

Passed by both Houses



New South Wales

Mining and Petroleum Legislation Amendment Bill 2022

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I certify that this public bill, which originated in the Legislative Assembly, has finally passed the Legislative Council and the Legislative Assembly of New South Wales.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney,*

, 2022



New South Wales

Mining and Petroleum Legislation Amendment Bill 2022

Act No _____, 2022

An Act to amend the *Mining Act 1992* and the *Petroleum (Onshore) Act 1991* to make further provision about mining and petroleum laws; and for other purposes.

I have examined this bill and find it to correspond in all respects with the bill as finally passed by both Houses.

Assistant Speaker of the Legislative Assembly.

The Legislature of New South Wales enacts—

1 Name of Act

This Act is the *Mining and Petroleum Legislation Amendment Act 2022*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

Schedule 1 Amendment of Mining Act 1992 No 29

[1] Whole Act

Omit “Director of Planning” wherever occurring. Insert instead “Planning Secretary”.

[2] Sections 6(2) and (4) and 63(5), Schedule 1B, clause 7B(3)(b) and Schedule 4, clause 13

Omit “immediate vicinity” wherever occurring. Insert instead “vicinity”.

[3] Section 6 Unauthorised carrying out of designated ancillary mining activities

Omit section 6(6). Insert instead—

(6) Meaning of “designated ancillary mining activity”

In this section, *designated ancillary mining activity* means the following—

- (a) the construction, maintenance or use, in or in connection with mining operations, of a reservoir, dam (including a tailings dam), drain or water race,
- (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.

[4] Section 6(7)

Insert after section 6(6), before the penalty provision—

- (7) However, the construction, maintenance or use of a reservoir, dam, drain or water race principally used for purposes not connected with mining or another activity regulated by or under an authorisation is not a *designated ancillary mining activity*.

[5] Section 10 Defences to prosecutions under Part 2

Insert after section 10(3)—

- (4) It is a defence to the prosecution of a person for an offence under section 5 or 6 in relation to mining for mercury if the mercury was mined as a by-product of mining for another mineral as authorised under this Act.

[6] Section 10B

Insert after section 10A—

10B Restriction on grant of mining lease in respect of mercury

A mining lease must not be granted in respect of mercury.

[7] Section 13 Application for exploration licence

Omit section 13(4)(a)–(c). Insert instead—

- (a) be lodged with the Secretary, and
- (b) be accompanied by the application fee prescribed by the regulations, and
- (c) be accompanied by the information, if any, specified by the regulations, and

[8] Section 13(5) and (6)

Omit the subsections.

[9] Section 13A Notice of application for exploration licence

Omit “in a newspaper circulating generally in the State and in at least one newspaper circulating in the locality of the proposed exploration area” from section 13A(1).

Insert instead “in the way specified by the regulations”.

[10] Section 13C Application for operational allocation licence by existing authority holders

Insert after section 13C(3)—

- (3A) The decision-maker may, for the purpose of determining whether there is sufficient interest from other potential applicants to justify a competitive selection process for the grant of an exploration licence over the area concerned under subsection (3)(b), conduct a market interest test by seeking expressions of interest from—
 - (a) the applicant under this section, and
 - (b) other potential applicants.
- (3B) The market interest test may be conducted over an area that differs in size and shape from the area concerned under subsection (3)(b).
- (3C) An expression of interest given in response to a market interest test must be accompanied by a market interest charge of the amount, if any, prescribed by the regulations.

[11] Section 14 Invitations for tenders

Omit section 14(2). Insert instead—

- (2) The Minister may, by notice published in the way specified by the regulations, invite tenders for an exploration licence for an allocated mineral, other than an exploration (mineral owner) licence for an allocated mineral.

[12] Sections 14(3)(c) and 52(3)(c)

Omit “place at which” wherever occurring. Insert instead “way in which”.

[13] Section 15 Tenders

Omit section 15(2)(a) and (c). Insert instead—

- (a) information, if any, specified by the regulations,

[14] Section 22 Power of decision-maker in relation to applications

Omit section 22(3). Insert instead—

- (3) The decision-maker may grant—
 - (a) a single exploration licence for 2 or more applications made by the same applicant, or
 - (b) 2 or more exploration licences to an applicant for a single application.

[15] Section 23A Activity approval required for assessable prospecting operations

Omit section 23A(3). Insert instead—

- (3) An application for an activity approval must include the information, if any, prescribed by the regulations.

- (3A) The decision-maker may require the holder of an exploration licence to provide further information as required by the decision-maker, within the time specified by the decision-maker, before considering the application or at any time during consideration of the application.

[16] Section 25 Shape and dimensions of land over which exploration licence may be granted

Insert after section 25(2)—

- (2A) Subsection (2)—
- (a) extends to the grant of a single exploration licence for 2 or more applications made by the same applicant, and
 - (b) as extended, applies as if the land over which the exploration licence was sought was the land over which the 2 or more exploration licences were sought.

[17] Section 30 Exempted areas

Omit section 30(1). Insert instead—

- (1) The holder of an exploration licence may not, except with the consent of the Minister, exercise a right conferred by the licence within the following land—
- (a) land in a state conservation area within an exempted area,
 - (b) other land in an exempted area, unless an access arrangement under section 140 applies to the land.

[18] Section 33 Application for assessment lease

Omit section 33(4)(a)–(c). Insert instead—

- (a) be lodged with the Secretary, and
- (b) be accompanied by the application fee prescribed by the regulations, and
- (c) be accompanied by the information, if any, specified by the regulations, and

[19] Section 33(5) and (6)

Omit the subsections.

[20] Sections 33A(1) and 51A(1)

Omit “in a newspaper circulating generally in the State and in at least one newspaper circulating in the locality concerned” wherever occurring.

Insert instead “in the way specified by the regulations”.

[21] Section 41 Power of decision-maker in relation to applications

Insert after section 41(1)—

- (2) The decision-maker may grant—
- (a) a single assessment lease for 2 or more applications made by the same applicant, or
 - (b) 2 or more assessment leases to an applicant for a single application.

[22] Section 43 Shape and dimensions of land over which assessment lease may be granted

Insert at the end of the section—

- (2) Subsection (1)—
 - (a) extends to the grant of a single assessment lease for 2 or more applications made by the same applicant, and
 - (b) as extended, applies as if the land over which the assessment lease was sought was the land over which the 2 or more assessment leases were sought.

[23] Section 44A Activity approval required for assessable prospecting operations

Omit section 44A(3). Insert instead—

- (3) An application for an activity approval must include the information, if any, prescribed by the regulations.
- (3A) The decision-maker may require the holder of an assessment lease to provide further information as required by the decision-maker, within the time specified by the decision-maker, before considering the application or at any time during consideration of the application.

[24] Section 48 Exempted areas

Omit section 48(1). Insert instead—

- (1) The holder of an assessment lease may not, except with the consent of the Minister, exercise a right conferred by the lease within the following land—
 - (a) land in a state conservation area within an exempted area,
 - (b) other land in an exempted area, unless an access arrangement under section 140 applies to the land.

[25] Section 51 Application for mining lease

Omit section 51(4)(a)–(c). Insert instead—

- (a) be lodged with the Secretary, and
- (b) be accompanied by the application fee, if any, prescribed by the regulations, and
- (c) be accompanied by the information, if any, specified by the regulations, and

[26] Section 51(5) and (6)

Omit the subsections.

[27] Section 52 Invitations for tenders

Omit section 52(2). Insert instead—

- (2) The Minister may, by notice published in the way specified by the regulations, invite tenders for a mining lease, other than a mining (mineral owner) lease, for—
 - (a) an allocated mineral within a mineral allocation area, or
 - (b) a controlled release mineral within a controlled release area.

[28] Section 53 Tenders

Omit section 53(2). Insert instead—

- (2) The *required information* is information, if any, specified by the regulations for the purposes of this section.

[29] Section 63 Power of decision-maker in relation to applications

Omit section 63(3). Insert instead—

- (3) The decision-maker may grant—
- (a) a single mining lease for 2 or more applications made by the same applicant, or
 - (b) 2 or more mining leases to an applicant for a single application.

[30] Section 63(6)

Omit the subsection. Insert instead—

- (6) A mining lease must not be granted if—
- (a) the application for the mining lease is for an ancillary mining activity or activities, and
 - (b) the ancillary mining activity or activities relate only to mining under a mining (mineral owner) lease, and
 - (c) the land that is to be subject to the mining lease is not owned by the holder of the mining (mineral owner) lease.

[31] Section 65 Development consents under Environmental Planning and Assessment Act 1979

Insert after section 65(4)—

- (5) The Minister may reject an application for a mining lease if the applicant, before the expiration of the period, if any, prescribed by the regulations or a longer period specified by the decision-maker, has failed to provide to the Minister evidence that—
- (a) an application for the development consent required by this section has been made, or
 - (b) the development consent has been granted and is in force.
- (6) To avoid doubt—
- (a) an application rejected under this section is taken never to have been made, and
 - (b) the Minister is not required to notify the applicant before the rejection.

[32] Section 69 Shape and dimensions of land over which mining lease may be granted

Insert at the end of the section—

- (2) Subsection (1)—
- (a) extends to the grant of a single mining lease for 2 or more applications made by the same applicant, and
 - (b) as extended, applies as if the land over which the mining lease was sought was the land over which the 2 or more mining leases were sought.

[33] Section 88

Omit “Secretary” wherever occurring. Insert instead “Planning Secretary”.

[34] Section 91 Objections to granting of proposed mining lease

Omit “Secretary” from section 91(3). Insert instead “Secretary of the Department”.

[35] Section 100 Conditions of consolidated mining lease

Omit “written consent of the Minister” from section 100(a).

Insert instead “requirements specified by the regulations”.

[36] Section 100(2)

Insert at the end of section 100—

- (2) Without limiting other requirements specified by the regulations under subsection (1)(a), the regulations may require the consent of a specified person to be obtained before mining operations in the mining area are suspended.

[37] Section 113 Applications for renewal

Omit section 113(2). Insert instead—

- (2) An application for the renewal of an authority must be lodged with the Secretary within the period, if any, prescribed by the regulations before the authority ceases to have effect.

[38] Section 113(5A)

Omit the subsection.

[39] Section 114A

Omit the section. Insert instead—

114A Power of decision-maker in relation to renewal applications for exploration licences

- (1) This section applies if the decision-maker is not satisfied that—
 - (a) the area of land over which renewal of an exploration licence is sought is genuinely required to support the proposed work program accompanying the application, or
 - (b) other special circumstances exist that justify the applicant retaining an area greater in size than that genuinely required to support the proposed work program.
- (2) If this section applies, the decision-maker must—
 - (a) inform the applicant of—
 - (i) the decision-maker’s opinion, and
 - (ii) the area of land over which the decision-maker proposes to renew the exploration licence, and
 - (b) renew the exploration licence only over the area of land the decision-maker considers—
 - (i) to be genuinely required to support the proposed work program, or
 - (ii) for an area greater in size than that genuinely required to support the proposed work program—is justified by special circumstances.

- (3) In deciding whether an area of land is genuinely required to support a proposed work program for the purposes of this section, the decision-maker may have regard to the matters specified by the regulations.

[40] Section 115 Notice of renewal to be served on holder of authority

Omit section 115(2). Insert instead—

- (2) A notice of renewal of an authority must include the information, if any, prescribed by the regulations.

[41] Section 116 Application to renew by only some holders of authority

Omit section 116(1). Insert instead—

- (1) If an application for the renewal of an authority is not made in the names of all of the holders of the authority, the decision-maker may renew the authority only if satisfied each holder of the authority not applying for its renewal does not wish the authority to be renewed in the person's name.

[42] Section 120 Application for approval of transfer

Omit section 120(2). Insert instead—

- (2) An application for approval must—
- (a) be lodged with the Secretary, and
 - (b) include the information, if any, prescribed by the regulations, and
 - (c) be accompanied by the application fee, if any, prescribed by the regulations.

[43] Section 122 Registration of transfers

Insert at the end of section 122(2)(b)—

, and

- (c) accompanied by evidence that any security deposit required to be provided under section 261BAA has been provided.

[44] Section 122(3)

Omit “the application”.

Insert instead “an application that complies with subsection (2)”.

[45] Section 122(6)

Insert after section 122(5)—

- (6) An approval of a transfer of an authority lapses if an application for registration of the transfer under this section has not been made within 3 months after the transferor and transferee of the authority were notified of the approval.

[46] Section 129A

Omit the section. Insert instead—

129A Applications and tenders to be supported by proposed work program

An application for an authority, or a tender, must be accompanied by a proposed work program that—

- (a) contains the information, if any, required by the regulations, and

- (b) complies with the regulations, if any.

[47] Section 133 Nomination of authority holder by applicant or tenderer

Insert after section 133(2)—

- (3) To avoid doubt, if 2 or more authorities are to be granted for a single application or tender, the applicant or tenderer may nominate 1 or more other persons under this section to be granted 1 or more of the authorities.

[48] Section 134

Omit the section. Insert instead—

134 Death, bankruptcy and incapacity of applicant

- (1) An application for an authority made by an individual who subsequently becomes bankrupt or an incapacitated person or dies—
 - (a) subsists for the benefit of the applicant or the applicant's estate, and
 - (b) may continue to be dealt with if—
 - (i) the applicant's representative makes a request under this section, and
 - (ii) the decision-maker accepts the request.
- (2) A request must be made in a way and within the period prescribed by the regulations, if any.
- (3) A decision-maker may reject the application for an authority if—
 - (a) no request is made within the period prescribed under subsection (2), or
 - (b) a request is made within the period prescribed, but the decision-maker rejects the request.
- (4) Without limiting other grounds for which a request may be rejected, a request may be rejected on grounds prescribed by the regulations.
- (5) A decision-maker, in considering whether to accept a request under this section, may have regard to the following—
 - (a) guidelines issued and made publicly available by the Minister for the purposes of this section, if any,
 - (b) matters prescribed by the regulations for the purposes of this section.
- (6) In this section—
representative, for an individual who is bankrupt, an incapacitated person or deceased, has the meaning prescribed by the regulations.

[49] Section 139 Arbitration Panel

Omit section 139(7) and (8). Insert instead—

- (7) The Secretary must keep a register of the following in a way prescribed by the regulations—
 - (a) the name of each member of the Arbitration Panel,
 - (b) other information, if any, relating to members of the Arbitration Panel, prescribed by the regulations.
- (8) The register must be made available for public inspection.

[50] Section 140 Prospecting to be carried out in accordance with access arrangement

Insert at the end of section 140(1)—

Maximum penalty—

- (a) for a corporation—5,000 penalty units, and, for a continuing offence, a further penalty of 500 penalty units for each day the offence continues, or
- (b) for an individual—1,000 penalty units or imprisonment for 5 years, or both, and, for a continuing offence, a further penalty of 100 penalty units for each day the offence continues.

[51] Section 156A Register of arbitrated access arrangements

Omit section 156A(2)–(4). Insert instead—

- (2) The Secretary must keep a register of the following in a way prescribed by the regulations—
 - (a) the arbitrated access arrangements provided to the Secretary,
 - (b) other information, if any, relating to arbitrated access arrangements, prescribed by the regulations.
- (3) The register must be made available for public inspection.

[52] Section 159 Records

Omit section 159(3). Insert instead—

- (3) The record must be made available for public inspection.
- (4) Despite subsection (3), the Secretary may decide to keep records relating to the following confidential and not make them publicly available until after the tender or selection process concerned has been completed—
 - (a) a tender made in response to an invitation under section 14,
 - (b) a competitive selection application made in response to an invitation under Schedule 1A.

[53] Section 161 Registration of certain interests

Omit section 161(9). Insert instead—

- (9) The register must be made available for public inspection.

[54] Section 162

Omit the section. Insert instead—

162 Devolution of rights of holder of authority

- (1) A person on whom the rights of the holder of an authority have devolved by operation of law may apply to the Minister to have the person's name recorded as the holder of the authority.
- (2) An application must be made in a way prescribed by the regulations.
- (3) The Minister, if satisfied that the rights of the holder of an authority have devolved by operation of law, may direct the Secretary to record the name of the applicant as the holder of the authority.
- (4) In considering an application under this section, the Minister must have regard to guidelines issued and made publicly available by the Minister for the purposes of this section, if any.

- (5) To avoid doubt, in this section—
 - (a) rights have devolved by operation of law if the rights have involuntarily passed from 1 person to another by operation of a law, including a transfer caused by death, bankruptcy or insolvency, and
 - (b) the granting or registration under this Act of a mining sublease does not result in the devolution of the rights of the holder of the head lease on a person.

[55] Section 163 Colliery holdings

Omit section 163(1), (2) and (10). Insert in appropriate order—

- (1) The Secretary must keep a register of colliery holdings (*the register*) in a way prescribed by the regulations.
- (2) The register must include—
 - (a) the names of colliery holdings and colliery holders, and
 - (b) information about directions given under this section, and
 - (c) other information, if any, relating to colliery holdings, prescribed by the regulations.
- (2A) The register must be made available for public inspection.

[56] Section 163A Registration of mining subleases

Omit section 163A(1) and (8). Insert in appropriate order—

- (1) The Secretary must keep a register of mining subleases in a way prescribed by the regulations.
- (1A) The register must include the information, if any, relating to mining subleases, prescribed by the regulations.
- (1B) The register must be made available for public inspection.

[57] Section 163A(4)(a)–(d)

Omit the paragraphs.

[58] Section 163A(4)(f)

Omit the paragraph. Insert instead—

- (f) other information, if any, prescribed by the regulations.

[59] Section 167 Joint holders of authorities

Insert at the end of the section—

- (2) An authority may be held by 2 or more persons as joint tenants or as tenants in common.
- (3) The Secretary must record that 2 or more holders of an authority hold the authority as tenants in common unless the holders apply, in a way prescribed by the regulations, to hold the authority as joint tenants.

[60] Section 178 Application for granting of mineral claim

Omit section 178(2). Insert instead—

- (2) An application must—
 - (a) be lodged with the Secretary, and

- (b) include the information, if any, prescribed by the regulations, and
- (c) be accompanied by the application fee prescribed by the regulations.

[61] Section 179 Objection as to agricultural land

Omit section 179(1)–(3). Insert instead—

- (1) A landholder may object to the granting of a mineral claim over land on the basis that the land is agricultural land if—
 - (a) the landholder has been served with a notice under section 177 in relation to the land, and
 - (b) the landholder is entitled to use the land for agricultural purposes.
- (2) The Secretary is not required to deal with an objection made under this section until the application for the mineral claim has been made under section 178.
- (3) Schedule 2 contains provisions dealing with objections.

[62] Section 187 Agricultural land

Insert “, except with the written consent of the landholder,” after “may not” in section 187(1).

[63] Sections 188(6) and 203(1)(g)

Omit “mining registrar” wherever occurring. Insert instead “decision-maker”.

[64] Section 197 Application for renewal of mineral claim

Omit section 197(2)(b). Insert instead—

- (b) must be lodged with the Secretary within the period, if any, prescribed by the regulations, before the day on which the claim would otherwise expire.

[65] Section 200 Application for transfer of mineral claim

Omit section 200(2). Insert instead—

- (2) An application must—
 - (a) be lodged with the Secretary, and
 - (b) include the information, if any, prescribed by the regulations, and
 - (c) be accompanied by the application fee prescribed by the regulations.

[66] Section 202

Omit the section. Insert instead—

202 Devolution of rights of mineral claim

- (1) A person on whom the rights of the holder of a mineral claim have devolved by operation of law may apply to the Secretary to have the person’s name recorded as the holder of the mineral claim.
- (2) An application must be made in a way prescribed by the regulations.
- (3) The Secretary, if satisfied that the rights of the holder of a mineral claim have devolved by operation of law, may record the name of the applicant as the holder of the mineral claim.

- (4) In considering an application under this section, the Secretary must have regard to guidelines issued and made publicly available by the Minister for the purposes of this section, if any.
- (5) To avoid doubt, in this section, rights have devolved by operation of law if the rights have involuntarily passed from 1 person to another by operation of a law, including a transfer caused by death, bankruptcy or insolvency.

[67] Section 203, heading

Omit “or operational suspension”.

[68] Section 210

Omit the section. Insert instead—

210 Death, bankruptcy and incapacity of applicant for grant of mineral claim

- (1) An application for a mineral claim made by an individual who subsequently becomes bankrupt or an incapacitated person or dies—
 - (a) subsists for the benefit of the applicant or the applicant’s estate, and
 - (b) may continue to be dealt with if—
 - (i) the applicant’s representative makes a request under this section, and
 - (ii) the decision-maker accepts the request.
- (2) A request must be made in a way and within the period prescribed by the regulations, if any.
- (3) A decision-maker may reject the application for a mineral claim if—
 - (a) no request is made within the period prescribed under subsection (2), or
 - (b) a request is made within the period prescribed, but the decision-maker rejects the request.
- (4) Without limiting other grounds for which a request may be rejected, a request may be rejected on grounds prescribed by the regulations.
- (5) A decision-maker, in considering whether to accept a request under this section, may have regard to the following—
 - (a) guidelines issued and made publicly available by the Minister for the purposes of this section, if any,
 - (b) matters prescribed by the regulations for the purposes of this section.
- (6) In this section—
representative, for an individual who is bankrupt, an incapacitated person or deceased, has the meaning prescribed by the regulations.

[69] Section 214 Joint holders of mineral claims

Insert at the end of the section—

- (2) A mineral claim may be held by 2 or more persons as joint tenants or as tenants in common.
- (3) The Secretary must record that 2 or more holders of a mineral claim hold the claim as tenants in common unless the holders apply, in a way prescribed by the regulations, to hold the claim as joint tenants.
- (4) To avoid doubt, if 2 or more persons are joint holders of a mineral claim, whether as joint tenants or as tenants in common, each person is taken to hold

a whole mineral claim for the purposes of ascertaining compliance with a condition relating to the maximum number of mineral claims that may be held by a person under section 175(2)(c).

[70] Section 218A Records

Omit section 218A(2) and (3). Insert instead—

- (2) The record must be kept in the way, and must include the information, prescribed by the regulations, if any.
- (3) The record must be made available for public inspection.

[71] Section 218B Registration of certain interests in mineral claims

Omit section 218B(9). Insert instead—

- (9) The register must be made available for public inspection.

[72] Section 219A Mineral claims district management fund

Omit the section.

[73] Section 222 Objections

Omit “Such an objection” from section 222(2).

Insert instead “An objection made on a ground referred to in subsection (1)(b)”.

[74] Section 222(3)

Omit the subsection. Insert instead—

- (3) Schedule 2 contains provisions dealing with objections made on the ground referred to in subsection (1)(a).

[75] Section 223 Certain land not to be included in opal prospecting area

Insert “, except with the written consent of the landholder” after “agricultural land” in section 223(1)(d).

[76] Section 229 Conditions of licence

Omit the section.

[77] Section 235A Records

Omit section 235A(2) and (3). Insert instead—

- (2) The record must be kept in the way, and must include the information, prescribed by the regulations, if any.
- (3) The record must be made available for public inspection.

[78] Section 235D Opal prospecting area management fund

Omit the section.

[79] Section 235F Registration of certain interests in opal prospecting licences

Omit section 235F(9). Insert instead—

- (9) The register must be made available for public inspection.

[80] Section 236J Public notice of access management plans

Omit “in a local newspaper circulating in the area in which the land is situated” from section 236J(1).

Insert instead “in the way specified by the regulations”.

[81] Section 239E Interpretation

Omit “responsible” wherever occurring in section 239E(2).

[82] Section 239E(2)

Insert “, controller” after “receiver”.

[83] Section 240 Directions

Insert after section 240(1)—

- (1A) The Secretary or an inspector may, by written notice, direct a person to do 1 or more of the following if the person has carried out prospecting, mining or another activity otherwise than in accordance with an authorisation, where an authorisation to carry out the prospecting, mining or activity is required under this Act—
 - (a) to address an adverse impact the prospecting, mining or activity has had on 1 or more aspects of the environment,
 - (b) to address a risk of there being such an impact,
 - (c) to conserve the environment, protect it from harm as a result of the prospecting, mining or activity or prevent, control or mitigate the harm,
 - (d) to rehabilitate land or water that is or may be affected by the prospecting, mining or activity.
- (1B) To avoid doubt, a reference to the environment, land and water in subsections (1) and (1A) includes the environment, land and water in a place regardless of whether the environment, land and water is within or outside an authorisation area.

[84] Section 240(2)

Omit “responsible”.

[85] Section 240(4)

Insert “under subsection (1)” after “a direction”.

[86] Section 240AA, heading

Insert “and activity approvals” after “operations”.

[87] Section 240AA(4) and (5)

Omit the subsections. Insert instead—

- (4) The suspension of an authorisation or an activity approval does not affect any liability incurred by the holder of the authorisation or activity approval before the suspension took effect.
- (5) The holder of an authorisation or an activity approval is not entitled to compensation merely because of the suspension of operations under the authorisation or activity approval in accordance with a suspension notice.

[88] Section 240C

Omit the section. Insert instead—

240C Breach of direction or notice

- (1) A person must comply with a direction or notice issued to the person under this Division, unless the person has a reasonable excuse for not doing so.
- (2) If a person fails, without reasonable excuse, to comply with a direction or notice under this Division in relation to an authorisation, the holder of the authorisation to which the direction or notice relates, if not the person to whom the direction or notice was issued, is also guilty of an offence.

Maximum penalty—

- (a) for a corporation—10,000 penalty units, and, in the case of a continuing offence, a further penalty of 1,000 penalty units for each day the offence continues, or
- (b) for an individual—2,000 penalty units, and, in the case of a continuing offence, a further penalty of 200 penalty units for each day the offence continues.

Note— An offence against this section committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 378F.

[89] Section 240E Fee

Omit “by the holder of the authorisation concerned” from 240E(3).

[90] Section 242C Derelict Mine Sites Fund

Insert after section 242C(4)—

- (5) The Secretary may invest money in the Derelict Mine Sites Fund—
 - (a) if the Department is a GSF agency for the purposes of the *Government Sector Finance Act 2018*, Part 6—in a way the Department is permitted to invest money under that Part, or
 - (b) if the Department is not a GSF agency for the purposes of the *Government Sector Finance Act 2018*, Part 6—in a way approved by the Treasurer.

[91] Section 244 Definitions

Omit “reserved land” from the definition of *landholder*.

Insert instead “an exempted area”.

[92] Section 246P Conditions for mandatory audits

Omit section 246P(7). Insert instead—

- (7) This section does not affect the operation of the *Environmental Planning and Assessment Act 1979*, section 4.42, 4.50 or 5.24.

[93] Section 249, heading

Omit the heading. Insert instead—

249 Entry on land to comply with environmental, rehabilitation and other directions and for other purposes

[94] Section 249(1)(a)

Omit the paragraph. Insert instead—

- (a) to comply with a direction in force under section 240, or

[95] Section 261B Security deposit conditions

Omit section 261B(5) and (6). Insert instead—

- (5) A security deposit condition may require—
 - (a) a single security deposit to be provided and maintained for more than 1 authorisation held by the same person, and
 - (b) the holder of 2 or more authorisations to cause a security deposit that has been provided and maintained for 1 authorisation to be extended to other authorisations held by the holder.
- (6) To avoid doubt, a security deposit condition for a group security deposit may be varied at the request of the holder of the authorisation or on the decision-maker's initiative—
 - (a) to deal with a further authorisation, or
 - (b) to remove an authorisation from being the subject of the condition.
- (7) This section does not affect the operation of the *Environmental Planning and Assessment Act 1979*, section 4.42, 4.50 or 5.24.

[96] Section 261BA, heading

Insert “or renewed” after “granted”

[97] Section 261BA(3)

Insert after section 261BA(2)—

- (3) Subsections (1) and (2) extend to the renewal of an authorisation.

[98] Section 261BAA

Insert after section 261BA—

261BAA Security may be required before transfer of authorities

- (1) If a decision-maker proposes to approve a transfer of an authority that is not subject to a security deposit condition, the decision-maker may, by notice given to the proposed transferee—
 - (a) advise the proposed transferee that the decision-maker proposes to impose a security deposit condition when the transfer is approved, and
 - (b) require the proposed transferee to provide the security deposit required to be provided and maintained under the condition before the transfer of the authority is registered.
- (2) If a decision-maker proposes to approve a transfer of an authority that is subject to a security deposit condition, the decision-maker may, by notice given to the proposed transferee, require the proposed transferee to provide the security deposit required to be provided and maintained under the condition before the transfer of the authority is registered.
- (3) If a decision-maker requires a security deposit to be provided before a transfer of the authority is registered, the transfer of the authority must not be registered under section 122 unless the security deposit is provided.

- (4) To avoid doubt, a decision-maker is not required under section 261G to return a security deposit to a transferor of an authority merely because the decision-maker requires or obtains a security deposit from a transferee of the authority or approves the transfer of the authority.
- (5) Subsections (1)–(4) apply to a full or partial transfer of an authority.

[99] Section 261BB Amount of security deposit

Insert at the end of the section—

- (2) The amount of a group security deposit that may be required by a security deposit condition is—
 - (a) the assessed deposit for the authorisations concerned as at the date the decision-maker imposes or varies the condition, or
 - (b) if there is no assessed deposit for the authorisations—the amount specified under section 261BC(7)(b) as at the date the decision-maker imposes or varies the condition.

[100] Section 261BC Secretary may assess amount of security deposit

Omit section 261BC(6) and (7). Insert instead—

- (6) The Secretary must make an assessment under this section having regard to the following—
 - (a) the estimated cost of fulfilling any obligations under the authorisation or authorisations concerned, including obligations under the authorisation that may arise in the future,
 - (b) other matters, if any, prescribed by the regulations.
- (7) An assessed deposit must not be less than—
 - (a) for a group security deposit—the amount prescribed by or calculated in accordance with the regulations,
 - (b) for another security deposit—the minimum deposit for the authorisation.

[101] Section 261BD Application for review of assessed deposit

Omit section 261BD(2)(a)–(d). Insert instead—

- (a) be made in the way, and contain the information, prescribed by the regulations, if any, and

[102] Section 261BE Review of assessed deposit by Minister

Omit section 261BE(2)(a). Insert instead—

- (a) must have regard to—
 - (i) submissions made by the holder of the authorisation in relation to the assessment the subject of the review, and
 - (ii) matters prescribed by the regulations for the purposes of this section, if any, and

[103] Section 261BE, note

Omit the note.

[104] Section 261BF Minimum deposit

Omit section 261BF(2). Insert instead—

- (2) A change to the following does not affect the validity of a security deposit condition imposed or varied before the change takes effect—
 - (a) the minimum deposit for an authorisation,
 - (b) an amount referred to in section 261BC(7)(b).

[105] Section 261C Content of security deposit condition

Omit section 261C(1) and (2). Insert instead—

- (1) A security deposit condition, whether in a standard form or otherwise, may include requirements specified for inclusion by the regulations.

[106] Section 261F Claim on and use of security deposit

Omit section 261F(4). Insert instead—

- (4) The Minister may invest money obtained under a security deposit—
 - (a) if the Minister is a GSF agency for the purposes of the *Government Sector Finance Act 2018*, Part 6—in a way the Department is permitted to invest money under that Part, or
 - (b) if the Minister is not a GSF agency for the purposes of the *Government Sector Finance Act 2018*, Part 6—in a way approved by the Treasurer.

[107] Section 261F(6)

Insert “or (3A)” after “subsection (3)”.

[108] Section 261G Lapsing of security deposit requirement and return of money

Omit section 261G(1).

[109] Section 261G(4) and (5)

Insert after section 261G(3)—

- (4) If a security deposit has lapsed, money obtained under the security deposit that has not been used under section 261F must 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.
- (5) To avoid doubt, a security deposit does not lapse merely because the person who provided the deposit—
 - (a) if the person is an individual—becomes bankrupt or an incapacitated person or dies, or
 - (b) if the person is a corporation—is wound up or deregistered or becomes a Chapter 5 body corporate within the meaning of the *Corporations Act 2001* of the Commonwealth.

[110] Section 272 Assessment of compensation

Omit “in a newspaper circulating generally in the State and in one or more newspapers circulating in the locality in which the land concerned is situated” from section 272(1)(b)(i).

Insert instead “in the way specified by the regulations”.

[111] Section 292A

Omit the section. Insert instead—

292A Interpretation

- (1) In this Part—
authorisation fee means an annual rental fee or administrative levy payable under this Part.
- (2) A reference in this Part to when an authorisation is granted or renewed is taken, in relation to a grant or renewal of an authorisation that takes effect under this Act after the date on which it is granted or renewed, to be a reference to when the grant or renewal takes effect.
- (3) To avoid doubt, if an authorisation fee is payable during the term of an authorisation, the term of the authorisation includes the period occurring after the term for which the authorisation as granted or renewed was due to expire but continues to have effect under section 117.

Note— Section 117 provides for the continuation of an authorisation if an application is made for renewal of the authorisation and it is not finally disposed of before the date on which the authorisation would otherwise cease to have effect.

[112] Section 292B Meaning of “grant anniversary date”

Omit the section.

[113] Section 292E

Omit the section. Insert instead—

292E Payment of annual rental fee

- (1) An annual rental fee must be paid for each year the authorisation continues in force.
- (2) An annual rental fee must be paid before the grant of an authorisation.
- (3) Subsequent annual rental fees must be paid by—
 - (a) the date specified by the Secretary by written notice given to the person liable to pay the fee, or
 - (b) if no date is specified—the date prescribed by, or determined in accordance with, the regulations for the purposes of this section.
- (4) In subsection (2), a reference to the grant of an authorisation includes a reference to the taking of action under this Act as a result of which an authorisation is taken to have been granted under this Act.

Note— For example, a partial transfer of an authorisation cannot be registered under section 122(5) until the annual rental fee is paid.

[114] Section 292H Definitions

Omit the definitions of *minimum deposit* and *security deposit condition*.

[115] Section 292I

Omit the section. Insert instead—

292I Payment of annual administrative levy

- (1) The administrative levy payable under this Part for an authorisation, other than a small-scale title, is an annual administrative levy.

- (2) An annual administrative levy must be paid for each year the authorisation continues in force.
- (3) An annual administrative levy must be paid before the grant of an authorisation.
- (4) Subsequent annual administrative levies must be paid by—
 - (a) the date specified by the Secretary by written notice given to the person liable to pay the fee, or
 - (b) if no date is specified—the date prescribed by, or determined in accordance with, the regulations for the purposes of this section.
- (5) In subsection (3), a reference to the granting of an authorisation includes a reference to the taking of action under this Act as a result of which an authorisation is taken to have been granted under this Act.
Note— For example, a partial transfer of an authorisation cannot be registered under section 122(5) until the administrative levy is paid.

[116] Section 292K

Omit the section. Insert instead—

292K Amount of annual administrative levy

The amount of an annual administrative levy is the amount calculated in accordance with the regulations.

[117] Section 292L Minimum amount of annual administrative levy

Omit the section.

[118] Section 292M

Omit the section. Insert instead—

292M Amount of term administrative levy

The amount of a term administrative levy is the amount calculated in accordance with the regulations.

[119] Section 292R Late payment fee

Omit section 292R(1). Insert instead—

- (1) If an authorisation fee is not paid within the period required under this Part, the Secretary may charge a late payment fee calculated in accordance with the regulations.

[120] Section 292RA

Insert after section 292R—

292RA Consultation before regulations regarding fees are made

Before recommending the making of a regulation that specifies or varies a method of calculation of a levy or fee under section 292K, 292M or 292R(1), the Minister must ensure that—

- (a) a notice is published in the way specified by the regulations to bring it to the attention of the public—
 - (i) stating the objects of the proposed regulation, and
 - (ii) advising where a copy of the regulation may be obtained or inspected, and

- (iii) inviting comments and submissions within a specified period, but not less than 28 days from publication of the notice, and
- (b) comments and submissions received within the period specified by the notice are considered.

[121] Section 292S Effect of cancellation or suspension

Insert “or suspends an activity approval” after “the authorisation” in section 292S(2).

[122] Part 14AB

Insert after Part 14AA—

Part 14AB Operational allocation charges

292SE Operational allocation charge payable

The holder of a mining lease is liable to pay an operational allocation charge to the Secretary on behalf of the Crown if the holder held an exploration licence granted under section 13C for an operational allocation purpose for any part of the land to which the mining lease relates.

292SF Amount of operational allocation charge

The amount of an operational allocation charge is the amount calculated in accordance with the regulations.

292SG Payment of operational allocation charge

The operational allocation charge must be paid at the time or times specified by the regulations.

292SH General

Part 14A, Division 5 applies to an operational allocation charge as if it were an authorisation fee.

[123] Sections 292W–292Y

Insert after section 292V—

292W Royalties for Rejuvenation Fund

- (1) There is established in the Special Deposits Account a fund called the Royalties for Rejuvenation Fund (the *Rejuvenation Fund*).
- (2) The object of the Rejuvenation Fund is to alleviate economic impacts in affected coal mining regions caused by a move away from coal mining by supporting other economic diversification in those regions, including by the funding of infrastructure, services, programs and other activities.
- (3) The Rejuvenation Fund is to be administered by the Secretary.
- (4) There is payable into the Rejuvenation Fund—
 - (a) money advanced, if any, by the Treasurer for the Rejuvenation Fund, and
 - (b) money appropriated, if any, by Parliament for the purposes of the Rejuvenation Fund, and
 - (c) other money directed or authorised to be paid into the Rejuvenation Fund by or under this or another Act or law, and

- (d) the proceeds from the investment of money in the Rejuvenation Fund.
- (5) There is payable from the Rejuvenation Fund—
 - (a) money authorised by the Minister to promote the object of the Rejuvenation Fund, but only if the Minister has considered—
 - (i) written advice about the payment given by the Secretary, including advice as to how the payment complies with the eligibility criteria specified under subsection (6), and
 - (ii) advice and recommendations given by an Expert Panel, and
 - (iii) for a payment that relates to an affected coal mining region—advice and recommendations given by an Expert Panel established for the region, and
 - (iv) the public interest, and
 - (v) whether the payment would lead to a negative impact on the environment, and
 - (b) money required to meet the administrative expenses related to the Rejuvenation Fund, and
 - (c) money authorised or required to be paid from the Rejuvenation Fund by or under this or another Act or law.
- (6) Money must not be paid from the Rejuvenation Fund under subsection (5)(a) unless it is paid in accordance with eligibility criteria issued and made publicly available by the Secretary for the purposes of this section.
- (7) The Secretary must—
 - (a) keep a public register on the Department’s website of all programs and projects funded from the Rejuvenation Fund under subsection (5)(a), and
 - (b) update the register, as soon as practicable after the end of each quarter, with details of projects or programs funded or approved for funding from the Rejuvenation Fund.
- (8) The Secretary may invest money in the Rejuvenation Fund—
 - (a) if the Department is a GSF agency for the purposes of the *Government Sector Finance Act 2018*, Part 6—in a way the Department is permitted to invest money under that Part, or
 - (b) if the Department is not a GSF agency for the purposes of the *Government Sector Finance Act 2018*, Part 6—in a way approved by the Treasurer.
- (9) The annual report of the Department must include details of the amounts paid from the Rejuvenation Fund during the financial year to which the report relates and the purposes for which those payments were made.
- (10) In this section—

affected coal mining region means an area of the State prescribed by the regulations for the purposes of this section.
- (11) The Minister must not recommend the making of a regulation under subsection (10) unless the Minister is satisfied that the area to be prescribed—
 - (a) relies, or has relied, on coal mining for employment and economic activity, and
 - (b) is, or is likely to be, impacted by a transition away from coal mining.

292X Royalties for Rejuvenation Expert Panel

- (1) The Minister must establish at least 1 advisory panel, called a Royalties for Rejuvenation Expert Panel (a *Panel*).
- (2) The Minister must establish a Panel for each affected coal mining region, within the meaning of section 292W.
- (3) To avoid doubt, subsection (2) does not prevent the Minister establishing Panels for other areas of the State or other Panels.
- (4) A Panel has the following functions—
 - (a) to advise the Minister and make recommendations about payments from the Rejuvenation Fund,
 - (b) to advise the Minister about other matters, if any, prescribed by the regulations.
- (5) Advice given by a Panel is non-binding.
- (6) The regulations may make provision about the following—
 - (a) the constitution of a Panel, including the appointment and removal of members,
 - (b) the operations of a Panel,
Example— The regulations may provide that the Expert Panel is to undertake public consultation before giving certain advice or making certain recommendations.
 - (c) the governance of a Panel, including integrity and probity matters,
 - (d) the calling of, and procedure at, meetings of a Panel, including methods of holding meetings.
- (7) A Panel is subject to the control and direction of the Minister in the exercise of its functions, except in relation to the contents of any advice given by it.
- (8) A Panel member is entitled to be paid travelling and other allowances as the Minister may from time to time determine for the member.
- (9) The Secretary must—
 - (a) keep a public register on the Department’s website of the following—
 - (i) the membership of each Panel,
 - (ii) a summary of the advice and recommendations given to the Minister by Panels under this section, and
 - (b) update the register as soon as practicable after the end of each quarter.
- (10) Despite subsection (9)(a)(ii), the Secretary is not required to record information on the public register if, in the opinion of the Secretary, the information is commercial in confidence.

292Y Coal Authorities Allocations Fund

- (1) There is established in the Special Deposits Account a fund called the Coal Authorities Allocations Fund.
- (2) The Coal Authorities Allocations Fund is to be administered by the Secretary.
- (3) There is payable into the Coal Authorities Allocations Fund—
 - (a) market interest charges payable under section 13C(3C), and
 - (b) mandatory participation charges payable under Schedule 1A, clause 3A, and

- (c) amounts of consideration paid under Schedule 1A, clause 5, and
 - (d) operational allocation charges payable under Part 14AB, and
 - (e) money advanced, if any, by the Treasurer for the Coal Authorities Allocations Fund, and
 - (f) money appropriated, if any, by Parliament for the purposes of the Coal Authorities Allocations Fund, and
 - (g) other money directed or authorised to be paid into the Coal Authorities Allocations Fund by or under this or another Act, and
 - (g) the proceeds from the investment of money in the Coal Authorities Allocations Fund.
- (4) There is payable from the Coal Authorities Allocations Fund—
- (a) amounts authorised by the Secretary for the purposes of the following—
 - (i) acquisition of data related to the State’s coal resources and the analysis and assessment of the data, including drilling, coal quality analysis, geological mapping, surveying and resource modelling,
 - (ii) other related activities, if any, prescribed by the regulations related to coal resource data acquisition, analysis and assessment,
 - (iii) the administration of Parts 3–8, 11, 12A and 18 and Schedules 1A–2 in relation to coal, and
 - (b) administrative expenses incurred in relation to the Coal Authorities Allocations Fund, including administrative expenses incurred in relation to the collection and recovery of amounts payable into the Coal Authorities Allocations Fund, and
 - (c) other amounts authorised or required by or under this or another Act to be paid from the Coal Authorities Allocations Fund.
- (5) The Minister may invest money in the Coal Authorities Allocations Fund—
- (a) if the Department is a GSF agency for the purposes of the *Government Sector Finance Act 2018*, Part 6—in a way the Department is permitted to invest money under that Part, or
 - (b) if the Department is not a GSF agency for the purposes of the *Government Sector Finance Act 2018*, Part 6—in a way approved by the Treasurer.
- (6) The annual report of the Department must include details of the amounts paid from the Coal Authorities Allocations Fund during the financial year to which the report relates and the purposes for which those payments were made.

[124] Section 363, heading

Omit “, Secretary or mining registrar”.

Insert instead “or Secretary”.

[125] Section 363(2A)

Omit the subsection.

[126] Section 364 Minister or official not to be interested in authority or small-scale title

Omit section 364(2). Insert instead—

- (2) This section does not prevent the Secretary from being the holder, on behalf of the Crown, of an authorisation.

[127] Section 365A Exchange of information

Omit section 365A(2)(b). Insert instead—

- (b) to determine whether to cancel, revoke or vary an authorisation that is granted, made or given under that legislation, or
- (b1) to determine whether to suspend a condition of, or operations under, an authorisation that is granted, made or given under that legislation, or
- (b2) to determine whether to cancel, revoke, suspend or vary an activity approval or other approval, or an exemption or declaration, that is granted, made or given under that legislation, or
- (b3) to determine whether to make a decision under Part 18, Division 2, or

[128] Section 366 Mining divisions

Omit section 366(2).

[129] Section 376

Insert before section 377—

376 Crown authorisations

- (1) The Secretary may apply on behalf of the Crown for an authorisation (a *Crown authorisation*).
- (2) The regulations may make provision for or about the following—
 - (a) requirements about applications made by the Secretary for Crown authorisations,
 - (b) requirements for prospecting, mining and other activities conducted under a Crown authorisation,
 - (c) rights conferred on the holder of the Crown authorisation.
- (3) The rights conferred under other provisions of this Act on the holder of a Crown authorisation are subject to the requirements of the regulations under this section.

[130] Section 378A Obstruction

Insert “, assault, threaten, intimidate” after “hinder”.

[131] Section 378I Time within which summary proceedings may be commenced

Omit “or 378D” wherever occurring in section 378I(1)(a) and (2)(a).

Insert instead “, 378D, 378F or 378FA”.

[132] Section 378I(1)(a1)

Insert after section 378I(1)(a)—

- (a1) in the case of an offence under section 378C—within but not later than 2 years after the date on which the offence is alleged to have been committed, or

[133] Section 378I(2)(a1)

Insert after section 378I(2)(a)—

- (a1) in the case of an offence under section 378C—within but not later than 2 years after the date on which evidence of the alleged offence first came to the attention of an inspector, or

[134] Part 18, Division 1, heading

Insert after Part 18, heading—

Division 1 General

[135] Section 379AB

Insert after section 379AA—

379AB Coal the property of the Crown

- (1) All coal that, but for the *Coal Acquisition Act 1981*, would be vested in—
 - (a) an instrumentality or agency of the Crown, or
 - (b) any person other than the Crown,is vested in the Crown freed and discharged from all trusts, leases, licences, obligations, estates, interests and contracts.
- (2) This clause does not apply to coal granted under the *Coal Ownership (Restitution) Act 1990*.
- (3) The reference in subsection (1) to leases does not include, and is to be taken never to have included, a reference to coal leases within the meaning of the *Coal Mining Act 1973*.
- (4) The provisions of this clause have effect despite anything contained in the *Real Property Act 1900*, section 42.
- (5) Subclauses (1)–(4) re-enact, with minor modifications, the *Coal Acquisition Act 1981*, section 5 and are transferred provisions to which the *Interpretation Act 1987*, section 30A applies.

[136] Section 380AA Restrictions on planning applications for coal mining

Omit the note from clause 380AA(1). Insert instead—

Note— In this Act, **development consent** means a development consent under the *Environmental Planning and Assessment Act 1979*, Part 4 or an approval under that Act, Part 3A or Division 5.2.

[137] Section 380A Fit and proper person consideration in making certain decisions about mining rights

Omit the section.

[138] Section 381, heading

Omit “epis”. Insert instead “**environmental planning instruments**”.

[139] Section 381B

Insert after section 381A—

381B Incomplete applications

- (1) A decision-maker may reject an application under this Act on either or both of the following grounds—
 - (a) the applicant has not paid a fee or levy payable in connection with the application within the period, if any, prescribed by the regulations,
 - (b) the applicant has not lodged information required by the regulations to accompany the application within the period, if any, prescribed by the regulations or a longer period specified by the decision-maker.

- (2) To avoid doubt—
 - (a) an application rejected under this section is taken never to have been made, and
 - (b) the decision-maker is not required to notify the applicant before the rejection.

[140] Section 382

Omit the section. Insert instead—

382 Applications, tenders and giving of documents and information generally

- (1) An application or tender under this Act must be made in an approved form.
- (2) If an approved form is required to be completed in a specified way, the form is not completed unless the form is completed in the specified way.
- (3) If an approved form requires specified information to be included in or submitted with the form, the form is not completed unless the specified information is included in or submitted with the form.
- (4) An application, tender or prescribed document, thing or information, required or authorised under this Act to be given to a person, must be given in the way, and within the periods, prescribed by the regulations, if any.
- (5) In this section—
prescribed document, thing or information means a document, thing or information prescribed by the regulations for the purposes of this section.

[141] Section 382A, heading

Insert “and charges” after “fees”

[142] Section 382A(1)

Insert “or charge” after “fee” wherever occurring.

[143] Section 382A(2)

Insert “and charges” after “fees”.

[144] Section 382B

Insert after section 382A—

382B Amendment of applications

- (1) The following applications, and information or documents accompanying applications, may, with the consent of the decision-maker, be amended by the applicant at any time before the decision-maker decides the relevant application—
 - (a) an application for an authorisation,
 - (b) an application for the renewal of an authorisation,
 - (c) an application for approval of the transfer of an authorisation,
 - (d) an application for the registration of a sublease or the renewal or variation of the registration,
 - (e) an application prescribed by the regulations,

- (f) information or a document accompanying an application referred to in paragraphs (a)–(e), including a proposed work program required to accompany an application.
- (2) An application under this section must be made in a way approved by the Secretary.
- (3) The decision-maker must give written notice to the applicant confirming the amendment of an application, information or document and the date on which it was amended.
- (4) The amendment of an application, information or document does not entitle the applicant to a refund or reduction of an application fee.

[145] Section 383 Service of documents

Omit “issued or given to a person, or may be” from section 383(1).

[146] Section 383(1)(f) and (g)

Insert at the end of section 383(1)(e)—

, or

- (f) by another method of electronic communication if the person has consented to the service of documents by the method, or
- (g) by another method authorised by the regulations for the service of documents of that kind.

[147] Section 383(8) and (9)

Omit section 383(8). Insert instead—

- (8) Nothing in this section affects the operation of a law or of the rules of a court authorising a document to be served on a person by another method.
- (9) In this section, *serve* includes issue, give or send.

[148] Section 387B Extraterritorial application

Insert “direction or” before “notice”.

[149] Section 387C, heading

Omit “minor”.

[150] Section 387C(1)(e)

Insert at the end of section 387C(1)(d)—

, or

- (e) that is specified by the regulations.

[151] Section 389A

Insert after section 389—

389A Review of Royalties for Rejuvenation Fund

- (1) The Secretary is to review sections 292W and 292X to determine whether the policy objectives of the provisions remain valid and whether the terms of the provisions remain appropriate for securing the objectives.
- (2) The review is to be undertaken as soon as possible after the period of 3 years from the commencement of the provisions.

- (3) A report on the outcome of the review is to be provided to the Minister as soon as practicable after the review is undertaken.

[152] Part 18, Division 2

Insert after section 391—

Division 2 Declarations about persons not fit and proper

392 Interpretation

- (1) In this Division—
authorisation does not include an environmental assessment permit under section 252.
decision includes declaration.
decision-maker, for a decision under this Division, means the decision-maker in relation to the authorisation that makes the person concerned a relevant person.
declared person—see section 393.
relevant person means the following—
- (a) a person who is or was a holder of an authorisation,
 - (b) a person who is or was an applicant for an authorisation,
 - (c) a person who is a proposed transferee under an application to transfer an authorisation,
 - (d) a person who is or was associated with an authorisation or activity approval.
- specified decision*, in relation to an authorisation, means the following—
- (a) a decision to reject an application to grant or renew the authorisation to a declared person,
 - (b) a decision to reject an application to transfer the authorisation to a declared person,
 - (c) a decision to cancel the authorisation or to suspend a condition of, or operations under, the authorisation, in whole or in part, if held by a declared person,
 - (d) a decision to suspend an activity approval related to an authorisation held by a declared person,
 - (e) a decision to restrict operations under an authorisation held by a declared person by the imposition or variation of conditions of an authorisation.
- (2) In this Division, a person is *associated with an authorisation or activity approval* if, in the opinion of the decision-maker, the person—
- (a) has or had an arrangement, whether formal or informal, that gives or gave the person the capacity to determine the outcome of financial or operating decisions about activities under the authorisation or activity approval, or
 - (b) holds or has held office as a director of a body corporate that gives or gave the person the capacity to determine the outcome of financial or operating decisions about activities under the authorisation or activity approval.

Note— A *director* of a body corporate includes any person involved in the management of the affairs of the body corporate—see the Dictionary.

393 Declarations that certain persons are not fit and proper persons for authorisations

- (1) If the decision-maker is satisfied that a relevant person is not a fit and proper person, the decision-maker may, by written order given to the person, declare that the person is not a fit and proper person (a *declared person*).
- (2) The decision-maker may make a declaration at any time, including at the request of the Minister or on the decision-maker's own initiative.
- (3) The decision-maker may, without limiting other matters that can be taken into consideration, take into consideration matters specified by the regulations for the following purposes—
 - (a) deciding whether a person is or is not a fit and proper person,
 - (b) deciding whether to make a declaration.

394 Decisions about declared persons and associated authorisations

- (1) The decision-maker, in relation to an authorisation for which the declared person is the holder, applicant or proposed transferee, may make a specified decision in relation to the authorisation.
- (2) The decision-maker may, by order given to a declared person, at the time the decision-maker makes a declaration, or within 6 months after making a declaration or a longer period as agreed between the decision-maker and the declared person, do 1 or more of the following—
 - (a) caution or reprimand the declared person,
 - (b) disqualify the declared person from making applications for the grant, renewal or transfer of authorisations for a specified period or an indefinite period,
 - (c) impose or vary a condition of an authorisation or an activity approval, but only if the declared person is associated with the authorisation or activity approval,
 - (d) direct the declared person to do or refrain from doing a thing specified in the direction in relation to the following—
 - (i) authorisations and applications for or in relation to authorisations,
 - (ii) mining and prospecting,
 - (e) take another action specified by the regulations.
- (3) An application made by a person disqualified under subsection (2)(b) is invalid and must be rejected by a decision-maker.
- (4) A condition imposed or varied under subsection (2)(c) is taken to have been imposed or varied by the relevant decision-maker.
- (5) A person must not contravene a direction under subsection (2)(d).

Maximum penalty—

 - (a) for a corporation—10,000 penalty units, and, for a continuing offence, a further penalty of 1,000 penalty units for each day the offence continues, or
 - (b) for an individual—2,000 penalty units, and, for a continuing offence, a further penalty of 200 penalty units for each day the offence continues.

395 Review of decisions

- (1) A declared person who is aggrieved by a decision under this Division may apply to the Land and Environment Court for a review of the decision.
- (2) A review by the Land and Environment Court is to be a redetermination of the decision, and the Court may consider fresh material or material in addition to, or in substitution for, the material considered by the decision-maker in the determination of the question.
- (3) An application under subsection (1)—
 - (a) must be made within 30 days of the declared person being given the decision or a longer period allowed by the Court, and
 - (b) does not stay the operation of a decision, unless the Court otherwise orders.

396 Miscellaneous

- (1) The grant, renewal or transfer of a mining lease may be rejected under this Division even if—
 - (a) the mining lease is necessary for the carrying out of State significant development authorised by a development consent, despite the Planning Act, section 4.42, or
 - (b) the mining lease is necessary for the carrying out of approved State significant infrastructure under the Planning Act, Division 5.2 despite the Planning Act, section 5.24, or
 - (c) the mining lease is necessary for the carrying out of a transitional Part 3A project under the *Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017*, Schedule 2, despite the Planning Act, section 75V as continued and modified by that Schedule, or
 - (d) the Planning Act, section 4.47 or 4.50 would otherwise prevent that rejection.
- (2) The regulations may extend the application of a provision of this Act to a decision under this Division, with or without modification.
- (3) Without limiting subsection (2)—
 - (a) sections 126 and 127(1) extend to a specified decision under this Division to cancel an authorisation, and
 - (b) sections 136 and 137 extend to a specified decision under this Division to cancel, or reject an application for the grant, renewal or transfer of, an authority, and
 - (c) section 190(5) extends to a specified decision under this Division to reject an application for the grant of a mineral claim, and
 - (d) section 204 extends to a specified decision under this Division to cancel a mineral claim, and
 - (e) section 205(1) extends to a specified decision under this Division to cancel a mineral claim, and
 - (f) section 210B extends to a specified decision under this Division to cancel, or reject an application for the grant, renewal or transfer of, a mineral claim, and
 - (g) section 228(3) extends to a specified decision under this Division to reject an application for the grant of an opal prospecting licence, and

- (h) section 234 extends to a specified decision under this Division to cancel an opal prospecting licence, and
 - (i) section 234A extends to a specified decision under this Division to cancel, or reject an application for the grant of an opal prospecting licence.
- (4) The regulations may make provision for the application of this Division to authorisations jointly held by, and applications jointly made by, more than 1 person, including dealing with the following—
- (a) a decision regarding an authorisation if 1 or more holders, but not all the holders, are declared persons,
 - (b) the transfer of a declared person's holding to another person.
- (5) In this section—
Planning Act means the *Environmental Planning and Assessment Act 1979*.

[153] Part 18, Division 3

Insert in appropriate order—

Division 3 External administration, winding up and deregistration of corporate holders, applicants and transferees

397 Notification regarding external administration

- (1) This section applies to the following persons—
- (a) a holder of an authority,
 - (b) an applicant for an authority,
 - (c) for an application to transfer an authority—the proposed transferee.
- (2) If a person to whom this section applies is a corporation, the person must notify the Secretary in the approved form if any of the following circumstances exist—
- (a) an external administrator is appointed for the corporation,
 - (b) a winding up of the corporation has commenced,
 - (c) the person has lodged an application to deregister the corporation,
 - (d) the person has received notice of a proposed deregistration of the corporation,
 - (e) a court has ordered the deregistration of the corporation,
 - (f) the person becomes aware that the application to deregister the corporation or proposed deregistration or order for deregistration, as referred to in paragraphs (c)–(e), has been withdrawn, deferred, refused or rejected, as the case may be.
- Maximum penalty— 100 penalty units.
- (3) The notification must be given—
- (a) as soon as practicable, and
 - (b) not later than 28 days after the person first becomes aware of the circumstances mentioned in subsection (2).
- (4) If the notification is caused by the appointment of an external administrator for the corporation, the notice must include an address for service of documents for the corporation.

- (5) To avoid doubt, 2 or more notifications may be included in the same document.
- (6) In this section—
authority includes mineral claim.
external administrator means an administrator, liquidator, restructuring practitioner or controller within the meaning of the *Corporations Act 2001* of the Commonwealth, section 9.

398 Action after notifiable circumstances

- (1) This section applies to the following persons—
 - (a) a holder of an authority,
 - (b) an applicant for an authority,
 - (c) for an application to transfer an authority—the proposed transferee.
- (2) The decision-maker may do 1 or more of the following in relation to an authority, or application in relation to an authority, if satisfied that circumstances mentioned in section 397(2)(a)–(e) exist in relation to a person to whom this section applies that is a corporation, whether or not the circumstances have been notified under the section—
 - (a) reject an application in relation to the authority,
 - (b) cancel the authority,
 - (c) if the authority is jointly held, or an application is made jointly—remove the person concerned, in accordance with the regulations, as holder or applicant.
- (3) Nothing in this section prevents the decision-maker doing 1 or more of the things in subsection (2) after a corporation has been wound up or deregistered.
- (4) In this section—
authority includes mineral claim.

[154] Schedule 1A Competitive selection process for controlled release prospecting titles

Insert after clause 3—

3A Participation charge

- (1) A competitive selection application must be accompanied by the participation charge, if any, prescribed by the regulations.
- (2) Despite subclause (1), a participation charge is not payable under this clause if the applicant has paid a market interest charge under section 13C(3C) for a market interest test in relation to the same geological coal resource.

[155] Schedule 1B Further provisions relating to authorisations generally

Omit clause 2(1)(d) and (e). Insert instead—

- (d) the imposition or suspension of conditions on an authorisation,
- (e) the variation of an authorisation, including the variation of conditions of an authorisation,
- (f) the suspension of operations under an authorisation under clause 7A, but not a direction to suspend operations under an authorisation or suspend an activity approval relating to the operations under section 240AA.

[156] Schedule 1B, clause 6(b)

Omit clause 6(b)–(e). Insert instead—

- (b) the relevant decision-maker considers that the applicant or, if the application relates to a transfer, the transferee, has failed to comply with 1 or more of the following—
 - (i) the applicant or transferee must meet the applicable minimum standards for work programs,
 - (ii) the applicant or transferee must have the technical capability to carry out the proposed work program,
 - (iii) the applicant or transferee must have the financial capability to carry out the proposed work program.

[157] Schedule 1B, clause 7(3)(b)

Omit “section 93”. Insert instead “section 4.50”.

[158] Schedule 1B, clause 7A(1)

Omit “written consent of the decision-maker”.

Insert instead “requirements specified by the regulations”.

[159] Schedule 1B, clause 7A(1A)

Insert after subclause (1)—

- (1A) Without limiting other requirements specified by the regulations under subclause (1), the regulations may require the consent of a specified person to be obtained before mining operations in the mining area are suspended.

[160] Schedule 1B, clause 9(b1)

Insert after clause 9(b)—

- (b1) the conditions to which the holder of the licence is subject under a registered access management plan in force for the opal prospecting block over which the licence is granted, and

[161] Schedule 1B, clause 13(1)

Omit “relevant decision-maker”. Insert instead “Minister”.

[162] Schedule 1B, clause 13(1)(a)

Omit “a daily newspaper circulating throughout New South Wales”.

Insert instead “a way specified by the regulations”.

[163] Schedule 1 Public consultation with respect to the granting of assessment leases and mining leases

Omit “(or approval under Part 3A or Part 5.1 of the *Environmental Planning and Assessment Act 1979*)” from clause 4A.

[164] Schedule 1, clause 4A, note

Insert at the end of the clause—

Note— In this Act, **development consent** means a development consent under the *Environmental Planning and Assessment Act 1979*, Part 4 or an approval under that Act, Part 3A or Division 5.2.

[165] Schedule 1, clause 21(5)

Omit “statutory declaration”.

Insert instead “statement by the applicant”.

[166] Schedule 1, clause 22(2)–(4)

Omit clause 22(2)–(5). Insert instead—

- (2) Schedule 2 contains provisions dealing with objections.
- (3) If, after an objection has been made, but before the objection is determined, the landholder gives written consent to the granting of the mining lease over the land, or the applicant for the mining lease gives written consent to the surface of the land being excluded from the application—
 - (a) the Secretary is not required to determine the objection, and
 - (b) the decision-maker may grant the mining lease.
- (4) A written consent given under this clause is irrevocable.

[167] Schedule 1, clause 23(3)–(6)

Omit clause 23(3) and (4). Insert instead—

- (3) Despite subclause (1), a mining lease may be granted beneath the surface of land determined to be agricultural land if the Minister is satisfied mining operations under the lease are able to be carried out without causing, at any time, unreasonable damage to the agricultural land or unreasonable interference with the use or productive capacity of the agricultural land.
- (4) Despite subclause (1), a mining lease may be granted over the whole or a part of the land determined to be agricultural land, including the surface of the land, if the Minister considers that the granting of the lease is necessary to give access to other land to which the lease applies.
- (5) A mining lease must not be granted in the circumstances referred to in subclause (3) unless the Minister has—
 - (a) given the landholder written notice of the proposed mining lease, including the reasons the Minister is satisfied of the relevant matters in the subclause, and
 - (b) at the time the written notice is given, invited submissions to the Minister about the proposed mining lease within a specified period, being not less than 28 days after the notice is given, and
 - (c) considered any submissions made within the specified period.
- (6) However, a mining lease referred to in subclause (3) may be granted with the written consent of the landholder.

[168] Schedule 1, clause 24(1)

Omit “, in a newspaper circulating generally in the State and in one or more newspapers circulating in the locality in which the land is situated”.

Insert instead “and in the way specified by the regulations”.

[169] Schedule 2 Agricultural land

Omit the definition of *agricultural land*, paragraph (c)(i) from clause 1(1).

Insert instead—

- (i) at the relevant date, trees are growing that provide shade or shelter or a windbreak to other land described in this definition, or

[170] Schedule 2, clause 2(3)

Insert after clause 2(2)—

- (3) The relevant authority may refuse to make a decision that land is agricultural land if the objector has not demonstrated to the relevant authority's satisfaction that the land is agricultural land.

[171] Schedule 2, clauses 2A and 2B

Insert after clause 2—

2A Objections

- (1) An objection must be—
 - (a) lodged with the Secretary—
 - (i) for an objection under section 179 or 222—within 28 days after the date the notice under section 177 or 221, as the case requires, is served, or
 - (ii) for an objection under Schedule 1, clause 22—on or before the date specified in the relevant notice under Schedule 1, clause 21, and
 - (b) made in a way prescribed by the regulations.
- (2) An objector must lodge with the Secretary information to support the objection in the way and within the period specified by the Secretary by written notice given to the objector, being a period of at least 28 days.
- (3) The Secretary may require an objector to provide further information to support the objection.
- (4) The further information must be provided in the way and within the period specified by the Secretary, being a period of at least 28 days.
- (5) If the further information is not provided within the specified period, the Secretary may reject the objection.
- (6) An objection may be withdrawn by written notice given to the Secretary.
- (7) The withdrawal of an objection is irrevocable.

2B Transfer of land if objection pending

- (1) If, before an objection has been determined, the landholder who made the objection transfers the land concerned to a new landholder—
 - (a) the landholder who made the objection must give the Secretary written notice of the transfer, and
 - (b) the objection continues in force as if made by the new landholder, subject to subclauses (2) and (3).
- (2) If, before an objection has been determined, the Secretary becomes aware that land to which the objection relates has been transferred to a new landholder, the Secretary may, by written notice given to the new landholder, request the new landholder notify the Secretary, within 28 days, whether the new landholder wishes the objection to proceed.

- (3) If, at the expiry of the 28-day period, the new landholder has not notified the Secretary that the new landholder wishes the objection to proceed, the objection is taken to have been withdrawn.
- (4) To avoid doubt, a withdrawal of an objection under subclause (3) is irrevocable.

[172] Schedule 2, clause 3

Omit the clause. Insert instead—

3 Date to be certified by Secretary

- (1) This clause applies if—
 - (a) an objection to the grant of a mining lease over land is made under Schedule 1, clause 22, and
 - (b) the tenderer or applicant for the mining lease over the land was, at the time the invitation for tenders was first published or the application was lodged, the holder of an exploration licence or mineral claim over the land.
- (2) If this clause applies, the Secretary must issue a certificate that—
 - (a) states that the matters referred to in subclause (1) have occurred, and
 - (b) specifies the date on which the invitation for tenders for the exploration licence was first published or the application for the exploration licence or mineral claim was lodged.
- (3) The certificate must be given to the following persons—
 - (a) the relevant authority,
 - (b) the landholder,
 - (c) the mining lease applicant.

[173] Schedule 2, clauses 5 and 6

Insert after clause 4—

5 Relevant authority may commission expert reports

Before deciding whether or not land is agricultural land, the relevant authority—

- (a) may commission an expert to report on the question, and
- (b) must allow the landholder and the following persons to make submissions within a reasonable period on the report, including the assumptions of and information contained in the report—
 - (i) for a reference under section 179—the person who caused the notice under section 177 to be served,
 - (ii) for a reference under Schedule 1, clause 22 in relation to a mining lease—the mining lease applicant, and
- (c) must consider the submissions, if any.

6 Parties may make submissions

Before deciding whether or not land is agricultural land, the relevant authority must—

- (a) provide a copy of the objection and supporting information to the following—

- (i) for an objection under section 179, the person who caused the notice under section 177 to be served,
- (ii) for an objection under Schedule 1, clause 22, the mining lease applicant, and
- (b) allow the following to make submissions within a reasonable time on the objection and supporting information—
 - (i) for a reference under section 179, the person who caused the notice under section 177 to be served,
 - (ii) for a reference under Schedule 1, clause 22, the mining lease applicant concerned, and
- (c) give a copy of the submissions to the landholder, and
- (d) allow the landholder to make submissions within a reasonable period commenting on submissions made under paragraph (b), and
- (e) consider the submissions, if any.

[174] Schedule 4 Regulation making powers

Omit clauses 7–9. Insert instead—

7 Fees, levies, charges and refunds

Regulating the imposition of fees, levies and charges and authorising the postponement, refund or waiver of fees, levies and charges.

8 Statistics and accounts

Providing for—

- (a) the compilation of mining statistics, and
- (b) the giving of information for the purpose of enabling mining statistics to be compiled, and
- (c) the keeping of books of account, and
- (d) the inspection of and giving of information from books of account.

9 Records and registers

Providing for—

- (a) the keeping of records and registers, and
- (b) the ways of making registers publicly available for inspection and copying.

[175] Schedule 4, clause 13(2)

Insert at the end of clause 13—

- (2) Without limiting subclause (1)(a), a regulation may specify circumstances in which an ancillary mining activity is taken for the purposes of the Act to be in the vicinity of a mining lease or mineral claim even if the ancillary mining activity is being carried out at a significant distance from the mining lease or mineral claim.

[176] Schedule 6 Savings, transitional and other provisions

Omit “a Warden’s Court” wherever occurring in clauses 70(7) and 72(5).

Insert instead “the Land and Environment Court”.

[177] Schedule 6, clause 142(3)

Omit “Director-General”. Insert instead “Secretary”.

[178] Schedule 6, Part 27

Insert at the end of the Schedule—

Part 27 Provisions consequent on enactment of Mining and Petroleum Legislation Amendment Act 2022

181 Definition

In this Part—

2022 amending Act means the *Mining and Petroleum Legislation Amendment Act 2022*.

182 Exempted areas—sections 30 and 48

- (1) Sections 30(1) and 48(1), as substituted by the 2022 amending Act, extend to the holder of an exploration licence or assessment lease who applied to the Minister for consent under the section if the application was not finally determined immediately before the amendments commenced.
- (2) Sections 30(1) and 48(1), as substituted by the 2022 amending Act, do not extend to the holder of an exploration licence or assessment lease who applied to the Minister for consent under the section if the application was determined before the amendments commenced.
- (3) Sections 30(1) and 48(1), as in force immediately before the subsections were substituted by the 2022 amending Act, continue to apply to the holder of an exploration licence or assessment lease referred to in subclause (2).

183 Conditions of mining leases regarding suspension of mining operations—section 100 and Schedule 1B, clause 7A

- (1) Section 100(a) and Schedule 1B, clause 7A(1), as amended by the 2022 amending Act, extend to mining operations suspended at the time the amendments commenced.
- (2) The regulations may make further provision regarding the application of section 100(a) and Schedule 1B, clause 7A(1), as amended by the 2022 amending Act, to mining operations in suspension at that time.
- (3) To avoid doubt, section 100(a) and Schedule 1B, clause 7A(1), as amended by the 2022 amending Act, apply even if an application for written consent was made before the amendments commenced.

184 Security required before transfer of authority—sections 122 and 261BAA

- (1) The following provisions do not apply to an application made under section 122 but not finally determined before section 261BAA commenced—
 - (a) section 122, as amended by the 2022 amending Act,
 - (b) section 261BAA.
- (2) Section 122, as in force immediately before it was amended by the 2022 amending Act, continues to apply to an application made under that section, but not finally determined, before the amendments commenced.

185 Death, bankruptcy and incapacity of applicant—sections 134 and 210

Sections 134 and 210, as substituted by the 2022 amending Act, extend to an application for an authority or mineral claim if, immediately before the substitution—

- (a) the application had been made but not finally determined, and
- (b) a request under the section—
 - (i) had been made but not finally determined, or
 - (ii) had not been made.

186 Directions—section 240(1A)

Section 240(1A) extends to prospecting, mining or other activities carried out before the subsection commenced.

187 Authorisation fees under Part 14A

Part 14A, as amended by the 2022 amending Act, extends to authorisations in force on the commencement of the amendments.

188 Operational allocation charges—Part 14AB

To avoid doubt, Part 14AB extends to mining leases whether granted before or after the Part commenced.

189 Amendment of applications—section 382B

Section 382B extends to applications made, but not finally determined, before the section commenced.

190 Operation of not fit and proper person declarations—Part 18, Division 2

- (1) Part 18, Division 2 extends to conduct occurring and matters arising before the Division commenced, including—
 - (a) authorisations granted and applications made before the commencement, and
 - (b) conduct that occurred, or a matter that arose, before the commencement.
- (2) To avoid doubt, section 396(1) extends to permit the Minister to refuse the grant, renewal or transfer of a mining lease even if the development consent that would otherwise have prevented refusal was granted before the subsection commenced.

191 Action in relation to external administration, winding up and deregistration of corporate holders, applicants and transferees—section 398

Section 398 extends to applications made, but not finally determined, immediately before the section commenced.

192 Incomplete applications—sections 65(5) and (6) and 381B

- (1) Section 65(5) and (6) extend to applications made, but not finally determined, before the section commenced.
- (2) Section 381B does not apply to applications made before the section commenced.

193 Immediate vicinity and vicinity of mining leases—sections 6(2) and (4) and 63(5) and Schedule 1B, clause 7B(3)(b) and Schedule 4, clause 13

- (1) For the period prescribed by the regulations after commencement day, being a period not exceeding 2 years—
 - (a) section 6(2) and (4), as in force immediately before commencement day, continue to apply to the carrying out of a designated ancillary mining activity by a person who was lawfully carrying out the activity before commencement day, and
 - (b) section 6(2) and (4), as amended by the 2022 amending Act, do not apply to the carrying out of the designated ancillary mining activity.
- (2) Section 63(5) and Schedule 1B, clause 7B(3)(b), as amended by the 2022 amending Act, extend to applications made, but not finally determined, immediately before the amendments commenced.
- (3) The regulations may provide that a reference to the immediate vicinity of a mining lease in a document, including an application for, or condition of, a mining lease, is taken to be a reference to the vicinity of a mining lease for the purposes of this Act.
- (4) In this clause—
commencement day means the date the amendments to section 6(2) and (4) by the 2022 amending Act commenced.

194 Transfer of land if objection pending—Schedule 2, clause 2B

To avoid doubt, Schedule 2, clause 2B extends to the following before the clause commenced—

- (a) an objection made but not finally determined,
- (b) a transfer of land.

195 Definition of “prospect”—Dictionary

- (1) The substitution of the definition of *prospect* in the Dictionary by the 2022 amending Act does not apply in relation to proceedings that were commenced, but not finally determined, before this clause commenced.
- (2) The regulations may make further provision regarding the application of the substituted definition of *prospect* to an authorisation in force on the substitution.

[179] Dictionary

Omit the definition of *Department*.

Insert instead—

Department means the Department of Regional NSW.

[180] Dictionary, definition of “deputy mining registrar”

Omit the definition.

[181] Dictionary, definition of “development consent”

Omit “Part 5.1”. Insert instead “Division 5.2”.

[182] Dictionary

Insert in alphabetical order—

incapacitated person means the following—

- (a) an involuntary patient within the meaning of the *Mental Health Act 2007*,
- (b) a protected person within the meaning of the *NSW Trustee and Guardian Act 2009*, being a person for whom an order is in force under the *NSW Trustee and Guardian Act 2009*, Part 4.2 or 4.3 or the *Guardianship Act 1987* that the whole or a part of the person's estate be subject to management under the *NSW Trustee and Guardian Act 2009*,
- (c) a person is incommunicate within the meaning of the *Powers of Attorney Act 2003*, but only if an enduring power of attorney authorises an attorney to act for the person in relation to an application while incommunicate.

Planning Secretary has the same meaning as in the *Environmental Planning and Assessment Act 1979*.

reject, in relation to a decision on an application, means reject without consideration of the application.

Royalties for Rejuvenation Fund or **Rejuvenation Fund**—see section 292W.
state conservation area means land reserved as a state conservation area under the *National Parks and Wildlife Act 1974*.

[183] Dictionary, definition of “landholder”

Omit “reserved land”. Insert instead “an exempted area”.

[184] Dictionary, definition of “prospect”

Omit the definition.

Insert instead—

prospect means to carry out the following activities, but does not include an activity declared not to be prospecting by or under a regulation under section 11A—

- (a) to carry out works on, or to remove samples from, land for the purpose of testing the following—
 - (i) the mineral bearing qualities of the land,
 - (ii) the potential to recover minerals from the land,
- (b) to rehabilitate land on which works have been carried out, or from which samples have been removed, as referred to in paragraph (a).

[185] Dictionary, definition of “reserved land”

Omit the definition.

Schedule 2 Amendment of Petroleum (Onshore) Act 1991 No 84

[1] Section 3 Definitions

Insert in alphabetical order in section 3(1)—

approved means approved by the Minister.

incapacitated person means the following—

- (a) an involuntary patient within the meaning of the *Mental Health Act 2007*,
- (b) a protected person within the meaning of the *NSW Trustee and Guardian Act 2009*, being a person for whom an order is in force under the *NSW Trustee and Guardian Act 2009*, Part 4.2 or 4.3 or the *Guardianship Act 1987* that the whole or a part of the person's estate be subject to management under the *NSW Trustee and Guardian Act 2009*,
- (c) a person is incommunicate within the meaning of the *Powers of Attorney Act 2003*, but only if an enduring power of attorney authorises an attorney to act for the person in relation to an application while incommunicate.

Planning Secretary has the same meaning as in the *Environmental Planning and Assessment Act 1979*.

reject, in relation to a decision on an application, means reject without consideration of the application.

well-head, of petroleum, has the meaning specified by the regulations.

[2] Section 3(1), definition of "Department"

Omit the definition. Insert instead—

Department means the Department of Regional NSW.

[3] Section 3(1), definition of "prospect"

Omit the definition.

Insert instead—

prospect means to carry out the following activities, but does not include an activity declared not to constitute prospecting by the regulations—

- (a) to carry out works on, or to remove samples from, land for the purpose of testing the following—
 - (i) the quality and quantity of petroleum in the land,
 - (ii) the potential to recover petroleum from the land,
- (b) to rehabilitate land on which works have been carried out, or from which samples have been removed, as referred to in paragraph (a).

[4] Section 11

Omit the section. Insert instead—

11 Making of applications for petroleum titles

An application for a petroleum title must—

- (a) be made in a form approved by the Minister, and
- (b) be lodged with the Secretary, and
- (c) include the information, if any, prescribed by the regulations.

[5] Section 14 Applications to be supported by proposed work program

Omit section 14(1) and (2). Insert instead—

An application for a petroleum title must be accompanied by a proposed work program that—

- (a) contains the information, if any, required by the regulations, and
- (b) complies with the regulations, if any.

[6] Section 15 Applications to be supported by evidence of financial capability

Omit the section.

[7] Section 16 Grant or refusal of petroleum titles

Insert after section 16(4)—

- (5) The Minister may grant—
 - (a) a single petroleum title of a kind for 2 or more applications for that kind of petroleum title made by the same applicant, or
 - (b) 2 or more petroleum titles of the same kind to an applicant for a single application for a petroleum title of that kind.

[8] Section 18 Title to nominee

Insert after section 18(2)—

- (3) To avoid doubt, if 2 or more titles are to be granted for a single application, the applicant may nominate 1 or more other persons under this section to be granted 1 or more of the titles.

[9] Section 19 Renewal of title

Omit section 19(1)–(2A). Insert instead—

- (1) The holder of a petroleum title may, from time to time, apply for the renewal of the title.
Note— Schedule 1B contains provisions about the consideration of applications for the renewal of petroleum titles and the grounds for refusal of the applications.
- (2) An application for the renewal of a petroleum title must be lodged with the Secretary within the period, if any, prescribed by the regulations, before the title ceases to have effect.

[10] Section 19(2AA)(b) and (c)

Omit “and” at the end of paragraph (b) and omit paragraph (c).

[11] Section 19(3)

Insert after section 19(2B)—

- (3) If an application for the renewal of a petroleum title is not made in the names of all of the holders of the title, the Minister may renew the title only if satisfied each holder of the title not applying for its renewal does not wish the title to be renewed in the person’s name.

[12] Section 19B

Omit the section. Insert instead—

19B Land over which exploration licences may be renewed

- (1) This section applies if the Minister is not satisfied that—
 - (a) the area of land over which renewal of an exploration licence is sought is genuinely required to support the proposed work program accompanying the application, or
 - (b) other special circumstances exist that justify the applicant retaining an area greater in size than that genuinely required to support the proposed work program.
- (2) If this section applies, the Minister must—
 - (a) inform the applicant of—
 - (i) the Minister’s opinion, and
 - (ii) the area of land over which the Minister proposes to renew the exploration licence, and
 - (b) renew the exploration licence only over the area of land the Minister considers—
 - (i) to be genuinely required to support the proposed work program, or
 - (ii) for an area greater in size than that genuinely required to support the proposed work program—is justified by special circumstances.
- (3) In deciding whether an area of land is genuinely required to support a proposed work program for the purposes of this section, the Minister may have regard to the matters specified by the regulations.

[13] Section 20 Continuation of title pending renewal

Insert “, in relation only to the land to which the application relates,” after “force”.

[14] Section 21

Insert after section 20—

21 Amendment of application

- (1) The following applications and information or documents accompanying applications, may, with the consent of the Minister, be amended by the applicant at any time before the Minister decides the relevant application—
 - (a) an application for a petroleum title,
 - (b) an application for the renewal of a petroleum title,
 - (c) an application for approval of the transfer of a petroleum title,
 - (d) an application prescribed by the regulations,
 - (e) information or a document accompanying an application referred to in paragraphs (a)–(d), including a proposed work program required to accompany an application.
- (2) An application under this section must be made in a way approved by the Secretary.
- (3) The Minister must give written notice to the applicant confirming the amendment of an application, information or document and the date on which it was amended.
- (4) The amendment of an application, information or document does not entitle the applicant to a refund or reduction of an application fee.

[15] Section 24A Fit and proper person consideration in making certain decisions about petroleum titles

Omit the section.

[16] Section 26 Title taken to be personal property

Omit “It may be disposed of during the lifetime of the holder and on the holder’s death descends or devolves on intestacy or by will as personal property.”.

[17] Sections 26A–26C

Insert after section 26—

26A Joint holders of petroleum titles

- (1) If there is more than 1 holder of a petroleum title, each of the holders is jointly and severally liable for the fulfilment of the obligations arising under this Act in relation to the petroleum title.
- (2) A petroleum title may be held by 2 or more persons as joint tenants or as tenants in common.
- (3) The Secretary must record that 2 or more holders of a petroleum title hold the petroleum title as tenants in common unless the holders apply in a way prescribed by the regulations to hold the petroleum title as joint tenants.

26B Death, bankruptcy and incapacity of applicant

- (1) An application for a petroleum title made by an individual who subsequently becomes bankrupt or an incapacitated person or dies—
 - (a) subsists for the benefit of the applicant or the applicant’s estate, and
 - (b) may continue to be dealt with if—
 - (i) the applicant’s representative makes a request under this section, and
 - (ii) the Minister accepts the request.
- (2) A request must be made in a way and within the period prescribed by the regulations, if any.
- (3) The Minister may reject the application for a petroleum title if—
 - (a) no request is made within the period prescribed under subsection (2), or
 - (b) a request is made within the period prescribed, but the Minister rejects the request.
- (4) Without limiting other grounds for which a request may be rejected, a request may be rejected on grounds prescribed by the regulations.
- (5) The Minister, in considering whether to accept a request under this section, may have regard to the following—
 - (a) guidelines issued and made publicly available by the Minister for the purposes of this section, if any,
 - (b) matters prescribed by the regulations for the purposes of this section.
- (6) In this section—

representative, for an individual who is bankrupt, an incapacitated person or deceased, has the meaning prescribed by the regulations.

26C Devolution of rights of holder of petroleum title

- (1) A person on whom the rights of the holder of a petroleum title have devolved by operation of law may apply to the Minister to have the person's name recorded as the holder of the title.
- (2) An application must be made in a way prescribed by the regulations.
- (3) The Minister, if satisfied that the rights of the holder of a petroleum title have devolved by operation of law, may direct the Secretary to record the name of the applicant as the holder of the title.
- (4) In considering an application under this section, the Minister must have regard to guidelines issued and made publicly available by the Minister for the purposes of this section, if any.
- (5) To avoid doubt, in this section, rights have devolved by operation of law if the rights have involuntarily passed from 1 person to another by operation of a law, including a transfer caused by death, bankruptcy or insolvency.

[18] Section 28C Land over which exploration licence granted

Insert at the end of the section—

- (2) Subsection (1)—
 - (a) extends to the grant of a single exploration licence for 2 or more applications made by the same applicant, and
 - (b) as extended, applies as if the land over which the exploration licence was sought was the land over which the 2 or more exploration licences were sought.

[19] Section 31A Activity approval required for assessable prospecting operations

Omit section 31A(3). Insert instead—

- (3) An application for an activity approval must—
 - (a) be made in a form approved by the Minister, and
 - (b) be lodged with the Minister, and
 - (c) include the information, if any, prescribed by the regulations.
- (3A) The Minister may require the holder of an exploration licence to provide further information as required by the Minister, within the period specified by the Minister, before considering the application or at any time during consideration of the application.

[20] Section 32A Land over which assessment lease granted

Insert at the end of the section—

- (2) Subsection (1)—
 - (a) extends to the grant of a single assessment lease for 2 or more applications made by the same applicant, and
 - (b) as extended, applies as if the land over which the assessment lease was sought was the land over which the 2 or more assessment leases were sought.

[21] Section 36 Notice to be given of application for assessment lease

Omit “both in a newspaper circulating in the vicinity of the area over which the lease is sought and in a newspaper circulating generally in the State” from section 36(1).

Insert instead “in the way specified by the regulations”.

[22] Section 36A Activity approval required for assessable prospecting operations

Omit section 36A(3). Insert instead—

- (3) An application for an activity approval must—
 - (a) be made in a form approved by the Minister, and
 - (b) be lodged with the Minister, and
 - (c) include the information, if any, prescribed by the regulations.
- (3A) The Minister may require the holder of an assessment lease to provide further information as required by the Minister, within the period specified by the Minister, before considering the application or at any time during consideration of the application.

[23] Section 39 Area of special prospecting authority

Insert at the end of the section—

- (2) The land over which a special prospecting authority is granted may differ in size or shape from, but may not include land other than, the land over which the authority was sought.
- (3) Subsection (2)—
 - (a) extends to the grant of a single special prospecting authority for 2 or more applications made by the same applicant, and
 - (b) as extended, applies as if the land over which the special prospecting authority was sought was the land over which the 2 or more special prospecting authorities were sought.

[24] Section 43 Notice of application for production lease to be published

Omit “a newspaper circulating generally in the State”.

Insert instead “a way specified by the regulations”.

[25] Section 44 Area of production lease

Insert at the end of the section—

- (2) The land over which a production lease is granted may differ in size or shape from, but may not include land other than, the land over which the production lease was sought.
- (3) Subsection (2)—
 - (a) extends to the grant of a single production lease for 2 or more applications made by the same applicant, and
 - (b) as extended, applies as if the land over which the production lease was sought was the land over which the 2 or more production leases were sought.

[26] Section 47, heading

Omit “epis”. Insert instead “environmental planning instruments”.

[27] Section 48 Application of this Division to Government bodies where development consent etc not required

Omit “Part 5.1”.

Insert instead “Division 5.2”.

[28] Sections 50 and 51

Omit “Secretary of the Department of Planning and Environment” wherever occurring.
Insert instead “Planning Secretary”.

[29] Section 54A Division applies only where development consent etc not required

Omit “Part 5.1”.
Insert instead “Division 5.2”.

[30] Section 67 Development consent under Environmental Planning and Assessment Act 1979

Insert after section 67(2)—

- (3) The Minister may reject an application for a production lease if the applicant, before the expiration of the period, if any, prescribed by the regulations or a longer period specified by the Minister, has failed to provide to the Minister evidence that—
 - (i) an application for the development consent required by this section has been made, or
 - (ii) the development consent has been granted and is in force.
- (4) To avoid doubt—
 - (a) an application rejected under this section is taken never to have been made, and
 - (b) the Minister is not required to notify the applicant before the rejection.

[31] Section 69C Prospecting to be carried out in accordance with access arrangement

Insert after section 69C(1)—

Maximum penalty—

- (a) for a corporation—5,000 penalty units, and, for a continuing offence, a further penalty of 500 penalty units for each day the offence continues, or
- (b) for an individual—1,000 penalty units or imprisonment for 5 years, or both, and, for a continuing offence, a further penalty of 100 penalty units for each day the offence continues.

[32] Section 69SA Register of arbitrated access arrangements

Omit section 69SA(2)–(4). Insert instead—

- (2) The Secretary must keep a register of the following in a way prescribed by the regulations—
 - (a) the arbitrated access arrangements provided to the Secretary,
 - (b) other information, if any, relating to arbitrated access arrangements prescribed by the regulations.
- (3) The register must be made available for public inspection.

[33] Section 73 Disputes between holders of petroleum titles and other persons carrying on operations on the land

Insert “mineral” before “claim” in section 73(1)(a).

[34] Section 73(1)(e)

Omit the paragraph.

[35] Section 74 Interpretation

Insert “, controller” after “receiver” in section 74(2).

[36] Section 74(2)

Omit “responsible” wherever occurring.

[37] Section 75 Directions

Insert after section 75(1)—

- (1A) The Secretary or an inspector may, by written notice, direct a person to do 1 or more of the following if the person has carried out prospecting for petroleum, mining petroleum or another activity otherwise than in accordance with a petroleum title, where a petroleum title to carry out the prospecting, mining or activity is required under this Act—
- (a) to address an adverse impact the prospecting, mining or activity has had on 1 or more aspects of the environment,
 - (b) to address a risk of there being such an impact,
 - (c) to conserve the environment, protect it from harm as a result of the prospecting, mining or activity or to prevent, control or mitigate the harm,
 - (d) to rehabilitate land or water that is or may be affected by the prospecting, mining or activity.
- (1B) To avoid doubt, a reference to the environment, land and water in subsections (1) and (1A) includes the environment, land and water in a place regardless of whether the environment, land and water is within or outside a title area.

[38] Section 75(2)

Omit “responsible”.

[39] Section 78C Fee

Omit “by the holder of the petroleum title concerned” from 78C(3).

[40] Section 83D Conditions for mandatory audits

Omit section 83D(7). Insert instead—

- (7) This section does not affect the operation of the *Environmental Planning and Assessment Act 1979*, section 4.42, 4.50 or 5.24.

[41] Section 88 Ascertainment of well-head

Omit the section.

[42] Section 89 Ascertainment of value

Omit “the amount determined by the Minister as being that value”.

Insert instead “the amount calculated in the way determined by the Minister”.

[43] Section 94A

Omit sections 94A and 94B. Insert instead—

94A Interpretation

- (1) A reference in this Part to when a petroleum title is granted or renewed is taken, in relation to a grant or renewal of a petroleum title that takes effect after the date on which it is granted or renewed, to be a reference to when the grant or renewal takes effect.
- (2) To avoid doubt, if a fee is payable during the term of a petroleum title, the term of the title includes the period occurring after the term for which the petroleum title as granted or renewed was due to expire but continues to have effect under section 20.

Note— Section 20 provides that if an application for renewal of a petroleum title has not been withdrawn or finally disposed of before the date on which the term of the title expires, it continues in force until the application is withdrawn or otherwise finally disposed of.

[44] Section 94H

Omit the section. Insert instead—

94H Payment of annual rental fee

- (1) An annual rental fee must be paid for each year the petroleum title continues in force.
- (2) An annual rental fee must be paid before the grant of a petroleum title.
- (3) Subsequent annual rental fees must be paid by—
 - (a) the date specified by the Secretary by written notice given to the person liable to pay the fee, or
 - (b) if no date is specified—the date prescribed by, or determined in accordance with, the regulations for the purposes of this section.

[45] Section 94J Definitions

Omit the section.

[46] Section 94K

Omit the section. Insert instead—

94K Payment of annual administrative levy

- (1) The administrative levy payable under this Part for a petroleum title is an annual administrative levy.
- (2) An annual administrative levy must be paid for each year the petroleum title continues in force.
- (3) An annual administrative levy must be paid before the grant of a petroleum title.
- (4) Subsequent annual administrative levies must be paid by—
 - (a) the date specified by the Secretary by written notice given to the person liable to pay the fee, or
 - (b) if no date is specified—the date prescribed by, or determined in accordance with, the regulations for the purposes of this section.

[47] Section 94L Amount of administrative levy

Omit section 94L(1)–(7). Insert instead—

The amount of an administrative levy is the amount calculated in accordance with the regulations.

[48] Section 94M Minimum amount of administrative levy

Omit the section.

[49] Section 94Q Late payment fee

Omit section 94Q(1). Insert instead—

- (1) If a fee under this Part is not paid within the period required under this Part, the Secretary may charge a late payment fee calculated in accordance with the regulations.

[50] Section 94QA

Insert after section 94Q—

94QA Consultation before regulations regarding fees are made

Before recommending the making of a regulation that specifies or varies a method of calculation of a levy or fee under section 94L or 94Q, the Minister must ensure that—

- (a) a notice is published in the way specified by the regulations to bring it to the attention of the public—
 - (i) stating the objects of the proposed regulation, and
 - (ii) advising where a copy of the regulation may be obtained or inspected, and
 - (iii) inviting comments and submissions within a specified period, but not less than 28 days from publication of the notice, and
- (b) comments and submissions received within the period specified in the notice are considered.

[51] Section 95 Records of titles

Omit section 95(2) and (3). Insert instead—

- (2) The record must be kept in the way, and must include the information, prescribed by the regulations, if any.
- (3) The record must be made available for public inspection.
- (4) Despite subsection (3), the Secretary may decide to keep the records relating to a competitive selection application made in response to an invitation under Schedule 1A confidential and not make them publicly available until after the selection process has been completed.

[52] Section 96 Applications for transfer of title

Omit section 96(2)(b).

[53] Section 96A Registration of transfers

Insert at the end of section 96A(2)(b)—

, and

- (c) must be accompanied by evidence that the security deposit required to be provided under section 106CA, if any, has been provided.

[54] Section 96A(3)

Omit “the application”.

Insert instead “an application that complies with subsection (2)”.

[55] Section 96A(5)

Insert after section 96A(4)—

- (5) An approval of transfer of a petroleum title lapses if an application for registration of the transfer under this section has not been made within 3 months after the transferor and transferee of the petroleum title were notified of the approval.

[56] Section 97 Registration of certain interests

Omit section 97(9). Insert instead—

- (9) The register must be made available for public inspection.

[57] Sections 97H and 97I

Insert after section 97G—

97H Notification regarding external administration

- (1) This section applies to the following persons—
 - (a) a holder of a petroleum title,
 - (b) an applicant for a petroleum title,
 - (c) for an application to transfer a petroleum title—the proposed transferee.
- (2) If a person to whom this section applies is a corporation, the person must notify the Secretary in the approved form if any of the following circumstances exist—
 - (a) an external administrator is appointed for the corporation,
 - (b) a winding up of the corporation has commenced,
 - (c) the person has lodged an application to deregister the corporation,
 - (d) the person has received notice of a proposed deregistration of the corporation,
 - (e) a court has ordered the deregistration of the corporation,
 - (f) the person becomes aware that the application to deregister the corporation or proposed deregistration or order for deregistration, as referred to in paragraphs (c)–(e), has been withdrawn, deferred or refused or rejected, as the case may be.

Maximum penalty— 100 penalty units.

- (3) The notification must be given—
 - (a) as soon as practicable, and
 - (b) not later than 28 days after the person first becomes aware of the circumstances mentioned in subsection (2).
- (4) If the notification is caused by the appointment of an external administrator for the corporation, the notice must include an address for service of documents for the corporation.
- (5) To avoid doubt, 2 or more notifications may be included in the same document.

- (6) In this section—
external administrator means an administrator, liquidator, restructuring practitioner or controller within the meaning of the *Corporations Act 2001* of the Commonwealth, section 9.

97I Action after notifiable circumstances

- (1) This section applies to the following persons—
- (a) a holder of a petroleum title,
 - (b) an applicant for a petroleum title,
 - (c) for an application to transfer a petroleum title—the proposed transferee.
- (2) The Minister may do 1 or more of the following in relation to a petroleum title, or application in relation to a petroleum title, if satisfied that circumstances mentioned in section 97H(2)(a)–(e) exist in relation to a person to whom this section applies that is a corporation, whether or not the circumstances have been notified under the section—
- (a) reject an application in relation to the petroleum title,
 - (b) cancel the petroleum title,
 - (c) if the petroleum title is jointly held, or an application is made jointly—remove the person concerned, in accordance with the regulations, as holder or applicant.
- (3) Nothing in this section prevents the Minister doing 1 or more of the things in subsection (2) after a corporation has been wound up or deregistered.

[58] Section 104KA

Insert before section 104L—

104KA Entry on land to comply with environmental, rehabilitation and other directions and for other purposes

- (1) The Minister may grant a permit to a person to enter land to enable the person—
- (a) to comply with a direction in force under section 75, or
 - (b) to remove a petroleum plant in accordance with a direction under section 82(1)(b) or as a result of a sale conducted under section 83.
- (2) The holder of a permit under this section, and an employee or agent of the holder, may, in accordance with the permit—
- (a) enter the land to which the permit relates, and
 - (b) do on the land things reasonably necessary to achieve the purpose for which the permit was granted.

[59] Section 106B Security required to be given

Omit section 106B(4). Insert instead—

- (4) A security deposit condition may require—
- (a) a single security deposit to be provided and maintained for more than 1 petroleum title held by the same person, and
 - (b) the holder of 2 or more petroleum titles to cause a security deposit that has been provided and maintained for 1 petroleum title to be extended to other petroleum titles held by the holder.

- (4A) To avoid doubt, a security deposit condition for a group security deposit may be varied at the request of the holder of the petroleum title or on the Minister's initiative—
- (a) to deal with a further petroleum title, or
 - (b) to remove a petroleum title from being the subject of the condition.

[60] Section 106C, heading

Insert “or renewed” after “granted”.

[61] Section 106C(3)

Insert after section 106C(2)—

- (3) Subsections (1) and (2) extend to the renewal of a petroleum title.

[62] Section 106CA

Insert after section 106C—

106CA Security may be required before transfer of petroleum title is registered

- (1) If the Minister proposes to approve a transfer of a petroleum title which is not subject to a security deposit condition, the Minister may, by notice given to the proposed transferee—
 - (a) advise the proposed transferee that the Minister proposes to impose a security deposit condition when the transfer is approved, and
 - (b) require the proposed transferee to provide the security deposit required to be provided and maintained under that condition before the transfer of the petroleum title is registered.
- (2) If the Minister proposes to approve a transfer of a petroleum title which is subject to a security deposit condition, the Minister may, by notice given to the proposed transferee, require the proposed transferee to provide the security deposit required to be provided and maintained under that condition before the transfer of the petroleum title is registered.
- (3) If the Minister requires a security deposit to be provided before a transfer of the petroleum title is registered, the transfer of the petroleum title must not be registered under section 96A unless the security deposit is provided.
- (4) Subsections (1)–(3) apply to a full or partial transfer of a petroleum title.

[63] Section 106D Amount of security deposit

Insert at the end of the section—

- (2) The amount of a group security deposit that may be required by a security deposit condition is—
 - (a) the assessed deposit for the petroleum titles concerned as at the date the Minister imposes or varies the condition, or
 - (b) if there is no assessed deposit for the petroleum titles—the amount specified under section 106E(7)(b) as at the date the Minister imposes or varies the condition.

[64] Section 106E Secretary may assess amount of security deposit

Omit section 106E(6) and (7). Insert instead—

- (6) The Secretary must make an assessment under this section having regard to the following—

- (a) the estimated cost of fulfilling obligations under the petroleum title or petroleum titles concerned, including obligations under the petroleum title that may arise in the future,
 - (b) other matters, if any, prescribed by the regulations.
- (7) An assessed deposit must not be less than the following—
- (a) for a group security deposit—the amount prescribed by or calculated in accordance with the regulations,
 - (b) for another security deposit—the minimum deposit for the petroleum title.

[65] Section 106F Application for review of assessed deposit

Omit section 106F(2)(a)–(d). Insert instead—

- (a) be made in the way, and contain the information, prescribed by the regulations, if any, and

[66] Section 106G Review of assessed deposit by Minister

Omit section 106G(2)(a). Insert instead—

- (a) must have regard to—
 - (i) submissions made by the holder of the petroleum title in relation to the assessment the subject of the review, and
 - (ii) matters, if any, prescribed by the regulations for the purposes of this section, and

[67] Section 106G(7), note

Omit the note.

[68] Section 106H Minimum deposit

Omit section 106H(2). Insert instead—

- (2) A change to the following does not affect the validity of a security deposit condition imposed or varied before the change takes effect—
 - (a) the minimum deposit for a petroleum title,
 - (b) an amount in section 106E(7)(b).

[69] Section 106I, heading

Insert “**and use**” after “**Forfeiture**”.

[70] Section 106I(4)

Insert after section 106I(3)—

- (4) The Minister may invest money obtained under a security deposit—
 - (a) if the Minister is a GSF agency for the purposes of the *Government Sector Finance Act 2018*, Part 6—in a way the Department is permitted to invest money under that Part, or
 - (b) if the Minister is not a GSF agency for the purposes of the *Government Sector Finance Act 2018*, Part 6—in a way approved by the Treasurer.

[71] Section 113C Minister or officer not to be interested in petroleum title

Insert after section 113C(2)—

- (3) This section does not prevent the Secretary from being the holder, on behalf of the Crown, of a petroleum title.

[72] Section 113CA

Insert after 113C—

113CA Crown authorisations

- (1) The Secretary may apply on behalf of the Crown for a petroleum title (a *Crown petroleum title*).
- (2) The regulations may make provision for or about the following—
- (a) requirements about applications made by the Secretary for Crown petroleum titles,
 - (b) requirements for prospecting, mining and other activities conducted under a Crown petroleum title,
 - (c) rights conferred on the holder of the Crown petroleum title.
- (3) The rights conferred under other provisions of this Act on the holder of a Crown petroleum title are subject to the requirements of the regulations under this section.

[73] Section 113N Exchange of information

Insert after section 113N(2)(b)—

- (b1) to determine whether to make a decision under Part 14, Division 2, or

[74] Section 125B Obstruction

Insert “, assault, threaten, intimidate” after “hinder”.

[75] Section 125M Time within which summary proceedings may be commenced

Omit “or 125E” from section 125M(1)(a) and (2)(a) wherever occurring.

Insert instead “, 125E, 125H or 125I”.

[76] Section 125M(1)(a1)

Insert after section 125M(1)(a)—

- (a1) in the case of an offence under section 125D—within but not later than 2 years after the date on which the offence is alleged to have been committed, or

[77] Section 125M(2)(a1)

Insert after section 125M(2)(a)—

- (a1) in the case of an offence under section 125D—within but not later than 2 years after the date on which evidence of the alleged offence first came to the attention of an inspector, or

[78] Part 14, Division 1, heading

Insert after Part 14, heading—

Division 1 General

[79] Section 129A Extraterritorial application

Insert “direction or” before “notice”.

[80] Section 129B, heading

Omit “minor”.

[81] Section 129B(1)(e)

Insert at the end of section 129B(1)(d)—

, or

(e) that is specified by the regulations.

[82] Sections 132 and 133

Insert before section 134—

132 Incomplete applications

- (1) The Minister may reject an application under this Act on either or both of the following grounds—
 - (a) the applicant has not paid a fee or levy payable in connection with the application within the period, if any, prescribed by the regulations,
 - (b) the applicant has not lodged information required by the regulations to accompany the application within the period, if any, prescribed by the regulations or a longer period specified by the Minister.
- (2) To avoid doubt—
 - (a) an application rejected under this section is taken never to have been made, and
 - (b) the Minister is not required to notify the applicant before the rejection.

133 Applications, tenders and giving of documents and information generally

- (1) An application or tender required or authorised under this Act to be given to a person must be given in the approved form.
- (2) If an approved form requires the form to be completed in a specified way, the form is not completed unless the form is completed in the specified way.
- (3) If an approved form requires specified information to be included in or submitted with the form, the form is not completed unless the specified information is included in or submitted with the form.
- (4) An application, tender or prescribed document, thing or information, required or authorised under this Act to be given to a person, must be given in the way, and within the period, prescribed by the regulations, if any.
- (5) In this section—

prescribed document, thing or information means a document, thing or information prescribed by the regulations for the purposes of this section.

[83] Section 134 Service of documents

Omit section 134(1). Insert instead—

- (1) A document that is authorised or required by this Act or the regulations to be served on a person may be served by 1 of the following methods—
 - (a) for an individual—by personal delivery to the person,
 - (b) by post to the address specified by the person for the service of documents of that kind,

- (c) for an individual who has not specified an address for that purpose—by post to the residential or business address of the person last known to the person serving the document,
- (d) for a body corporate—by post to the registered office or another office of the body corporate or by leaving it at the office with a person apparently over the age of 16 years,
- (e) by email to an email address specified by the person for the service of documents of that kind,
- (f) by another method of electronic communication if the person has consented to service of documents by the method,
- (g) by another method authorised by the regulations for the service of documents of that kind.

[84] Section 134(5) and (6)

Omit section 134(5). Insert instead—

- (5) Nothing in this section affects the operation of a law or of the rules of a court authorising a document to be served on a person by another method.
- (6) In this section, *serve* includes issue, give or send.

[85] Section 138 Regulations

Insert after section 138(1)(g1)—

- (g2) providing for—
 - (a) the keeping of records and registers, and
 - (b) the ways of making registers publicly available for inspection and copying, and

[86] Part 14, Division 2

Insert after section 141—

Division 2 Declarations about persons not fit and proper

142 Interpretation

- (1) In this Division—
 - decision* includes declaration.
 - declared person*—see section 143.
 - relevant person* means the following—
 - (a) a person who is or was a holder of a petroleum title,
 - (b) a person who is or was an applicant for a petroleum title,
 - (c) a person who is a proposed transferee under an application to transfer a petroleum title,
 - (d) a person who is or was associated with a petroleum title or activity approval.
 - specified decision*, in relation to a petroleum title, means the following—
 - (a) a decision to reject an application to grant or renew the petroleum title to a declared person,
 - (b) a decision to reject an application to transfer the petroleum title to a declared person,

- (c) a decision to cancel the petroleum title or to suspend a condition of, or operations under, the petroleum title, in whole or in part, if held by a declared person,
 - (d) a decision to suspend an activity approval related to a petroleum title held by a declared person,
 - (e) a decision to restrict operations under a petroleum title held by a declared person by the imposition or variation of conditions of a petroleum title.
- (2) In this Division, a person is *associated with a petroleum title or activity approval* if, in the opinion of the Minister, the person—
- (a) has or had an arrangement, whether formal or informal, that gives or gave the person the capacity to determine the outcome of financial or operating decisions about activities under the petroleum title or activity approval, or
 - (b) holds or has held office as director of a body corporate that gives or gave the person the capacity to determine the outcome of financial or operating decisions about activities under the petroleum title or activity approval.

Note— A *director* of a body corporate includes any person involved in the management of the affairs of the body corporate—see section 3(1).

143 Declarations that certain persons are not fit and proper persons for petroleum titles

- (1) If the Minister is satisfied that a relevant person is not a fit and proper person, the Minister may, by written order given to the person, declare that the person is not a fit and proper person (a *declared person*).
- (2) The Minister may make a declaration at any time, including on the Minister's own initiative.
- (3) The Minister may, without limiting other matters that can be taken into consideration, take into consideration matters specified by the regulations for the following purposes—
 - (a) deciding whether a person is or is not a fit and proper person,
 - (b) deciding whether to make a declaration.

144 Decisions about declared persons and associated petroleum titles

- (1) The Minister, in relation to a petroleum title for which the declared person is the holder, applicant or proposed transferee, may make a specified decision in relation to the petroleum title.
- (2) The Minister may, by order given to a declared person, at the time the Minister makes a declaration, or within 6 months after making a declaration or a longer period as agreed between the Minister and the declared person, do 1 or more of the following—
 - (a) caution or reprimand the declared person,
 - (b) disqualify the declared person from making applications for the grant, renewal or transfer of petroleum titles for a specified period or an indefinite period,
 - (c) impose or vary a condition of a petroleum title or an activity approval, but only if the declared person is associated with the petroleum title or activity approval,

- (d) direct the declared person to do or refrain from doing a thing specified in the direction in relation to the following—
 - (i) petroleum titles and applications for or in relation to petroleum titles,
 - (ii) mining and prospecting,
- (e) take another action specified by the regulations.
- (3) An application made by a person disqualified under subsection (2)(b) is invalid and must be rejected by the Minister.
- (4) A condition imposed or varied under subsection (2)(c) is taken to have been imposed or varied by the Minister.
- (5) A person must not contravene a direction under subsection (2)(d).
Maximum penalty—
 - (a) for a corporation—10,000 penalty units, and, for a continuing offence, a further penalty of 1,000 penalty units for each day the offence continues, or
 - (b) for an individual—2,000 penalty units, and, for a continuing offence, a further penalty of 200 penalty units for each day the offence continues.

145 Review of decisions

- (1) A declared person who is aggrieved by a decision under this Division may apply to the Land and Environment Court for a review of the decision.
- (2) A review by the Land and Environment Court is to be a redetermination of the decision, and the Court may consider fresh material or material in addition to, or in substitution for, the material considered by the Minister in the determination of the question.
- (3) An application under subsection (1)—
 - (a) must be made within 30 days of the declared person being given the decision or a longer period allowed by the Court, and
 - (b) does not stay the operation of a decision, unless the Court otherwise orders.

146 Miscellaneous

- (1) The grant, renewal or transfer of a petroleum title may be refused under this Division even if—
 - (a) the petroleum title is necessary for the carrying out of State significant development that is authorised by a development consent, despite the Planning Act, section 4.42, or
 - (b) the petroleum title is necessary for the carrying out of approved State significant infrastructure under the Planning Act, Division 5.2 despite the Planning Act, section 5.24, or
 - (c) the petroleum title is necessary for the carrying out of a transitional Part 3A project under the *Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017*, Schedule 2, despite the Planning Act, section 75V as continued and modified by that Schedule, or
 - (d) the Planning Act, section 4.47 or 4.50 would otherwise prevent that refusal.

- (2) The regulations may extend the application of a provision of the Act to a decision under this Division, with or without modification.
- (3) Without limiting subsection (2)—
 - (a) section 22A(6) extends to the cancellation of a petroleum title under this Division, and
 - (b) section 25 extends to a decision to reject an application to grant, renew or transfer a petroleum title under this Division.
- (4) The regulations may make provision for the application of this Division to petroleum titles jointly held by, and applications jointly made by, more than 1 person, including dealing with the following—
 - (a) a decision regarding a petroleum title if 1 or more holders, but not all the holders, are declared persons,
 - (b) the transfer of a declared person's holding to another person.
- (5) In this section—
Planning Act means the *Environmental Planning and Assessment Act 1979*.

[87] Schedule 1B Further provisions relating to petroleum titles generally

Omit clause 5(b). Insert instead—

- (b) the Minister considers that the applicant or, if the application relates to a transfer, the transferee, has failed to comply with 1 or more of the following—
 - (i) the applicant or transferee must meet the applicable minimum standards for work programs,
 - (ii) the applicant or transferee must have the technical capability to carry out the proposed work program,
 - (iii) the applicant or transferee must have the financial capability to carry out the proposed work program.

[88] Schedule 1B, clause 5(c) and (d)

Omit the paragraphs.

[89] Schedule 1B, clause 6(3)(b)

Omit “section 93 of the *Environmental Planning and Assessment Act 1979*”.

Insert instead “the *Environmental Planning and Assessment Act 1979*, section 4.50”.

[90] Schedule 1B, clause 10(1)(a)

Omit “in a daily newspaper circulating throughout New South Wales”.

Insert instead “in a way specified by the regulations”.

[91] Schedule 1 Savings and transitional provisions

Insert at the end of the Schedule—

Part 15 Provisions consequent on enactment of Mining and Petroleum Legislation Amendment Act 2022

67 Definition

In this Part—

2022 amending Act means the *Mining and Petroleum Legislation Amendment Act 2022*.

68 Definition of “prospect”—s 3(1)

- (1) The substitution of section 3(1), definition of *prospect* by the 2022 amending Act does not apply in relation to any proceedings that were commenced, but not finally determined, before this clause commenced.
- (2) The regulations may make further provision regarding the application of the substituted definition of *prospect* to a petroleum title in force on the substitution.

69 Definition of “well-head”

- (1) The amendments made by the 2022 amending Act, Schedule 2[1] and [41] do not apply in relation to a royalty payable in relation to a royalty period that began before the amendments commenced.
- (2) Section 88, as in force immediately before its repeal by the 2022 amending Act, Schedule 2[41], continues to apply in relation to a royalty payable in relation to a royalty period that began before the repeal of the section.

70 Ascertainment of value of petroleum at well-head

- (1) The amendment made by the 2022 amending Act, Schedule 2[42] does not apply in relation to a royalty payable in relation to a royalty period that began before the amendment commenced.
- (2) Section 89, as in force immediately before its amendment by the 2022 amending Act, Schedule 2[42], continues to apply in relation to a royalty payable in relation to a royalty period that began before the amendment of the section commenced.

71 Continuation of title pending renewal

- (1) Section 20, as amended by the 2022 amending Act, does not apply in relation to an application for the renewal of a title made, but not finally determined, before that amendment commenced.
- (2) Section 20, as in force immediately before its amendment by the 2022 amending Act, continues to apply in relation to an application for the renewal of a title made, but not finally determined, before the amendment commenced.

72 Amendment of applications—s 21

Section 21, as inserted by the 2022 amending Act, extends to applications made, but not finally determined, before the section commenced.

73 Applications where death, bankruptcy and incapacity of applicant—s 26B

Section 26B, as inserted by the 2022 amending Act, extends to an application for a petroleum title if, immediately before the substitution—

- (a) the application had been made but not finally determined, and
- (b) a request under the section—
 - (i) had been made but not finally determined, or
 - (ii) had not been made.

74 Directions—s 75(1A)

Section 75(1A) extends to prospecting for petroleum, mining petroleum or another activity carried out before the subsection commenced.

75 Fees under Part 7A

Part 7A, as amended by the 2022 amending Act, extends to petroleum titles in force on the commencement of the amendments.

76 Security required before transfer of petroleum titles

- (1) The following provisions do not apply to an application made under section 96A, but not finally determined, before section 106CA commenced—
 - (a) section 96A, as amended by the 2022 amending Act,
 - (b) section 106CA.
- (2) Section 96A, as in force immediately before it was amended by the 2022 amending Act, continues to apply to an application made under the section, but not finally determined before the commencement of the amendments.

77 Action in relation to external administration, winding up and deregistration of corporate holders, applicants and transferees—s 97I

Section 97I extends to applications made, but not finally determined, on the commencement of the section.

78 Operation of not fit and proper person declarations—Part 14, Division 2

- (1) Part 14, Division 2 extends to conduct occurring and matters arising before the Division commenced, including—
 - (a) petroleum titles granted and applications made before the commencement, and
 - (b) conduct that occurred, or a matter that arose, before the commencement.
- (2) To avoid doubt, section 146(1) extends to permit the Minister to refuse the grant, renewal or transfer of a petroleum title even if the development consent that would otherwise have prevented refusal was granted before the subsection commenced.

79 Incomplete applications—ss 67(3) and (4) and 132

- (1) Section 67(3) and (4) extend to applications made, but not finally determined, before the subsections commenced.
- (2) Section 132 does not apply to applications made before the section commenced.