

## Consultation Guide – November 2021

***Please note that this document provides information about the proposed Bill summarised or expressed in general statements to assist in the consultation process. The information in this document should not be relied upon as a substitute for professional legal advice.***

### Schedule 1 Amendment of the *Mining Act 1992*

Schedule 1[1], [34], [35], [160] and [176] amend references to certain persons.

Schedule 1[5] inserts a defence to a prosecution for certain offences under Part 2.

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

Schedule 1[7] – [19] make amendments in relation to exploration licences, including amendments in relation to the following matters—

- applications for exploration licences, and
- the granting of exploration licences, and
- tenders for exploration licences, and
- the exercise of rights conferred by an exploration licence in exempted areas.

Schedule 1[20] – [26] make amendments in relation to assessment leases, including amendments in relation to the following matters—

- applications for assessment leases, and
- the granting of assessment leases, and
- applications for activity approvals to carry out certain prospecting operations on land over which an assessment lease is granted, and
- the exercise of rights conferred by an assessment lease in an exempted area.

Schedule 1[27] – [33], [36] and [37] make amendments in relation to mining leases, including amendments in relation to the following matters—

- applications for mining leases, and
- tenders for mining leases, and
- the granting of mining leases, and
- the granting of consolidated mining leases.

Schedule 1[38] – [46] make amendments in relation to the renewal and transfer of exploration licences, assessment leases and mining leases.

Schedule 1[47] – [49] make amendments in relation to applications for authorities and tenders for authorities.

Schedule 1[50] – [52] make amendments in relation to access arrangements for prospecting titles.

Schedule 1[53] – [54] amend provisions relating to public access to certain records and registers kept under the Act.

Schedule 1[55] amends a provision enabling a person on whom the rights of the holder of an authority have devolved to apply to the Minister to have that person's name recorded as the holder of the authority.

Schedule 1[56] – [59] make amendments to provisions relating to the registration of colliery holdings and mining subleases.

Schedule 1[60] provides for authorities to be held by two or more persons as joint tenants or tenants in common.

Schedule 1[61] – [63] make amendments in relation to applications for, and the granting of, mineral claims.

Schedule 1[64], [125], [126], [129] and [179] remove or replace references to a “mining registrar” with references to the “decision-maker”.

Schedule 1[65], [66] and [68] make amendments relating to the renewal, transfer and cancellation of mineral claims.

Schedule 1[67] amends a provision enabling a person on whom the rights of the holder of a mineral claim have devolved to apply to the Secretary of the Department of Planning, Industry and Environment (the Secretary) to have that person’s name recorded as the holder of the mineral claim.

Schedule 1[69] amends a provision in relation to the death, bankruptcy or incapacitation of an applicant for a mineral claim.

Schedule 1[70] provides for mineral claims to be held by two or more persons as joint tenants or tenants in common.

Schedule 1[71] and [72] provide for records in relation to mineral claims, and a register of certain interests in mineral claims, to be made available to the public.

Schedule 1[73] omits a provision that provides for a district management fund for each mineral claims district.

Schedule 1[74] – [80] make amendments in relation to opal prospecting licences, including amendments in relation to the following matters—

- opal prospecting areas and objections to proposals to constitute land as, or add land to, an opal prospecting area, and
- the conditions of opal prospecting licences, and
- records of certain matters relating to opal prospecting licences, and
- area management funds for each opal prospecting area, and
- public access to a register of legal and equitable interests in opal prospecting licences.

Schedule 1[81], [111], [167] provide for the regulations to specify notice requirements in relation to certain matters.

Schedule 1[82] – [90] amend provisions in relation to the giving of certain directions under the Act, Part 11, Division 3.

Schedule 1[91] specifies the ways in which the Secretary may invest money in the Derelict Mine Sites Fund.

Schedule 1[93], [137], [156] and [162] remove or replace references to provisions in the Environmental Planning and Assessment Act 1979.

Schedule 1[94] and [95] amend a provision relating to permits to enter land for certain purposes.

Schedule 1[96] – [110] 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—

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

Schedule 1[114] – [122] amend provisions in relation to fees, including in relation to the following matters—

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

Schedule 1[123] inserts proposed Part 14AB to provide for the payment of operational allocation charges.

Schedule 1[124] establishes the Royalties for Rejuvenation Fund and the Coal Authorities Allocations Fund as Special Deposits Accounts. 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 one 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[127] 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[128] amends a provision relating to the information to which an information sharing arrangement may relate.

Schedule 1[130] enables the Secretary to apply for an authorisation on behalf of the Crown.

Schedule 1[131] – [134] amend provisions relating to offences and enforcement, including to—

- expand the offence of obstructing certain persons in the exercise of a function under the Act, and
- provide for the time within which certain summary proceedings may be commenced.

Schedule 1[136] provides that certain coal is vested in the Crown.

Schedule 1[139] provides for—

- an application or tender to be made in an approved form, and
- 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 Act.

Schedule 1[140] – [142] expand a provision relating to the waiver or refund of fees to include charges.

Schedule 1[143] 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[144] – [146] amend a provision in relation to service of documents.

Schedule 1[147] expands a provision enabling a notice to be given to a person outside the State, or in relation to a matter that occurs or is located outside the State, to also apply to a direction.

Schedule 1[149] inserts a power for the Minister to waive a requirement specified by the regulations.

Schedule 1[150] inserts proposed Part 18, Division 2 to—

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

Schedule 1[151] imposes a requirement on certain corporations to notify the Secretary if circumstances relating to the appointment of an external administrator, the winding up of the corporation or the deregistration of the corporation have occurred. 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[152] provides that a participation charge for a competitive selection application is payable in certain circumstances.

Schedule 1[153] – [156] make amendments in relation to the consideration of applications for authorisations.

Schedule 1[157] and [158] 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[159] imposes an additional condition on opal prospecting licences.

Schedule 1[161] amends a provision in relation to the publication of notices.

Schedule 1[165] and [167] provide for 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[168] – [172] amend provisions in relation to agricultural land, including to—

- enable the Secretary of the Department or delegate to refuse to make a decision that land is agricultural land in certain circumstances, and
- specify requirements in relation to objections made under certain sections of the Act, and
- provide for the consequences of a transfer of land on a pending objection, and
- amend a provision requiring the Secretary to issue a certificate in certain circumstances, and
- provide for the commissioning of experts and the making of submissions for the purposes of deciding whether land is agricultural land.

Schedule 1[173] and [174] amend items identifying matters for which the regulations may make provision.

Schedule 1[177] inserts savings and transitional provisions consequent on the enactment of the proposed Act.

Schedule 1[2], [3], [4], [92], [112], [115], [170], and [178] – [184] insert, amend, update or omit definitions.

## Schedule 2 Amendment of *Petroleum (Onshore) Act 1991*

Schedule 2[1] and [2] insert or amend definitions.

Schedule 2[3] – [24] make amendments in relation to petroleum titles, including amendments in relation to the following matters—

- applications for petroleum titles, including the amendment of applications, and
- the granting of petroleum titles, and
- the renewal of petroleum titles, and
- the omission of a fit and proper person consideration in relation to certain decisions about petroleum titles, and
- provide for petroleum titles to be held by two or more persons as joint tenants or tenants in common, and
- the consequences of the death, bankruptcy or incapacitation of an application for a petroleum title, and
- the devolution of rights of the holder of a petroleum title, and
- exploration licences, including approvals for certain assessable prospecting operations on land over which the licence is granted, and
- assessment leases, including approvals for certain assessable prospecting operations on land over which the lease is granted, and
- special prospecting authorities and production leases, and
- requirements for certain notices to be published in the way specified in the regulations.

Schedule 2[25] 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[26] amends a provision requiring the Secretary to keep a register of arbitrated access arrangements and related information prescribed by the regulations.

Schedule 2[31] amends a provision relating to the giving of certain directions under Part 5, Division 1 of the Act.

Schedule 2[34] omits a provision providing for the ascertainment of a well-head in relation to petroleum.

Schedule 2[36] – [43] amend provisions in relation to fees, including in relation to the following matters—

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

Schedule 2[44] – [49] amend provisions relating to public access to records of titles, applications for the transfer of titles, the registration of transfers and a register of certain interests.

Schedule 2[50] imposes a requirement on certain corporations to notify the Secretary if circumstances relating to the appointment of an external administrator, the winding up of the corporation or the deregistration of the corporation have occurred. 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[51] inserts a provision relating to permits to enter land for certain purposes.

Schedule 2[52] – [63] amend provisions relating to petroleum titles subject to a security deposit condition, including amendments in relation to the following—

- extending security deposits to more than one petroleum title, and
- the imposition of a security deposit condition on the renewal or transfer of a petroleum title, and
- the amount of a group security deposit and the assessment of the amount of a security deposit, and
- the review of assessed deposits, and
- 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, and
- the ways in which the Minister may invest money obtained under a security deposit.

Schedule 2[64] 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[65] enables the Secretary to apply for a petroleum title on behalf of the Crown.

Schedule 2[66] updates a provision relating to the information to which an information sharing arrangement may relate.

Schedule 2[67] – [70] amend provisions relating to offences and enforcement, including to—

- expand the offence of obstructing certain persons in the exercise of a function under the Act, and
- provide for the time within which certain summary proceedings may be commenced.

Schedule 2[72] expands a provision enabling a notice to be given to a person outside the State, or in relation to a matter that occurs or is located outside the State, to also apply to a direction.

Schedule 2[74] inserts a power for the Minister to waive a requirement specified by the regulations.

Schedule 2[75] provides for—

- an application or tender to be made in an approved form, and
- 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 Act to be given to a person.

Schedule 2[76] and [77] amend a provision in relation to the service of documents.

Schedule 2[78] 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[79] inserts proposed Part 14, Division 2 to—

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

Schedule 2[80] – [82] make amendments in relation to the consideration of applications for petroleum titles.

Schedule 2[83] amends a provision in relation to the publication of notices.

Schedule 2[84] inserts savings and transitional provisions consequent on the enactment of the proposed Act.

Schedule 2[27] – [30], [32], [32], [35], [71] and [73] make minor or consequential amendments.

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