ancillary mining activity is taken for the purposes of the Mining Act to be (or not to be) in the immediate vicinity of, or to directly facilitate (or not to directly facilitate) a mining lease or mineral claim.

**Schedule 1 [6]** provides that a mining lease may not be granted, in respect of an ancillary mining activity or activities only, unless the decision-maker is satisfied that the ancillary mining activity or activities is or are to be carried out in the immediate vicinity of and to directly facilitate (rather than in connection with and in the immediate vicinity of):

- (a) a mining lease in respect of a mineral or minerals, or
- (b) a mineral claim,

being a mining lease or mineral claim that has been or is proposed to be granted.

**Schedule 1 [7]** provides that the decision-maker, in deciding whether to grant or refuse an application for a mining lease for an ancillary mining activity or activities only, is to have regard to guidelines issued (and made publicly available) by the Secretary of the Department of Planning and Environment (the *Secretary*).

**Schedule 1 [8]** makes it clear that section 65 of the Mining Act (which provides that a mining lease must not be granted over land if development consent is required for activities to be carried out under the lease unless an appropriate development consent is in force in respect of the carrying out of those activities on the land) applies in the same way to imposing a condition on a mining lease relating to the carrying out of an ancillary mining activity on land (whether or not within the mining area of the mining lease).

**Schedule 1 [9]** amends section 240A of the Mining Act (Prohibition notices) to provide that if the Secretary or an inspector reasonably suspects that a person is carrying out, or is about to carry out, an activity in contravention of section 6 of that Act (Unauthorised carrying out of designated ancillary mining activities), the Secretary or inspector may issue a prohibition notice to direct the person to discontinue that activity.

**Schedule 1 [26]** inserts proposed clause 7B into Schedule 1B (Further provisions relating to authorisations generally) to the Mining Act. The proposed clause makes provision with respect to conditions of mining leases relating to ancillary mining activities as follows:

- (a) providing that a condition may be imposed by the relevant decision-maker or prescribed by the regulations under the Mining Act in the case of a mining lease that regulates the carrying out of one or more ancillary mining activities and specifies certain types of such conditions (proposed clause 7B (1) and (2)),
- (b) providing that such conditions may regulate the carrying out of an ancillary mining activity on land that is not within the mining area that is the subject of the mining lease only if the mining lease is a mining lease in respect of a mineral or minerals and the ancillary mining activity is to be carried out in the immediate vicinity of and to directly facilitate the mining lease concerned (proposed clause 7B (3)),
- (c) clarifying that such conditions do not authorise the carrying out of an ancillary mining activity (or the exercise of any power or right in connection with an ancillary mining activity) that is not authorised to be carried out (or exercised) under another Act or law (proposed clause 7B (4)),
- (d) dealing with the interaction of such conditions with the operation of section 265 (Compensation arising under mining lease) and section 383C (General immunity of landholders) of the Mining Act (proposed clause 7B (5)),
- (e) providing that a decision-maker, in deciding whether to impose such a condition relating to an ancillary mining activity, is to have regard to guidelines issued (and made publicly available) by the Secretary for the purposes of this proposed clause (proposed clause 7B (6)),
- (f) dealing with other machinery matters.

**Schedule 2 [4]** provides for a fee for an application for a variation of a mining lease to impose a condition to regulate the carrying out of an ancillary mining activity on land that is not within the mining area that is the subject of the mining lease.

**Schedule 1 [15] and [25]** and **Schedule 2 [2]** make consequential amendments.

### **Amendments relating to enforceable undertakings**

The Bill contains a number of amendments relating to the giving and enforcement of enforceable undertakings under the Mining Act and the Petroleum Act.

**Schedule 1 [14]** provides that the proceedings for an offence against section 378ZFE (relating to a contravention of an enforceable undertaking) may be dealt with summarily before the Land and Environment Court.

**Schedule 1 [16]** and **Schedule 3 [4]** provide that the Secretary must publish, and make public, a copy of each enforceable undertaking accepted by the Secretary under the Mining Act and the Petroleum Act, respectively.

**Schedule 1 [17]** and **Schedule 3 [5]** provide that the Secretary may apply to the Land and Environment Court (rather than the District Court) for an order if a person contravenes an enforceable undertaking under the Mining Act and the Petroleum Act, respectively.

**Schedule 1 [18] and [19] and Schedule 3 [6] and [7]** make it clear that the Secretary may seek such an order whether or not proceedings have been instituted for an offence for the contravention of the enforceable undertaking.

**Schedule 1 [20] and Schedule 3 [8]** provide that the Secretary must publish, and make public, a copy of each variation of an enforceable undertaking (rather than mere notice of a variation).

**Schedule 1 [21] and Schedule 3 [9]** make it clear that the effect of an enforceable undertaking is that no proceedings for a contravention or alleged contravention of the Mining Act or the Petroleum Act, respectively, may be brought against the person who has made an enforceable undertaking in relation to that contravention that is in effect. Proceedings may still be brought against other persons in relation to the contravention or alleged contravention.

### **Amendments relating to offences regarding provision of false or misleading information**

**Schedule 1 [12] and Schedule 3 [2]** amend section 378C of the Mining Act and section 125D of the Petroleum Act, respectively, to increase the maximum penalty that may be imposed by a court for the offence of providing false or misleading information in purported compliance with any requirement by or under those Acts. The increased maximum penalty is to be:

- (a) in the case of a corporation—10,000 penalty units, or
- (b) in the case of a natural person—2,000 penalty units.

**Schedule 1 [13] and Schedule 3 [3]** insert proposed section 378C (2)–(4) into the Mining Act and section 125D (2)–(4) into the Petroleum Act, respectively, to create a new offence to provide that a holder of an authorisation or title must ensure that an agent, employee or any other person acting on behalf of the holder does not provide any information, record or return in purported compliance with any requirement by or under those Acts, respectively, in connection with the holder's authorisation or title where the agent, employee or person knows, or is reckless as to whether, the information, record or return is false or misleading in a material particular.

The new offence is to carry a maximum penalty of:

- (a) in the case of a corporation—10,000 penalty units, or
- (b) in the case of a natural person—2,000 penalty units.

The amendments provide for a defence to a prosecution for the offence if the holder of the authorisation or title establishes that the holder took all reasonable steps to prevent the contravention of the provision.

**Schedule 1 [14]** provides that proceedings for an offence against section 378C (relating to the provision of false or misleading information) may be dealt with summarily before the Land and Environment Court.

### **Miscellaneous amendments**

**Schedule 1 [3] and [24]** provide that an application for an exploration licence over land that is the subject of another exploration licence for the same group or groups of minerals must be accompanied by the written consent of the holder of that other exploration licence at the time of the lodgment of the application.

**Schedule 1 [10] and Schedule 3 [1]** make law revision amendments to section 246P of the Mining Act and section 83D of the Petroleum Act, respectively, to clarify who may impose the conditions for mandatory audits referred to in those sections.

**Schedule 1 [11]** substitutes section 261G (1) of the Mining Act to clarify what is to occur on the lapsing of a security deposit requirement under Part 12A of that Act. The new provision provides that any money obtained under a security deposit that is not used is to be paid (without interest) as follows:

- (a) to the person who provided the deposit,
- (b) if the person who provided the deposit is unable to be located despite reasonable endeavours, to the holder of the authorisation concerned,

- (c) if the person who provided the deposit and the holder of the authorisation are unable to be located despite reasonable endeavours, into the Derelict Mine Sites Fund.

**Schedule 1 [22]** makes a law revision amendment to make it clear that a notice or other document may be issued or given to a person, or may be served on a person, for the purposes of the Mining Act by sending it by email to an email address specified by the person for the service of notices or documents of that kind.

**Schedule 1 [23]** and **Schedule 3 [10]** amend clause 5 of Schedule 1B to the Mining Act and clause 4 of Schedule 1B to the Petroleum Act, respectively, to provide that the relevant decision-maker under the Mining Act or Minister administering the Petroleum Act, respectively, in relation to an application to approve the transfer of an authorisation or a petroleum title, may require the proposed transferee concerned (as well as the proposed transferor) to furnish further information in connection with the application in accordance with the clause.

**Schedule 1 [27]** and **Schedule 3 [11]** amend clause 12 of Schedule 1B to the Mining Act and clause 9 of Schedule 1B to the Petroleum Act, respectively, to make it clear that a variation of an authorisation or petroleum title takes effect when written notice of the variation is served on the holder of the authorisation or petroleum title or at a later time specified in the notice.

**Schedule 1 [30]** and **Schedule 3 [12]** insert savings and transitional provisions consequent on the enactment of the proposed Act into Schedule 6 to the Mining Act and Schedule 1 to the Petroleum Act, respectively.