

# Consultation: Feedback and response summary



## Mining and Petroleum Legislation Amendment Bill – Exposure Draft

Source	Proposed Amendment/ Topic	Issue / Feedback	Adopted	Reason/Comment
Mining industry and primary industries stakeholders	Regulations	<p>Concern about the lack of information about what would be in the Regulations and requested further consultation.</p> <p>Request for draft regulations to be made available prior to the finalisation of the Bill.</p> <p>Concerns were raised about moving requirements from the Act to Regulation, noting that regulations could be changed by the Minister without consultation.</p>	No	<p>The Regulations are subject to the passing of the Bill. The Department of Regional NSW (DRNSW) will run a public consultation on the Regulations, which is expected to commence following passage of the Bill. This will provide an opportunity for all stakeholders to provide input to the Regulation and ensure any concerns are addressed.</p> <p>The Bill will commence on proclamation and provisions that are moved from the Acts to the Regulations, or are linked to a regulation, will not commence until the Regulations are finalised and ready to commence.</p> <p>It is common practice to house prescriptive requirements in a Regulation. This provides greater flexibility to ensure that administrative and prescriptive elements can be updated to reflect contemporary good practice where required.</p>

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Local government and mining industry stakeholders	Public Notice Requirements	<p>Concerns over changes to public notice requirements were raised.</p> <p>Local governments were generally supportive, though clarity was sought about application notices, requirements being moved to regulations, and whether the public would be informed of the change.</p> <p>One council requested the inclusion of local government websites in the public notice requirements, and the need for on-going notification of applicable council and residents during exploration activities.</p> <p>Industry recommended further consultation on new methods of public notice requirements.</p> <p>Another stakeholder identified the importance of local and national papers as a way for their clients obtain information about the activities going on within their traditional Country, with a preference to keep the requirement to notify in papers, though no objection to additional notification mediums.</p> <p>A further stakeholder identified that unreliable internet service means many landholders rely on newspapers. The stakeholder also recommended every impacted landholder be notified directly by registered letter.</p>	N/A	<p>The amendments reflect the current print media environment, with many local papers closing and in some local areas it is impossible for industry comply with the current legislation.</p> <p>The amendments will result in more flexibility to ensure that the right audience for any authorisation matter is notified.</p> <p>DRNSW acknowledges that some community groups have concerns around lack of visibility with these changes however there will be stakeholder consultation on the proposed regulations. Print media will be retained where it is deemed the most appropriate methods for the particular public notice.</p>

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Mining industry stakeholders	Handling and publication of sensitive information	Request that commercially sensitive information and information relating to competitive selection processes be kept confidential, with a recommendation that legislation amendments do not permit the publication of commercially sensitive or personal information on public registers.	No	<p>The requirement to maintain registers and records and make them publicly available is not new and the Bill doesn't change this requirement.</p> <p>The requirement to make records publicly available is also in the current legislation. The Bill ensures that the details of the competitive selection and tender processes can be kept confidential until after the process is complete.</p> <p>The requirement is to make the registers and records publicly available. This is not a requirement to publish the information.</p> <p>DRNSW does not publish confidential or sensitive information. Parties should raise any concerns with the DRNSW to ensure such information is identified and treated appropriately.</p>
Mining industry stakeholders	Transitional arrangements – in-train matters	<p>Transitional arrangements and concerns around impacts to in-train matters.</p> <p>Concerns around the implications of change and transitional arrangements, with a request for further consultation with industry when developing of regulations.</p>	Yes	<p>DRNSW will run a public consultation on the Regulations, which is expected to commence following passage of the Bill.</p> <p>DRNSW has carefully considered the savings and transitional provisions required to manage the impact on the in-train matters. The Bill will commence on proclamation to ensure any consequential amendments to the Regulation can commence simultaneously. Any concerns about specific in-train matters can be raised directly with DRNSW.</p>

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Mining industry stakeholders	Transitional arrangements – immediate vicinity	Extending transitional periods on the amendments to at least two years to ensure changes to ancillary mining activity definition from ‘immediate vicinity’ to ‘vicinity’ can be managed appropriately and new authorisations granted.	Yes	<p>The Bill has been amended to provide that the regulations will prescribe a transitional period up to two years from commencement of the amended sections 6(2) and (4) during which time the amendments will not apply.</p> <p>DRNSW will consult on the timeframe as part of the consultation on the Regulations. Concerns about specific applications that have been made but not determined should be raised by the applicant with DRNSW.</p>

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Various	Prospecting – definition	<p>Recommendation to review the definition of prospecting and consult on regulations made under the savings and transitional provisions.</p> <p>Suggested changes to Mining SEPP to ensure the change to the definition of prospecting to include rehabilitation does not have adverse impacts.</p> <p>Another stakeholder supports the amended definition and inclusion of penalties for prospecting.</p>	No	<p>The intention of this amendment is to harmonise the definitions between the Mining Act and the Petroleum (Onshore) Act and to include in the definition of prospecting the recognition that prospecting includes activities to rehabilitate land in the same way as the definition of mining.</p> <p>DRNSW believes that a transition period is not required for the inclusion of the requirement to rehabilitate in the definition of prospecting because the obligation to rehabilitate land disturbed by prospecting already exists. DRNSW will consult on any proposed regulations under section 195 in relation to the new definition of prospecting.</p> <p>DRNSW meets regularly with Department of Planning and Environment to consider matters arising from the intersections between the resources and Energy SEPP and Mining Act however ultimately amendments to the SEPP are a matter for DPE.</p> <p>DRNSW consulted the Commonwealth in relation to native title implications.</p>
Mining industry stakeholders	Operational allocation – Ministerial consent	Concern that the additional requirement for Ministerial consent will result in inefficiency and delays in preparation and processing, while adding little, if any, value to the existing regulatory framework.	Yes	The requirement to seek Ministerial consent before lodging an application has been removed from the Bill as DRNSW agrees that it may duplicate approvals, given the rigorous assessment process for operational allocation applications and the requirement for Cabinet approval.

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Local government	Operational allocation – work program	Clarification about applications and tenders supported by work program	N/A	The requirement for applications and tenders to be accompanied by a proposed work program has not changed. The details of what should be included will be moved to the Regulation and consultation will be undertaken on the proposed Regulation.
Mining industry stakeholders	Operational allocation – fees	Suggestion that any fees should only be applied for future operational allocations and should not be applied retrospectively.	N/A	This fee replaces the financial contributions for Coal Operational Allocations outlined in the guidelines for coal exploration licence applications for operational allocation purposes and will apply to mining leases whether granted before or after the amendments commence, consistent with current requirements under the guidelines.
Mining industry stakeholders	Operational allocation – fees	Suggestion that transitioning from existing operational allocation charge as set out in policy to new provisions in regulation should ensure holders of such an exploration licence is not disadvantaged.	Yes	The amount of the fee and when it must be paid will be specified by the regulations. Consultation will give stakeholders the opportunity to provide feedback on the amount and timing of the fees.

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Mining and Petroleum Legislation Amendment Bill – Exposure Draft



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Environment stakeholders	Operational allocation – Schedule 1B	Recommendation that the decision-maker consider matters listed in Schedule 1B of the Act and suggested expanding these matters to include public interest and the principles of ecologically sustainable development.	No	<p>Schedule 1B applies to all applications including applications for operational allocation purposes. It contains considerations for the decision-maker to take into account when considering applications, including protection of the environment as well as whether the applicant meets the minimum standards and has a satisfactory compliance history.</p> <p>DRNSW believes that these provisions are sufficient, given the operational allocation framework allows existing miners and explorers to apply for an exploration licence only. Should the holder of an explorational licence for operational allocation purposes wish to develop a mine on the site, a State Significant Development consent would be required under the planning framework.</p>
Mining industry stakeholders	Market interest test - fees	Clarification about when an operational allocation application triggers a market interest test, will the applicant pay the market interest charge or if this charge will be reduced by any amount they have paid when lodging the exploration licence application under the competitive allocation pathway.	Yes	<p>The intention is that the original applicant would not be disadvantaged.</p> <p>Existing waiver provisions can be used to adjust fees.</p>
Mining industry stakeholders	Market interest test - discretionary	Suggestion that the market interest test should not be discretionary.	No	<p>This power is deliberately discretionary because there will be some instances where a market interest test is not appropriate for an operational allocation application, such as an application for an area below but within a mine's existing footprint.</p>

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Mining industry stakeholders	Market interest test - frequency	Concerns about more than one market interest test being run over the same area at different times.	No	<p>The area over which a market interest test is conducted is discretionary and will be considered on a case-by-case basis. The market interest test may be used to consider whether there is sufficient interest to justify a competitive selection process and the area may therefore be larger or a different shape than the area applied for under the operational allocation framework.</p> <p>Generally, if a market interest test has recently been run over a specific area, a subsequent market interest test would not be conducted over the same area because market interest has already been established.</p>
Mining industry stakeholders	Fit and Proper Person (FPP) test – procedural fairness	Concerns about the operation of the amended fit and proper person provisions and need for greater procedural fairness.	In Part	<p>The new provisions provide a clearer framework for making fit and proper person determinations and applying sanctions commensurate with offence and risk.</p> <p>While the Mining Act and the principles of administrative law, as well as DRNSW's practices, already provide for procedural fairness, a new clause has been included (s396(3)) to explicitly apply procedural fairness provisions contained in the Mining Act to the new fit and provisions.</p>
Mining industry stakeholders	Fit and proper person test – considerations	Concerns about what information will be used by a decision-maker to assess whether someone is a fit and proper person, particularly when a decision can be made at any time.	N/A	The Regulation will specify matters that the decision maker can take into consideration when deciding whether a person is or is not a fit and proper person and deciding whether to make a declaration.

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Mining and Petroleum Legislation Amendment Bill – Exposure Draft



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Primary industries stakeholders	Fit and proper person test – existing provisions	Concerns with the existing fit and proper person provisions, inadequacy for dealing with insurance, financial backing, security deposits and \$2 shelf companies.	N/A	<p>The Bill refines the existing fit and proper test. DRNSW has implemented reforms to its exploration management framework, including introducing in 2021 minimum standards for exploration work programs and technical and financial capability. These standards ensure that exploration licence applicants have the technical and financial capability to carry out the work program.</p> <p>In addition, all explorers must lodge a security deposit with the Department that covers the full cost of any rehabilitation and environmental protection obligations required as a result of the exploration activities.</p>
Primary industries stakeholders	Fit and proper person test	Suggestion that the provisions can go further, to deal with incidents of assault and intimidation.	No	Illegal behaviour beyond provisions in the mining and petroleum legislation are more appropriately dealt with by NSW Police.
Various	Fit and Proper Person s380A	Clarification on how the current section 380A related to the new Part 18 Division 2 and whether s380A would be removed.	Yes	Section 380A has been repealed. The Part 18, Division 2 deals with the fit and proper provisions. Considerations from section 380A will be included in the Regulations and further consultations will be undertaken on these matters.
Mining industry stakeholders	Fit and Proper Person	Concerns about the use of ‘corporation or unincorporated association’ in relation to association with an authorisation not covering registered organisations.	Yes	This section has been amended to refer to ‘body corporate’ instead of ‘corporation or unincorporated association’.

# Consultation: Feedback and response summary

Mining and Petroleum Legislation Amendment Bill – Exposure Draft



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Environment stakeholders	Fit and Proper Person – extending	Recommendation to extend the provisions to allow the decision-maker to suspend and/or revoke activity approvals and/or mining and exploration titles.	Yes	<p>This is already provided for in the Bill:</p> <p>In the Mining Act:</p> <p>S394 (1) enables the decision-maker to “make a specified decision in relation to the authorisation.” S392(1) provides the interpretation of “specified decision, in relation to an authorisation” which means:</p> <ul style="list-style-type: none"> <li>• a decision to reject an application to grant or renew the authorisation to a declared person,</li> <li>• a decision to reject an application to transfer the authorisation to a declared person,</li> <li>• 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,</li> <li>• a decision to suspend an activity approval related to an authorisation held by a declared person,</li> <li>• a decision to restrict operations under an authorisation held by a declared person by the imposition or variation of conditions of an authorisation.</li> </ul> <p>Corresponding provisions are in the Petroleum (Onshore) Act.</p>

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Environment stakeholders	Fit and Proper Person – review of decisions	Suggestion that anyone should be able to review decisions, this should not be limited to declared persons but should be available to anyone aggrieved by a decision to take or refrain from taking action.	No	<p>The review provision enables the declared person to seek an independent review of the decision made against themselves and to afford the declared person an appeal mechanism. It is not the intention to provide a broader power to enable any person to take grievances about decisions about a declared person to the Land and Environment Court.</p> <p>There are other mechanisms available to report non-compliance and representations can be made to the decision-maker if there is evidence that a person should be considered not a fit and proper person.</p>
Environment stakeholders	Fit and Proper Person – public release of information	Recommendation that the Mining and Petroleum (Onshore) Acts should specifically provide for the public release of any declaration that a person is not fit and any decision imposed on a declared person.	In Part	<p>A new subsection under s396 (Mining Act) has been included to extend s137 (Gazettal of certain matters) to a specified decision under this Division to cancel, or reject an application for the grant, renewal or transfer of, an authority. Corresponding provisions are in the Petroleum (Onshore) Act.</p> <p>DRNSW publishes statutory decisions under the Mining Act and Petroleum (Onshore) Act about variations, cancellations and suspensions, including decisions made under the fit and proper provisions.</p>

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Mining industry stakeholders	Renewal of Exploration Licences - power of decision maker (s114A MA)	Recommendation to remove the power of the decision-maker to direct the holder to relinquish specified areas and requested further consultation with the applicant or holder before an application or tenure is rejected, though a legislated requirement with a 'notice of intention to refuse' or similar.	No	<p>The power of the decision-maker to make decisions in relation to the area being sought for renewal under an exploration licence is in the current legislation. There is no broadening of this power in the amendments.</p> <p>The amendments provide an outcomes-based approach, requiring applicants to make the case for the area the need for the work program rather than being required to relinquish the currently prescribed 50 per cent at renewal.</p> <p>DRNSW adheres to the principles of administrative law, including affording procedural fairness when determining licence applications for renewal.</p>
Mining industry stakeholders	S114A - relationship with Renewals Policy	Recommendation that the current consultation on the draft 'Exploration Licence Renewal Policy' and draft 'Assessment Lease Grant and Renewal policy' is deferred pending finalisation of the Bill and Regulations	Yes	The renewals policies will be updated for consistency with the legislative amendments.
Mining industry stakeholders	Exploration Licence Renewal - definition of 'genuinely required', 'special circumstances'	<p>Concerns about the introduction of the terms 'genuinely required' and 'special circumstances'</p> <p>Request for guidance through Regulations or policy advice in relation to the petroleum legislation.</p>	In part	<p>The amendments provide a regulation making power to provide for matters that the decision maker should consider when deciding whether an area of land is genuinely required.</p> <p>The term 'special circumstances' is in the current legislation and is not currently defined because the term is considered as having an ordinary meaning. Further guidance will be provided on 'special circumstances'.</p>

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Mining industry stakeholders	Exploration Licence Renewal – past performance 114A(3)	Industry expressed concerns that the amendments do not provide for ‘special circumstances’ and ‘past performance’ to be specified in the regulations.	In part	<p>The amendments provide a regulation making power to provide for matters that the decision maker should consider when deciding whether an area of land is genuinely required. Past performance will be one of these matters. Further consultation will be undertaken on the draft Regulations.</p> <p>‘Special circumstances’ is a separate consideration to what is genuinely required, providing the exploration licence holder the opportunity to make the case for an area larger than what is genuinely required to support the work program. ‘Special circumstances’ are assessed on a case-by-case basis therefore a definition would not encompass every scenario. Further guidance will be provided on the types of scenarios that may warrant special circumstance considerations.</p>
Mining industry stakeholders	Activity approvals for assessable prospecting operations	Request further discussion about the duplication of activity approvals through the NSW Environment Protection Agency	Yes	This is outside the scope of the Bill however DRNSW will work with industry to minimise the duplication and align timeframes in relation to activity approval requirements.
Mining industry stakeholders	Grounds for rejection s210	Clarification on the prescribed grounds for rejection of an application, specifically, in relation to S210 – Death, Bankruptcy and incapacity of applicant	N/A	The grounds for rejection of an application in these circumstances will be provided in the regulations and further consultation will occur through the regulation development.

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Mining industry stakeholders	Rejection of incomplete applications	<p>Clarification, particularly regarding rejection due to not having development consent and requested a mining lease application not be rejected while a development application remains undetermined or is subject to appeal proceedings.</p> <p>Request for further consultation with exploration licence holders before rejecting applications without development consent or fail to meet minimum standards through a legislated requirement with a 'notice of intention to refuse' or similar and an independent appeal process.</p>	In part	<p>The Bill has now separated incomplete applications and lack of development consent, to ensure these two types of rejection powers are treated separately. The refusal for failure to meet minimum standards is a separate consideration, in current legislation, which has been clarified in the Bill.</p> <p>Where required attachments or fees are missing, the intention is to reject applications. The 10-day grace period in the current legislation ensures applicants have the opportunity to provide missing information before the application is rejected.</p> <p>The development consent rejection provision now makes it clear that applicant is required to provide evidence either that an application for development consent has been made or that a development consent has been granted and is in force. This change has been made in acknowledgment that the development consent process is often protracted through no fault of the applicant, however the onus is on the applicant to demonstrate that serious attempts have been made. Applicants will continue to receive a notice of proposed decision and procedural fairness applies under administrative law and is supported by current Departmental processes.</p>

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Mining industry and primary industries stakeholders	Refusal for failure to meet minimum standards	<p>Suggestion that notice be given to applicants and an opportunity provided to remedy issue. Sought confirmation that the period to provide additional information would be moved to the Regulations.</p> <p>Support for the amendment for the rejection of applications that are incomplete or do not meet the minimum standards as this provides landholders certainty and transparency.</p>	In part	<p>The Acts allow the decision-maker to refuse an application where an applicant fails to meet the applicable minimum standards for work programs and the technical and financial capability to carry out the proposed work program. Ambiguous drafting means it is unclear whether the decision-maker can refuse for failure to meet one or more of these grounds or can only do so for failure to meet all three, which was not the policy intent. The Bill clarifies the current provision.</p> <p>The Act currently provides a 10-business day grace period for applicants to lodge any additional information required to accompany their application. The principles of administrative law, as well as DRNSW's practices, ensure that procedural fairness applies to all applications. The rejection powers fall into two categories: incomplete applications and lack of development consent.</p>
Mining industry stakeholders	Security deposits on transfer	Concern about the requirement for a transferee to hold a security on registration of the transfer and suggested that transferor's deposit should be returned immediately after the transfer is registered unless the transferor has not complied with a direction issued before the registration.	No	As is current practice, the security deposit is held until a determination is made under section 261G(2) (Lapsing of security deposit requirement and return of money). The intent is that the transferor's security deposit will not be returned until the requirement to maintain the transferor's security deposit has lapsed under s261G(2), as it may be necessary or appropriate to claim on or use the transferor's security deposit in relation to an existing direction under section 240 (ie in relation to something that occurred during the transferor's term).

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Mining industry stakeholders	Security deposits on transfer	Request for DRNSW to reconsider the amendment that requires a transferee to lodge a security deposit prior to the approval of a transfer, this creates more administrative and financial burden for industry and does not 'streamline' the transfer process.	Yes	This requirement was in an early draft and was referred to in the Explanatory Guide but this was changed in the draft Bill, to a requirement for the transferee to lodge a security deposit prior to the registration of a transfer (within three months of approval).
Mining industry stakeholders	Ancillary Mining Activities (AMA) – definition of vicinity	Request that the term 'vicinity' needs to be clearly defined.	In part	DRNSW will provide additional guidance to assist industry understand the concepts of 'vicinity' and 'directly facilitate' in relation to AMAs.  DRNSW determined that a strict definition of these terms would not be able to cover the range of activities captured by this term and guidance would be a more appropriate way to capture the breadth of scenarios AMAs.
Mining industry stakeholders	Additional powers	Concerns that the amendments provide additional powers to DRNSW which could be applied arbitrarily.	No	DRNSW's governance framework and application of administrative law principles ensure that Departmental decisions are subject to robust internal review.

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Mining industry and primary industries stakeholders	Procedural fairness - generally	Broad concerns over procedural fairness arising from changed provisions.	No	<p>Procedural fairness and application of administrative law principles are a core tenet of DRNSW's operations and processes. The Act also already general procedural fairness provisions and specific provisions. New procedural fairness provisions have been included in relation to agricultural land objections and specific sections of the Act have been explicitly applied to the fit and proper person clauses.</p> <p>The Department's governance framework and application of administrative law principles ensure that Departmental decisions are subject to robust internal review.</p>
Mining industry stakeholders	Agricultural land objections - interference	Request for the reference to 'interference' in the agricultural land provision be changed to 'unreasonable interference'.	Yes	<p>The Bill has been amended to include the word 'unreasonable' before 'interference' and 'use' so that the Minister may grant a mining lease beneath agricultural land if satisfied that the mining operations won't cause unreasonable damage to the land or unreasonable interference with the use or productive capacity of the land. This was the intent of the provision, however DRNSW accepts that as drafted 'unreasonable damage to agricultural land or interference ...' may be unclear.</p>

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Mining industry stakeholders	Agricultural land objections - timeframes	Request for additional provisions including the time limits on providing supporting information about an objection, including a maximum period of 20 days, a 'deemed refusal' period of 40 days.	In part	<p>The Bill has been amended to provide clearer requirements, including that the timeframe be specified at the time the landholder is given written notice of the proposed mine (not less than 28 days after the notice is given). DRNSW recognises the frustration that protracted assessments of agricultural land objections can cause.</p> <p>The new provisions aim to clarify the process for making, assessing and determining an agricultural land objection under the Mining Act. The amendments also aim to strike a balance and recognise that the landholders need a reasonable timeframe to make an objection and supply additional information.</p> <p>The Bill was amended in Parliament so that the period in which information to support an objection is to be provided to the Secretary is at least 28 days.</p>
Local government, mining industry and primary industries stakeholders	Agricultural land objections -	Various submissions noted the potential interactions with the other land use and planning frameworks.	N/A	DRNSW is aware of the interactions of the Mining and Petroleum (Onshore) legislation with the planning framework and land use issues and meets regularly with DPE on matters of intersecting interest.

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Primary industries stakeholders	Agricultural land objections - clarity	Concerns that while a more precise framework for determining agricultural land objections would be helpful, the amendments are largely administrative and do not prevent the granting of mining or exploration licences on agricultural land.	N/A	<p>The amendments do not alter the framework for agricultural land objections or alter the policy intent to enable coexistence of mining and agriculture.</p> <p>The intention of the amendments is to clarify the process, including providing detailed information on how an objection is to be made, enabling the commissioning of expert reports, providing for parties to make submissions and making a minor amendment to the definition of agricultural land.</p>
Primary industries stakeholders	Agricultural land objections – expert reports	Recommendation that experts be commissioned to determine agricultural land.	Yes	The Bill enables the relevant authority to commission expert reports on whether or not land is agricultural land.
Environment stakeholders	Agricultural land objections	Recommendation that prime agricultural land should be off-limits to mining.	No	The purpose of the agricultural land provision is to provide a framework whereby landholders who can demonstrate that their land is agricultural land (defined in the Mining Act) can object to the granting of a mining lease or mineral claim.
Mining industry stakeholders	Penalties for prospecting without a valid licence.	Suggestion that the new penalties for prospecting without a valid access arrangement not come into force until review of the land access framework is undertaken.	No	<p>The new offence provision will take effect when the amendments commence (by proclamation). DRNSW does not believe there would be a valid reason for an exploration licence holder to access land without a valid access agreement.</p> <p>This is an important protection for landholders and a central provision to ensure the co-existence of agriculture and mining.</p>

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Mining industry stakeholders	Project Status	A legislative basis for project status was recommended by multiple industry stakeholders to provide a framework for the issuing, maintenance and cancellation of a formal approval for, or recognition of, project status in relation to a number of related authorisations.	N/A	DRNSW understands this is an issue for industry however it is out of scope of the current legislative amendments.
Mining industry stakeholders	Cost Capping	Request for the capping costs payable to, and timelines for, a landholder participating in negotiating a land access arrangement (MA 1992 s142(2A)) for non-surface disturbing prospecting activities.	N/A	Cost capping is out of scope of the legislative reform, however DRNSW recognises the importance of providing clarity around this framework and is considering this matter.
Mining industry stakeholders	Increases to levies	Request for confirmation that there are no plans to increase administrative levy.	N/A	No increase to the annual administrative levy fee is planned in the legislative amendment.

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Mining industry stakeholders	Time window for summary proceedings to commence	Concerns about the <i>Time within which summary proceedings may be commenced</i> clauses as they may be a denial of basic rights. It is open ended and open to abuse. What a miner and Departmental officers felt was acceptable information to include or omit in an application, renewal, transfer, etc at a particular point in time may not be seen as acceptable five, 10 or 20 years later. In the case of small scale titles the alleged offender may very well have cancelled a particular title years after an alleged offence first came to the attention of an inspector or have even exited the industry.	No	This section sets the time to commence proceedings for the offence in section 378C which deals with providing false or misleading information where the person knows that the information, record or return is false or misleading in a material particular, or is reckless as to that knowledge. In determining that there is knowledge of the false or misleading nature of the information (or recklessness) the court will consider the facts of the matter as and when it occurred.
Mining industry stakeholders	Crown Authorisations	<p>Clarification in relation to 'Crown authorisations', specifically what DRNSW intends to do with them.</p> <p>Recommendation to reconsider the need for the secretary to hold titles, suggesting that the broadening the minerals for Government exploration should be reconsidered and removed until further consultation with industry.</p> <p>Support Crown authorisations noting that this would allow the state to hold title over communal rehabilitation stockpiles.</p>	No	<p>Under the Mining Act an explicit provision allows the Secretary to hold an exploration licence for coal and petroleum to collect data. There is no provision to hold Crown authorisations for other Schedule 2 minerals.</p> <p>The intent of the amendment is to enable DRNSW to hold an authority for other minerals, to support better development and regulation. This could include enabling a secretary-held exploration licence for Schedule 2 minerals to gather exploration data, to support the private investment and development of the state's mineral resources or in order to manage the rehabilitation of a mine.</p>

# Consultation: Feedback and response summary

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Mining industry and community stakeholders	Closure of redundant funds	Concern about the proposal to close the mineral claims district fund and opal prospecting area management fund.	No	The funds were established but never activated. The funds hold no money and the amendment will remove redundant management fund requirements as a matter of housekeeping.
Mining industry stakeholders	Coal Identification Fund	Request for confirmation that the money in the Coal Identification Fund would be rolled over to the new Coal Authorities Allocations Fund.	Yes	Yes, the money from the Coal ID Fund will be moved to the Coal Authorities Allocations Fund.
Primary industries stakeholders	Aerial Survey	Request for increased regulation around the use of aerial surveys in mining and exploration activities due to the potential impacts of stock and farmers.  Comment that aerial surveys should be included as part of access agreements.  Provision of a number of case studies showcasing their request for increased regulation around aerial surveying, and the impact on stock and farmers.	N/A	The regulation of aircraft operation is a matter for CASA however DRNSW recognises the distress aerial surveys may cause and strongly recommends that explorers undertake a risk assessment and consultation with landholders before these activities occur.  This matter is out of scope of the Bill.

# Consultation: Feedback and response summary

## Mining and Petroleum Legislation Amendment Bill – Exposure Draft



Source	Proposed Amendment/ Topic	Issue / Feedback	Adopted	Reason/Comment
Mining industry, community and primary industries stakeholders	Waivers	<p>The introduction of a broader waiver power was supported by industry and not supported by an agriculture stakeholder</p> <p>One individual expressed concern that increased waivers may reduce transparency and opportunity for public scrutiny</p>	No	<p>The Acts currently contain narrow waiver powers, which limits the potential to respond to significant hardship or test alternative regulatory approaches. The more general powers will increase flexibility of government to respond to unforeseen circumstances.</p> <p>Current requirements to consider adverse impacts on a person's rights would remain. The regulations will be able to specify persons, activities or circumstances to which waivers may relate.</p>
Mining industry and primary industries stakeholders	Removal of Statutory Declaration	<p>The removal of statutory declaration requirements is supported by industry, in favour of less complexity with lodgements and clearer expectations.</p> <p>A primary industries stakeholder did not support the removal of the statutory declaration requirements and replacement with statement by the applicant as a weaker requirement.</p>	No	<p>This Bill removes the few remaining requirements for provision of a statutory declaration. This is consistent with standard Departmental practices, which rely on affirmations and the use of false and misleading information offences to regulate the accuracy of documents.</p>
Mining industry stakeholders	Exploration in exempt areas	<p>Support change to remove certain approval requirement if prospecting in exempted areas where landholder (eg. NPWS, Crown Lands, etc) consent is given.</p>	N/A	<p>The amendment is intended to reduce unnecessary administrative burden on industry.</p>

# Consultation: Feedback and response summary

## Mining and Petroleum Legislation Amendment Bill – Exposure Draft



Source	Proposed Amendment/ Topic	Issue / Feedback	Adopted	Reason/Comment
Mining industry and primary industries stakeholders	Land access issues - mediation, arbitration and compensable loss	<p>Request for the current status quo of 'reasonable cost' assessment regarding explorers paying for mediation and arbitration (when a mutually acceptable access agreement cannot be agreed on) is retained, rather than a 'cost cap' being placed on costs.</p> <p>Recommendation for a review and streamlining of land access for exploration in particular a review of the land access framework, current cost structure, land access process, cost caps and the definition of significant improvement and consider a streamlines process for reconnaissance activities.</p> <p>Suggestion to postpone land access penalties until a review of the land access framework is undertaken.</p>	No	<p>Land access issues about mediation, arbitration and compensable loss are out of scope of the current legislative amendments however are currently being considered by DRNSW.</p> <p>While DRNSW understands concerns about land access, it does not support exploration licence holders entering land without a valid land access agreement.</p>
Mining industry stakeholders	Application and other forms	Suggestion that printable forms continue to be made available despite wider move to online form submission	Yes	While DRNSW is moving to an online-focused service delivery model the DRNSW understands that printable forms and in person lodgement may be required for some businesses.
Mining industry stakeholders	Notice of cancellation	Suggestion that notice of cancellation of an authority should be provided to the administrator before a final decision is made.	Yes	<p>The current provisions relating to cancellation of authorities (section 126) provides for procedural fairness in relation to cancellations.</p> <p>If an external administrator has been appointed to an authority holder, notices will be directed to the administrator.</p>

# Consultation: Feedback and response summary

Mining and Petroleum Legislation Amendment Bill – Exposure Draft



Source	Proposed Amendment/ Topic	Issue / Feedback	Adopted	Reason/Comment
Various	Royalties for Rejuvenation - Fund and amount	<p>Several submissions requested additional funding for the program.</p> <p>The provisions of Bill in relation to the fund were questioned in relation to the amount of money, period of funding, increasing or accumulating funding, source of funding and administration of the Fund.</p> <p>One submission suggested portioning funding for different regions to ensure equitable allocation.</p>	No	<p>Funding for the program is a matter for the Government and outside the scope of the Bill.</p> <p>Legislation allows for increased deposits to the fund, and for money to accumulate. The details are not required in legislation because the general powers as drafted are sufficient to allow operation of fund. Further details can be provided in the Regulation and guidance. Amounts of funding are generally not specified through an Act.</p> <p>The power in section 292W(3) allows the Secretary of DRNSW to administer the Fund but does not empower the Secretary to unilaterally fund initiatives, only administrative expenses. Only the Minister can approve funding for the program. Requiring Expert Panel advice for administering the fund would be impractical.</p> <p>Inclusion of 'if any' is standard drafting convention - money contributed to the fund still needs approval of some form (Minister or Parliament).</p> <p>Partitioning the funds into 'sub funds' may be a consideration in the process of setting up funds, however it may not reflect the opportunities for economic diversification in each region in practice.</p>

# Consultation: Feedback and response summary

Mining and Petroleum Legislation Amendment Bill – Exposure Draft



Source	Proposed Amendment/ Topic	Issue / Feedback	Adopted	Reason/Comment
Local government, environment and community stakeholders	Royalties for Rejuvenation – consultation	<p>Several councils requested further individual consultation on the Fund.</p> <p>Several submissions requested a requirement or mechanism for community consultation in the Bill</p>	Yes	<p>DRNSW notes the request for further consultation. Councils in affected coal mining regions are considered key stakeholders and will be consulted on the establishment of panels</p> <p>Community consultation can be addressed in either the Regulations or guidelines – further consideration is required to determine the most appropriate location for this provision. Further public consultation will be undertaken on the draft Regulations.</p>

# Consultation: Feedback and response summary

Mining and Petroleum Legislation Amendment Bill – Exposure Draft



Source	Proposed Amendment/ Topic	Issue / Feedback	Adopted	Reason/Comment
Environment and community stakeholders	Royalties for Rejuvenation – Review, transparency and reporting	Submissions suggested a regular review mechanism that reports on the effectiveness of the Fund. Additional measures for transparency and accountability were suggested.	Yes	<p>A new provision has been included to review the Royalties for Rejuvenation Fund to determine whether the policy objectives remain valid and whether the terms of the provisions remain appropriate for securing the objectives. The review is to be undertaken as soon as possible after the period of three years from the commencement of the provisions. A report on the outcome of the review is to be provided to the Minister as soon as practicable after the review is undertaken.</p> <p>The provisions under the current drafting of the Bill require the details of amounts paid from the fund and the purposes to be published in the Department’s annual report. This reporting mechanism ensures a high level of transparency.</p> <p>The Bill was amended in Parliament to include a provision that a register including details of all projects funded from the Fund must be published on the Department’s website. This register must be updated as soon as practicable after the end of each quarter.</p> <p>The Bill was also amended in Parliament to require the Secretary to publish a public register on the Department’s website that contains the membership of each panel and a summary of the advice and recommendations given to the Minister by the panels about proposed projects.</p>

# Consultation: Feedback and response summary

Mining and Petroleum Legislation Amendment Bill – Exposure Draft



Source	Proposed Amendment/ Topic	Issue / Feedback	Adopted	Reason/Comment
Environment, community, individuals and local government stakeholders	Royalties for Rejuvenation – scope	Several submissions suggested broadening the scope to include social and wellbeing initiatives, rehabilitation, housing, planning for projects and public interest.	In Part	<p>The purpose of the Fund is to drive the economic transition of communities away from coal mining. While community and wellbeing initiatives would support communities, they do not align with current objectives.</p> <p>Public interest is always a consideration in NSW Government funding programs.</p> <p>Rehabilitation of land disturbed by mining and prospecting is an obligation of all holders of authorisations under the Mining Act and it is not the intent of Fund to support rehabilitation.</p> <p>Preliminary work is captured by 'other activities' and are consistent with the intent of the fund.</p> <p>The Bill was amended in Parliament to require the Minister to consider the public interest and whether a payment would lead to a negative impact on the environment, when authorising payments from the fund. The Minister must also consider the advice and recommendations given by the Expert Panel established for the region and written advice from the Secretary that the payment complies with the eligibility criteria issued and made publicly available by the Secretary.</p>

# Consultation: Feedback and response summary

## Mining and Petroleum Legislation Amendment Bill – Exposure Draft



Source	Proposed Amendment/ Topic	Issue / Feedback	Adopted	Reason/Comment
Community stakeholders	Royalties for Rejuvenation - Closing the Gap targets	Suggestion that the Rejuvenation Fund to include specific targets around employment of Aboriginal people in line with the Closing the Gap targets and outcomes.	In part	<p>Noting the commitment of the NSW Government to Closing the Gap, these matters can be considered in the Regulations or funding guidelines.</p> <p>There will be further opportunities to provide feedback on the draft Regulation.</p>
Environment, community, individuals and local government stakeholders	Royalties for Rejuvenation - Expert Panels	<p>Several submissions commented on the establishment of expert panels, including the need for the panels to be specific to, and genuinely represent each community as well as getting the right level of expertise and diversity.</p> <p>There was a mix of opinions on legislative requirements, while some suggested further details should be contained in the Bill others suggested the terms should not be prescribed or constrained by regulations or policy.</p> <p>One submission suggested amending section 292W(5) to include expert panels.</p> <p>Publication of the terms of reference and constitution of the panel was suggested.</p> <p>One submission suggested community-based secretariats support the panel.</p>	In part	<p>Individual expert panels will be established for each region and community representation is intended. The Regulations can guide who is included and provide further details on the establishment of panels and further consultation will be undertaken on the development of the Regulations, which are required to provide the governance framework for the Fund. Fund guidelines will provide additional information.</p> <p>The intent is not for expert panels to have unilateral ability to approve expenditure.</p> <p>The terms of reference and constitution of panels can be published without requiring amendments to the Bill.</p> <p>Community secretariats could create significant variation between approaches for panels and while the idea has some merit, it would be impractical for RRF panels given the overall governance model.</p>

# Consultation: Feedback and response summary



## Mining and Petroleum Legislation Amendment Bill – Exposure Draft

Source	Proposed Amendment/ Topic	Issue / Feedback	Adopted	Reason/Comment
Mining industry stakeholders	Royalties for Rejuvenation – difference from Resources for Regions	Request for clarification on the difference between the Royalties for Rejuvenation Fund and the Resources for Regions Program.	N/A	<p>The Royalties for Rejuvenation Fund will complement the Resources for Regions Program. The Royalties for Rejuvenation Fund will provide more targeted support to diversify the economies of coal mining regions.</p> <p>The Resources for Regions Program, now up to Round 8, continues to support regional communities through providing economic opportunities, improved amenities, and positive social outcomes.</p>

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