

EXPLANATORY MEMORANDUM
MINING AMENDMENT BILL 2021

Introduction and Overview

This Bill amends the *Mining Act 1978* (Mining Act) to consolidate and clarify the conditions and approvals required to undertake activities on mining tenements. The Bill will insert a proposed Part into the Mining Act to consolidate all activity approval conditions and separate them from the provisions of the Mining Act that deal with the grant and administration of mining tenements. Transitional arrangements are provided for previously approved activities and undetermined applications at the time of commencement.

CLAUSE NOTES

Clause 1 – Short Title

The short title is the *Mining Amendment Act 2021*.

Clause 2 – Commencement

This clause identifies that Clause 1 and Clause 2 operate on the day on which this Act receives Royal Assent. The rest of the Act will commence on days fixed by proclamation.

Clause 3 – Act amended

This act amends the Mining Act 1978.

Clause 4 – Section 6 amended

This clause makes minor wording edits to modernise the language.

Clause 5 – Section 8 amended

Section 8 identifies terms used in the Act.

This clause removes the ground disturbing equipment definition as this threshold is now captured and defined in the new Part 4AA.

Additional terms are included for those introduced by the new Part 4AA and used throughout the Act.

Clause 6 – Section 12

This clause replaces section 12 to clarify the delegation powers.

Clause 7 – Section 17 amended

This clause makes minor wording edits to modernise the language.

Clause 8 – Section 20 amended

This clause makes minor wording edits to modernise the language.

Clause 9 – Section 40D amended

This clause makes minor wording edits to modernise the language.

Clause 10 – Section 46 amended

The provisions relating to programmes of work are relocated to the proposed Part 4AA.

The conditions related to the manner in which prospecting is carried out have been revised with modern drafting to focus on ensuring the outcome of making disturbances safe and preventing damage or injury.

Clause 11 - Section 46A deleted

The conditions in section 46A are relocated to the proposed Part 4AA.

Clause 12 – Section 52 amended

The requirement for security for compliance with conditions imposed under section 46A are relocated to the proposed Part 4AA.

Clause 13– Section 55A amended

This clause makes minor wording edits to modernise the language to approved form and giving notice.

Clause 14– Section 60 amended

The requirement for security for compliance with conditions imposed under section 63AA are relocated to the proposed Part 4AA.

Clause 15 – Section 63 amended

The provisions relating to programmes of work are relocated to the proposed Part 4AA.

The conditions related to the manner in which exploring for minerals is carried out have been revised with modern drafting to focus on ensuring the outcome of making disturbances safe and preventing damage or injury.

Clause 16– Section 63AA deleted

The conditions in section 63AA are relocated to the proposed Part 4AA.

Clause 17 – Section 63A amended

This clause updates the references to conditions that apply to exploration licences and for which non-compliance means the licence is liable to forfeiture.

Clause 18 – Section 69D amended

This clause makes minor wording edits to modernise the language to approved form and giving notice.

Clause 19– section 70F amended

The requirement for security for compliance with conditions imposed under section 70I are relocated to the proposed Part 4AA.

Clause 20 – Section 70H amended

The provisions relating to programmes of work are relocated to the proposed Part 4AA.

The conditions related to the manner in which exploring for minerals is carried out have been revised with modern drafting to focus on ensuring the outcome of making disturbances safe and preventing damage or injury.

Clause 21 – Section 70I deleted

The conditions in section 70I are relocated to the proposed Part 4AA.

Clause 22 – Section 70IA amended

This clause makes minor wording edits to modernise the language to approved form and giving notice. Condition may be cancelled or varied by the Minister at any time.

Clause 23 – Section 70K amended

This clause updates the references to conditions that apply to retention licences and for which non-compliance means the licence is liable to forfeiture.

Clause 24 – Section 70L amended

This clause updates the references to conditions that apply to retention licences.

Clause 25– Section 70O and 70P replaced

This clause removes the terms used that have been relocated to the proposed Part 4AA. The remaining term used is 'significant mineralisation'. References to guidelines in the Mining Act are deleted.

Clause 26 – Section 74 amended

The reference to 'mining proposal' is updated to 'mining development and closure proposal'.

Clause 27 – Section 82 amended

The provisions relating to activity approvals and mine closure plans are relocated to the proposed Part 4AA.

The clause updates the references to conditions for which non-compliance renders the lease liable to forfeiture.

The provisions under the previous section 82(1b) are relocated to the proposed Part 4AA.

Clause 28 – Section 82A deleted

The provisions for activity approvals are relocated to the proposed Part 4AA.

Clause 29 – Section 84AA and 84 deleted

The provisions for the review of mine closure plans and conditions for prevention or reduction of injury to land are relocated to the proposed Part 4AA.

Clause 30 – Section 84A amended

The requirement for security for compliance with conditions imposed under section 84A are relocated to the proposed Part 4AA.

Clause 31– Section 90 amended

Section 90 identifies the mining lease conditions that apply to general purpose leases. This clause updates the references to the relevant conditions in the proposed Part 4AA.

Clause 32 – Section 92 amended

This clause removes references to s46A as that section is now deleted as per clause 11.

Clause 33 – Section 96 amended

This clause updates the section references to the relevant conditions in the proposed Part 4AA.

Clause 34 – Part 4AA inserted

New Part 4AA is inserted after section 103 and titled Conditions and Approvals

Proposed Division 1 – Preliminary

Proposed section 103AA – Terms Used

The proposed section defines the terms used in the proposed Part 4AA.

Proposed Division 2 - Conditions and notices relating to eligible mining activities

Proposed section 103AB – Eligible mining activities

The proposed section enables the regulations to prescribe activities to be eligible for submitting a notice if that activity is required to be authorised via the Part as it uses machinery to disturb the surface of the land, but it can be undertaken with minimal disturbance if undertaken in accordance with prescribed requirements.

Proposed section 103AC – Excluded area notices

The proposed section identifies that the Minister may gazette areas in which an eligible mining activity notice cannot be given. These notices can be cancelled, and a publicly available register of these areas must be made.

Proposed section 103AD – Certain lands excluded from EMAs

The proposed section excludes the lands identified in section 24, 24A and 25A of the Mining Act and Commonwealth lands from a notice being given. There are procedural obligations under those sections that are incompatible with an automated authorisation.

Proposed section 103AE - Condition relating to carrying out EMAs in accordance with prescribed requirements

The proposed section identifies if an activity is an EMA, it must be undertaken in accordance with the prescribed requirements, unless it is proposed via a programme of work or a mining development and closure proposal and subsequently approved. If an activity is authorised via a programme of work or mining development and closure proposal nothing in this section affects the obligations to comply with the conditions of those approvals.

Proposed section 103AF – EMA notices and notices of completion

This section requires that EMA notices are given in a form approved by the Minister.

This section requires that if an EMA is authorised via an EMA notice, the mining tenement holder must give notice of completion of that activity, and that notice is given in the approved form. The regulations will identify the period in which a notice of completion must be given.

The regulations will identify the manner in which an EMA notice is given.

Proposed Division 3- Programmes of work

Proposed section 103AG – Conditions attached to prospecting licences, exploration licences and retention licences

This section relocates the conditions for requiring activities to be authorised via a programme of work on licences, unless it is an EMA and authorised via an EMA notice, meaning the tenement holder may opt to lodge a programme of work for approval of an EMA. It identifies that if an activity is proposed in a programme of work and approved, it must not be done otherwise than in accordance with that approval/approved programme of work.

Proposed section 103AH – Conditions attached to mining leases

This section relocates the conditions for requiring activities to be authorised via a programme of work on mining leases (and extended to general purpose leases) via section 90), unless it is an EMA and authorised via an EMA notice, meaning the tenement holder may opt to lodge a programme of work for approval of an EMA. It identifies that if an activity is proposed in a programme of work and approved, it must not be done otherwise than in accordance with that approval/approved programme of work.

Proposed section 103AI – Conditions attached to miscellaneous licences

This section relocates the conditions for requiring licensed activities to be authorised via a programme of work on miscellaneous licences unless it is an EMA and authorised via an EMA notice, meaning the tenement holder may opt to lodge a programme of work for approval of an EMA. It identifies that if an activity is proposed in a programme of work and approved, it must not be done otherwise than in accordance with that approval/approved programme of work.

Proposed section 103AJ – Lodgement of programmes of work

This proposed section identifies that the regulations must prescribe the manner in which a programme of work must be lodged. It identifies that a party other than the tenement holder may be authorised by the tenement holder to lodge documents and provide substitute documents and further information. The programme of work must be in the approved form, accompanied by an application fee where prescribed, and include information that the regulations prescribe. The section identifies the procedural requirements for the lodgement and further information required for programme of work. It enables applications to be substituted (ie edited and resubmitted) as part of an assessment process that has already commenced, where the activities proposed are not substantially different.

Proposed section 103AK – Approval of activities in programmes of work

This proposed section identifies that the Minister may approve or refuse to approve activities in a programme of work or any substitutes received during the assessment process. If multiple activities are proposed in a programme of work, some may be approved and some may be refused. The Minister must notify the tenement holder of their decision and give reasons for any refusals. The approvals take effect when they are given notice of to the tenement holder.

Proposed Division 4 – Mining development and closure proposals

Proposed section 103AL – Conditions relating to mining operations on land subject of mining lease

This section relocates the conditions on mining leases (and extended to general purpose leases via section 90), for requiring ground disturbance for the purpose of preparation of, or the carrying out of mining operations to be authorised via a mining development and closure proposal unless it is an EMA and authorised via an EMA notice, meaning the tenement holder may opt to lodge a mining development and closure proposal for approval of an EMA. It identifies that if an activity is proposed in a mining development and closure proposal and approved, it must not be done otherwise than in accordance with the approvals statement. These sections do not apply to mining leases granted or held pursuant to a Government agreement.

Proposed section 103AM – Conditions relating to mining operations on land subject of miscellaneous licences

This section relocates the conditions on miscellaneous licences for requiring licensed activities to be authorised via a mining development and closure proposal, unless it is an EMA and authorised via an EMA notice, meaning the tenement holder may opt to lodge a MDCP for approval of an EMA. It identifies that if an activity is proposed in a MDCP and approved, it must not be done otherwise than in accordance with the approvals statement. These sections do not apply to miscellaneous licences granted or held pursuant to a Government agreement.

Proposed section 103AN – Lodgement of mining development and closure proposal

This proposed section identifies the procedural requirements for the lodgement, form, manner and content of mining development and closure proposals, including withdrawals and substitution of MDCPs during the assessment process.

Proposed section 103AO- Approval of activities in mining development and closure proposals

This section identifies the Ministers powers to approve or refuse to approve activities proposed in a MDCP and the procedural obligations of the Minister as result of the decision. It provides for statements of reasons to be given for refusals, and for the issue of approvals statements for approvals and conditions may be attached to an approval. The effect of the section is that the Minister may approve some activities and refuse some activities in the same MDCP application.

Proposed section 103AP – Approvals statements

This section identifies Approvals statements as the document on which information regarding the approval is recorded (including approvals, conditions of approval, relevant information, closure outcomes, and date for lodgement of mine closure plans) and procedural requirements of the issuing and publication of approvals statements.

Proposed section 103AQ – Cancellations and variations to be recorded on approvals statements

This section provides for the variation or cancellation of approvals, conditions and relevant information on approvals statements, and the procedural requirements for these changes to approvals statements.

Proposed Division 5 – Mine closure plans

Proposed section 103AR – Contents of mine closure plan

This section identifies the information requirements to be provided in a mine closure plan and that other information requirements may be prescribed in the regulations.

Proposed section 103AS – Conditions relating to mine closure plans

This section imposes the condition on mining leases (general purposes leases via section 90) and miscellaneous licences that a mine closure plan must be lodged, and that the lodgement complies with the requirements of 103AS.

Proposed section 103AT – Lodgement of mine closure plans

MCPs must be lodged in the approved form and in the prescribed manner on or before the due date recorded on the approvals statement. This date may be varied or extended by the Minister and if so the tenement holder is notified and the date is amended on the approvals statement.

Proposed Division 6 – Other conditions

Proposed section 103AU – Conditions for preventing, reducing or remediating injury to land and for other purposes

This section substantially relocates all deleted sections regarding the prevention and reduction to injury land. It now includes the ability to impose tenement conditions for preventing or reducing or remediating the impact of mining on the values of reserved lands.

Proposed Division 7 – Securities

Proposed section 103AV – Security for compliance with conditions

This section substantially relocates all deleted sections regarding securities for compliance with conditions for prevention and reduction to injury to land, and provides for securities for compliance with approval conditions.

Clause 35 – Section 103EA amended

This clause makes minor wording edits to modernise the language.

Clause 36 – Section 105A amended

This clause makes minor wording edits to modernise the language.

Clause 37 – Section 122C amended

This clause makes minor wording edits to modernise the language.

Clause 38 - Section 126 amended

This section is amended to update the references to securities due to the relocation of these provisions to the proposed Part 4AA.

Clause 39 – Section 140 amended

This clause makes minor wording edits to modernise the language.

Clause 40 – Section 162 amended

This clause makes minor wording edits to modernise the language.

Clause 41- Second Schedule Division 3 inserted.

This clause inserts Division 3 into the Second Schedule for provisions relating to *Mining Amendment Act 2021*.

Proposed clause 20 – Terms used

This clause defines the terms in this Division

Proposed clause 21 – Continuation of conditions

This clause provides for the conditions that are on the mining tenements at commencement day that were imposed under former provisions that are being relocated, will continue to be conditions on the mining tenements against the relocated provision. This has the effect that there is no change to conditions with the commencement of this Bill.

Proposed clause 22 – Continuation of securities

This clause provides for the securities that are held against environmental conditions on mining tenements that were imposed under former provisions, on commencement day will continue to be held as a security against the relocated provision. This has the effect that there is no change to securities with the commencement of this Bill.

Proposed clause 23 – Transitional provisions for programmes of work

This clause provides for programmes of work that were received prior to commencement day under former provisions that are being located for which no approval decision had been made, will be considered to be received under the relocated provisions and will be dealt with under the new Part.

This clause also provides for programmes of work approved prior to commencement day will be considered to be approved under the new Part. This has the effect that there is no change to approvals for programmes of work.

Proposed clause 24 – Transitional provisions for existing undetermined mining proposals

This clause provides for mining proposals and mine closure plans that were received prior to commencement day under former provisions for which no approval decision had been made, will be considered to be a Mining Development and Closure Proposal and dealt with under the new Part.

Proposed clause 25 – Transitional provisions for previously approved mining proposals

All previously approved mining proposals continue to be approved. This clause provides a ten year transitional period in which tenement holders of mining proposals approved under former provisions may be issued an Approvals Statement in accordance with the new Part that records those approvals.