



New South Wales

# Mining and Petroleum Legislation Amendment (Grant of Coal and Petroleum Prospecting Titles) Bill 2015

## Explanatory note

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

The following Bills are cognate with this Bill:

*Mining and Petroleum Legislation Amendment (Harmonisation) Bill 2015*

*Mining and Petroleum Legislation Amendment (Land Access Arbitration) Bill 2015*

*Protection of the Environment Operations Amendment (Enforcement of Gas and Other Petroleum Legislation) Bill 2015*

*Work Health and Safety (Mines and Petroleum) Legislation Amendment (Harmonisation) Bill 2015*

## 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 Petroleum Act***) to establish a new system for granting certain prospecting titles for coal and petroleum. The new system will feature a competitive selection process for the granting of an exploration licence or assessment lease in relation to certain areas under the Mining Act or an exploration licence, assessment lease or special prospecting authority under the Petroleum Act.

For that purpose, the Bill:

- (a) enables the Minister to constitute an area as a ***controlled release area*** for specified minerals under the Mining Act, and
- (b) provides that the whole State is constituted as a controlled release area for coal, and

- (c) provides that the following prospecting titles can only be granted pursuant to a competitive selection process:
  - (i) an exploration licence or assessment lease under the Mining Act relating to land in a controlled release area (with certain exceptions for exploration licences granted to holders of existing mining authorities or on behalf of the Crown), and
  - (ii) an exploration licence, assessment lease or special prospecting authority under the Petroleum Act, and
- (d) provides that a petroleum title is not to be granted in respect of an area unless any applicant who had an application in respect of that area expunged (by operation of the *Petroleum (Onshore) Amendment (NSW Gas Plan) Act 2014*) has first been given an opportunity to participate in a competitive selection process for the grant of the title, and
- (e) provides for various matters in relation to invitations for competitive selection applications, the process for competitive selection and the consideration of applications, and
- (f) makes miscellaneous amendments relating to applications for prospecting titles under the Mining Act and the Petroleum Act.

## Outline of provisions

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

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

## Schedule 1 Amendment of Mining Act 1992 No 29

### Controlled release areas

**Schedule 1 [18]** inserts proposed section 368A to enable the Minister to constitute any land as a controlled release area for minerals. The proposed section also provides that the whole State is constituted as a controlled release area for coal and that more than one controlled release area may be constituted in respect of any area. Accordingly, an application for an exploration licence or assessment lease in relation to coal will generally be required to be made pursuant to a competitive selection process under proposed Schedule 1A.

**Schedule 1 [21]** inserts definitions of *controlled release area* and *controlled release mineral*.

**Schedule 1 [17]** provides that a mineral is not an allocated mineral in an area while the mineral is a controlled release mineral in that area.

**Schedule 1 [14]–[16]** make consequential amendments.

### Applications for controlled release prospecting titles

**Schedule 1 [1]** inserts proposed section 13 (3A) to provide that an application for an exploration licence in relation to a controlled release mineral in a controlled release area can only be made pursuant to a competitive selection process under proposed Schedule 1A, by the holder of an existing authority for coal under proposed section 13C or on behalf of the Crown under proposed section 13D.

**Schedule 1 [3]** inserts proposed sections 13C and 13D. Proposed section 13C enables the holder of a mining authority for coal to apply for an exploration licence for coal, subject to the requirements of the regulations, and sets out the grounds for refusal and other matters to be considered in determining the application. Proposed section 13D enables the Secretary of the Department of Industry, Skills and Regional Development to apply on behalf of the Crown for an exploration licence for a controlled release mineral in a controlled release area to authorise prospecting for the purpose of obtaining information about the potential mineral bearing qualities of land in the State. The rights conferred on the holder of the licence and the procedures for the relinquishment of the licence are subject to the regulations.

**Schedule 1 [4]** removes the prohibition on granting an exploration licence (following a competitive selection process) over land the subject of an application for an exploration licence.

**Schedule 1 [5]** inserts proposed section 33 (3A) to provide that an application for an assessment lease in relation to a controlled release mineral in a controlled release area can only be made by way of a competitive selection application or by the holder of an exploration licence or mining lease over land in that area in respect of that mineral.

**Schedule 1 [2] and [6]** provide that an applicant for a competitive selection application is not required to publish notice of the application.

**Schedule 1 [7]** removes the prohibition on granting an assessment lease (following a competitive selection process) over land the subject of a preceding application for an exploration licence or assessment lease.

**Schedule 1 [8]** provides that certain provisions of the Mining Act that require the Minister to notify affected Government agencies and councils of a proposal to grant an assessment lease, and to resolve objections in relation to the proposal, do not apply to a competitive selection application for the grant of an assessment lease.

#### **Applications and tenders for mining leases**

**Schedule 1 [9]** extends the categories of authority holder that may apply for a mining lease in relation to an allocated mineral in a mineral allocation area to include the holder of a mining lease over land in that area in respect of that mineral.

**Schedule 1 [10]** provides that an application for a mining lease in relation to a controlled release mineral in a controlled release area can only be made by the holder of an exploration licence, assessment lease or mining lease over land in that area in respect of that mineral.

**Schedule 1 [11]** extends a provision which enables the Minister to invite tenders for mining leases for allocated minerals (within a mineral allocation area) to controlled release minerals (within a controlled release area). **Schedule 1 [12] and [13]** make consequential amendments.

#### **Competitive selection process**

**Schedule 1 [19]** inserts proposed Schedule 1A, which provides for matters relating to competitive selection applications. The proposed Schedule contains the following provisions:

**Clause 1** of the proposed Schedule defines *controlled release prospecting title* as an exploration licence or assessment lease that relates to a controlled release mineral in a controlled release area.

**Clause 2** of the proposed Schedule enables the Minister to invite (by notice in the Gazette) applications for the grant of a controlled release prospecting title for a specified area of land on the basis of competitive selection (and to vary or withdraw an invitation). An invitation can stipulate additional information that is to accompany the application and can relate to more than one area of land. Notice of the making or refusal of a competitive selection application is not required to be published in the Gazette.

**Clause 3** of the proposed Schedule provides that the Minister is to determine the process for competitive selection (which can be different for different areas of land and for different minerals) and include information the Minister considers appropriate in the invitation for applications.

**Clause 4** provides that the Minister must take into account in the competitive selection process any matter required to be considered in determining an application for the grant of a mining authority and any matter prescribed by the regulations made under the Mining Act. The Minister may determine any other matters to be considered.

**Clause 5** provides that an invitation for competitive selection applications can require applications to include an undertaking that the applicant will pay a non-refundable amount (specified in the application or determined through a competitive selection process) as consideration for the grant of the title. The process for competitive selection may provide for public release of information relating to the consideration offered.

**Clause 6** provides that after a competitive selection application has been considered, it is to be dealt with and determined in accordance with the provisions of the Mining Act that relate to the

mining authority concerned. An application may be refused at any time if it fails to meet the requirements of the invitation for competitive selection applications.

### **Savings and transitional provisions**

**Schedule 1 [20]** provides for savings and transitional matters. In particular, an application made before the commencement of proposed section 13 (3A) for the consent of the Minister to apply for an exploration licence relating to coal is to be dealt with as if the proposed Act had not been enacted.

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

### **Applications for petroleum titles**

**Schedule 2 [1]** provides that any person may apply for an exploration licence, assessment lease, production lease or special prospecting authority under the Petroleum Act. However, an application for an assessment lease (by an applicant who does not hold an exploration licence over the land concerned) or an exploration licence or special prospecting authority can only be made pursuant to a competitive selection process under proposed Schedule 1A.

**Schedule 2 [2]** removes the prohibition on granting an exploration licence, assessment lease or special prospecting authority (following a competitive selection process) over an onshore area included in a preceding competitive selection application.

**Schedule 2 [3]** omits a provision that requires that an application for a petroleum title must relate to only one area.

**Schedule 2 [4]** provides that the area of land over which a petroleum title is renewed may differ from the area over which the renewal was sought, but may not include any area not subject to the title immediately before the renewal.

**Schedule 2 [5] and [6]** provide that an exploration licence or assessment lease may be granted over all or any part of the land over which the licence or lease was sought.

**Schedule 2 [9] and [10]** provide that a petroleum title is not to be granted in respect of an area unless any applicant who had an application in respect of that area expunged (by operation of the *Petroleum (Onshore) Amendment (NSW Gas Plan) Act 2014*) has first been given an opportunity to participate in a competitive selection process for the grant of the title. **Schedule 2 [11] and [12]** make consequential amendments.

### **Competitive selection process**

**Schedule 2 [7]** inserts proposed Schedule 1A, which provides for matters relating to competitive selection applications. The proposed Schedule contains the following provisions:

**Clause 1** of the proposed Schedule defines *petroleum prospecting title* as an exploration licence, assessment lease or special prospecting authority under the Petroleum Act.

**Clause 2** of the proposed Schedule enables the Minister to invite (by notice in the Gazette) applications for the grant of a petroleum prospecting title for a specified area of land on the basis of competitive selection (and to vary or withdraw an invitation). An invitation can stipulate additional information that is to accompany the application and can relate to more than one area of land. Notice of the making or refusal of a competitive selection application is not required to be published in the Gazette.

**Clause 3** of the proposed Schedule provides that the Minister is to determine the process for competitive selection (which can be different for different areas of land) and include information the Minister considers appropriate in the invitation for applications.

**Clause 4** provides that the Minister must take into account in the competitive selection process any matter required to be considered in determining an application for the grant of a petroleum title and any matter prescribed by the regulations made under the Petroleum Act. The Minister may determine any other matters to be considered.

**Clause 5** provides that an invitation for competitive selection applications can require applications to include an undertaking that the applicant will pay a non-refundable amount (specified in the application or determined through a competitive selection process) as consideration for the grant of the title. The process for competitive selection may provide for public release of information relating to the consideration offered.

**Clause 6** provides that after a competitive selection application has been considered, it is to be dealt with and determined in accordance with the provisions of the Petroleum Act that relate to the petroleum title concerned. An application may be refused at any time if it fails to meet the requirements of the invitation for competitive selection applications.

**Savings and transitional provisions**

**Schedule 2 [8]** provides that an application for an exploration licence (made before the commencement of the amendment made by Schedule 2 [1]) that relates to an area designated by the Minister as an area in respect of which a petroleum title is not to be granted is to be dealt with as if the proposed Act had not been enacted.