



New South Wales

Mining and Petroleum Legislation Amendment Bill 2022

Explanatory note

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

Overview of Bill

The object of this Bill is to amend the *Mining Act 1992* (the ***Mining Act***) and the *Petroleum (Onshore) Act 1991* (the ***PO Act***) to make further provision in relation to the regulation of the prospecting for, and mining of, minerals and petroleum.

Outline of provisions

Clause 1 sets out the name, also called the short title, of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Schedule 1 Amendment of Mining Act 1992 No 29

Schedule 1[1], [33], [34], [161] and [177] amend references to certain persons.

Schedule 1[5] inserts a defence to a prosecution for certain offences relating to mining for mercury.

Schedule 1[6] restricts the grant of a mining lease in respect to mercury.

Schedule 1[7], [8], [10], [12]–[19], [21]–[26], [28]–[29], [31]–[32], [46]–[47] and [60] make amendments in relation to machinery provisions relating to authorisations, including amendments in relation to the following matters—

- (a) applications and tenders for, and grants of, authorisations,

- (b) the process for making applications for operational allocation licences and fees for market interest tests,
- (c) the rejection of applications where evidence of a required development consent is not provided within a prescribed period,
- (d) consent required before the exercise of certain rights in exempted areas.

Schedule 1[9], [11], [20], [27], [80], [110], [162] and [168] provide for the regulations to specify notice requirements in relation to certain matters.

Schedule 1[35], [36], [158] and [159] provide for the regulations to impose requirements in relation to the suspension of mining operations, including a requirement for the holder of a mining lease to obtain the consent of a specified person.

Schedule 1[37]–[45] make amendments in relation to the renewal and transfer of exploration licences, assessment leases and mining leases (each an *authority*).

Schedule 1[50] makes it an offence to carry out prospecting operations on land not in accordance with an access arrangement or arrangements applying to the land.

Schedule 1[48] and [68] amend provisions in relation to the death, bankruptcy or incapacitation of applicants for authorities and mineral claims.

Schedule 1[49], [51]–[53] and [55]–[58] amend provisions relating to certain records and registers kept under the Mining Act, including dealing with access to the records and registers.

Schedule 1[54] and [66] amend provisions enabling a person on whom the rights of the holder of an authority or a mineral have devolved to apply to the Minister to have the person's name recorded as the holder of the authority or claim.

Schedule 1[59] makes it clear that authorities held by 2 or more persons may be held as joint tenants or tenants in common.

Schedule 1[61], [62] and [73]–[75] make amendments in relation to making agricultural land objections in relation to mineral claims and opal prospecting areas.

Schedule 1[63], [124], [125], [128] and [180] remove references to a “mining registrar” or replace them with references to the “decision-maker”.

Schedule 1[64], [65] and [67] make amendments relating to the renewal, transfer and cancellation of mineral claims.

Schedule 1[69] makes it clear that mineral claims held by 2 or more persons may be held as joint tenants or tenants in common.

Schedule 1[70], [71], [77] and [79] deal with records and registers in relation to mineral claims and opal prospecting licences and public access to the records and registers.

Schedule 1[72] and [78] omit redundant provisions that provide for a district management fund for each mineral claims district and opal prospecting area.

Schedule 1[76] and [160] consolidate duplicated provisions relating to conditions on opal prospecting licences.

Schedule 1[81]–[89] amend provisions in relation to the giving of certain directions under the Mining Act, Part 11, Division 3 (Environmental, rehabilitation and other directions).

Schedule 1[90] specifies the ways in which the Secretary may invest money in the Derelict Mine Sites Fund.

Schedule 1[92], [136], [157], [163], [164] and [181] remove or replace references to provisions in the *Environmental Planning and Assessment Act 1979*.

Schedule 1[93] and [94] amend a provision relating to permits to enter land for certain purposes.

Schedule 1[95]–[109] amend provisions relating to the imposition of a condition on an authorisation for the holder of the authorisation to provide and maintain a security deposit (a *security deposit condition*), including amendments in relation to the following matters—

- (a) the content of requirements that may be imposed by a security deposit condition,
- (b) the variation of a security deposit condition,
- (c) the imposition of a security deposit condition on the renewal and transfer of an authorisation,
- (d) the assessment of the amount of a security deposit, including a group security deposit,
- (e) the review of assessed security deposit amounts,
- (f) a change in the minimum deposit for an authorisation or the minimum amount for a group security deposit,
- (g) a power for the regulations to specify requirements to be included in a security deposit condition,
- (h) the use and investment of money obtained under a security deposit,
- (i) the lapse of a security deposit.

Schedule 1[113]–[121] amend provisions in relation to fees and levies, including in relation to the following matters—

- (a) the payment of an annual rental fee and an annual administrative levy for an authorisation,
- (b) the calculation of the amount of an annual administrative levy,
- (c) late payment fees,
- (d) certain preconditions that must be met before the Minister recommends the making of a regulation regarding certain levies or fees,
- (e) the effect of a suspension of an activity approval on a person's liability to pay an authorisation fee.

Schedule 1[122] inserts proposed Part 14AB to provide for the payment of operational allocation charges.

Schedule 1[123] establishes the Royalties for Rejuvenation Fund and the Coal Authorities Allocations Fund in the Special Deposits Account. The proposed amendments set out certain matters in relation to the Funds, including the objects of the Funds, money payable into the Funds and the purposes for which money in the Funds may be applied. The proposed amendment also provides for the establishment of 1 or more advisory panels in relation to the Royalties for Rejuvenation Fund to advise the Minister at the Minister's request and make recommendations about payments from the Fund and other matters prescribed by the regulations. **Schedule 1[151]** provides for the Secretary to review certain Royalties for Rejuvenation Fund sections 3 years after the commencement of the sections.

Schedule 1[126] clarifies that a prohibition on certain persons from holding a direct or indirect beneficial interest in an authority or small-scale title does not prevent the Secretary from holding an authorisation on behalf of the Crown. **Schedule 1[129]** enables the Secretary to apply for an authorisation on behalf of the Crown.

Schedule 1[127] amends a provision relating to the information to which an information sharing arrangement may relate.

Schedule 1[130]–[133] amend provisions relating to offences and enforcement, including to—

- (a) expand the offence of obstructing certain persons in the exercise of a function under the Mining Act, and
- (b) deal with the time within which certain summary proceedings may be commenced.

Schedule 1[135] re-enacts a provision vesting certain coal in the Crown that is currently contained in the *Coal Acquisition Act 1981*.

Schedule 1[139] enables a decision-maker to reject an application under the Mining Act because the application is incomplete.

Schedule 1[140] provides for—

- (a) an application or tender to be made in an approved form, and
- (b) the regulations to prescribe certain matters in relation to an application, tender, document, thing or information required or authorised to be given to a person under the Mining Act.

Schedule 1[141]–[143] expand a provision relating to the waiver or refund of fees to include charges.

Schedule 1[144] enables certain applications and information or documents to be amended by the applicant at any time before the decision-maker decides the relevant application.

Schedule 1[145]–[147] amend a provision in relation to the service of documents.

Schedule 1[148] expands a provision enabling a notice to be given to a person outside the State and, in relation to a matter that occurs or is located outside the State, to also apply to a direction.

Schedule 1[150] inserts a power for the Minister to waive a requirement of a kind specified by the regulations.

Schedule 1[152] inserts proposed Part 18, Division 2 to deal with persons who are not fit and proper persons for authorisations, including to—

- (a) provide for declarations that certain persons are not fit and proper persons for authorisations (a *declared person*), and
- (b) specify decisions that can be made in relation to authorisations and declared persons, and
- (c) provide for the review of a decision made under the proposed Division, and
- (d) specify circumstances in which the grant, renewal or transfer of a mining lease may be refused under the proposed Division.

Schedule 1[137] makes a consequential omission.

Schedule 1[153] inserts proposed Part 18, Division 3 to impose requirements on certain corporations to notify the Secretary if an external administrator is appointed, a winding up occurs or the corporation is deregistered. The Secretary may reject an application made by the corporation in relation to an authority, cancel an authority held by the corporation or remove the corporation as the applicant for, or the holder of, the authority.

Schedule 1[154] provides that a participation charge for a competitive selection application is payable in certain circumstances.

Schedule 1[155] and [156] make amendments in relation to the consideration of applications for authorisations.

Schedule 1[166] and [167] deal with the making of objections by the landholder to the granting of mining leases over agricultural land and the circumstances in which a mining lease may be granted over agricultural land without the consent of the landholder.

Schedule 1[169]–[173] amend provisions in relation to the determination of agricultural land, including to—

- (a) enable the Secretary of the Department or delegate to refuse to make a decision that land is agricultural land in certain circumstances, and
- (b) specify requirements in relation to objections made under certain sections of the Mining Act, and
- (c) provide for the consequences of a transfer of land on a pending objection, and
- (d) amend a provision requiring the Secretary to issue a certificate in certain circumstances, and

- (e) provide for the commissioning of experts and the making of submissions for the purpose of deciding whether land is agricultural land.

Schedule 1[174] and [175] amend regulation-making provisions.

Schedule 1[178] inserts savings and transitional provisions consequent on the enactment of the proposed Act.

Schedule 1[3], [4], [91], [111], [112], [179] and [182]–[185] insert, amend, update or omit definitions.

Schedule 1[2], [30], [134], [138], [149], [165] and [176] make minor or consequential amendments.

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

Schedule 2[1]–[3] insert or amend definitions.

Schedule 2[4]–[25] make amendments in relation to petroleum titles, including amendments in relation to the following matters—

- (a) applications for petroleum titles, including the amendment of applications,
- (b) the granting of petroleum titles,
- (c) the renewal of petroleum titles,
- (d) the omission of a fit and proper person consideration in relation to certain decisions about petroleum titles,
- (e) making it clear that petroleum titles held by 2 or more persons may be held as joint tenants or tenants in common,
- (f) the consequences of the death, bankruptcy or incapacitation of an applicant for a petroleum title,
- (g) the devolution of rights of the holder of a petroleum title,
- (h) exploration licences, including approvals for certain assessable prospecting operations on land over which the licence is granted,
- (i) assessment leases, including approvals for certain assessable prospecting operations on land over which the lease is granted,
- (j) special prospecting authorities,
- (k) production leases,
- (l) requirements for certain notices to be published in the way specified in the regulations.

Schedule 2[30] enables the Minister to reject an application for a production lease where a development consent is required and the applicant has failed to provide evidence of certain matters in relation to the development consent.

Schedule 2[31] makes it an offence to carry out prospecting operations on land not in accordance with an access arrangement or arrangements applying to the land.

Schedule 2[32] amends a provision requiring the Secretary to keep a register of arbitrated access arrangements and related information prescribed by the regulations.

Schedule 2[37] amends a provision relating to the giving of certain directions under the PO Act, Part 6, Division 1 (Environmental, rehabilitation and other directions).

Schedule 2[41] and [42] deal with petroleum mining well-heads.

Schedule 2[43]–[50] amend provisions in relation to fees and levies, including in relation to the following matters—

- (a) the payment of an annual rental fee and an annual administrative levy,
- (b) the calculation of the amount of an administrative levy, including the omission of a provision providing for the minimum amount of the levy,
- (c) the charging of late payment fees,
- (d) consultation requirements that must be met by the Minister before recommending the making of a regulation regarding certain levies or fees.

Schedule 2[51]–[56] amend provisions relating to certain records and registers, including public access to the records and registers.

Schedule 2[57] imposes requirements on certain corporations to notify the Secretary if an external administrator is appointed, a winding up occurs or the corporation is deregistered. The Secretary may reject an application made by the corporation in relation to a petroleum title, cancel a petroleum title held by the corporation or remove the corporation as the applicant for, or the holder of, the title.

Schedule 2[58] inserts a provision relating to permits to enter land for certain purposes.

Schedule 2[59]–[70] amend provisions relating to petroleum titles subject to a security deposit condition, including amendments in relation to the following—

- (a) security deposits extending to more than 1 petroleum title,
- (b) the imposition of a security deposit condition on the renewal or transfer of a petroleum title,
- (c) the amount of a group security deposit and the assessment of the amount of a security deposit,
- (d) the review of assessed deposits,
- (e) the consequences of a change to an assessed deposit for the validity of a security deposit condition imposed or varied before the change takes effect,
- (f) the ways in which the Minister may invest money obtained under a security deposit.

Schedule 2[71] clarifies that a prohibition on certain persons from holding a direct or indirect beneficial interest in a petroleum title does not prevent the Secretary from holding a title on behalf of the Crown. **Schedule 2[72]** enables the Secretary to apply for a petroleum title on behalf of the Crown.

Schedule 2[73] updates a provision relating to the information to which an information sharing arrangement may relate.

Schedule 2[74]–[77] amend provisions relating to offences and enforcement, including to—

- (a) expand the offence of obstructing certain persons in the exercise of a function under the PO Act, and
- (b) deal with the time within which certain summary proceedings may be commenced.

Schedule 2[79] expands a provision enabling a notice to be given to a person outside the State, and, in relation to a matter that occurs or is located outside the State, to also apply to a direction.

Schedule 2[81] inserts a power for the Minister to waive a requirement of a kind specified by the regulations.

Schedule 2[82] provides for—

- (a) the rejection of certain incomplete applications, and
- (b) applications and tenders to be made in an approved form, and
- (c) the regulations to prescribe certain matters in relation to an application or tender, or a prescribed document, thing or information required or authorised under the PO Act to be given to a person.

Schedule 2[83] and [84] amend a provision in relation to the service of documents.

Schedule 2[85] inserts a regulation making power in relation to the keeping of records and registers and the ways of making registers publicly available for inspection and copying.

Schedule 2[86] inserts proposed Part 14, Division 2 to deal with persons who are not fit and proper persons for petroleum titles, including to—

- (a) provide for declarations that certain persons are not fit and proper persons for petroleum titles, and
- (b) specify decisions that can be made in relation to petroleum titles and declared persons, and
- (c) provide for the review of a decision made under the proposed Division, and
- (d) specify circumstances in which the grant, renewal or transfer of a petroleum title may be refused under the proposed Division.

Schedule 2[87]–[89] make amendments in relation to the consideration of applications for petroleum titles.

Schedule 2[90] amends a provision in relation to the publication of notices.

Schedule 2[91] inserts savings and transitional provisions consequent on the enactment of the proposed Act.

Schedule 2[26]–[29], [33]–[36], [38]–[40], [78] and [80] make minor or consequential amendments.