

EXPLANATORY MEMORANDUM

MINING LEGISLATION AMENDMENT BILL 2015

Introduction and Overview

This is a Bill to amend the *Mining Act 1978* (Mining Act) to consolidate and clarify the requirements on tenement holders relating to environmental management. The Bill makes consequential amendments to the *Environmental Protection Act 1986* and *Mining Legislation Amendment Act 2014* and contains minor amendments to the *Mining Rehabilitation Fund Act 2012*. The Bill will insert a new Part into the Mining Act to consolidate all environmental management provisions and separate them from the provisions of the Mining Act that deal with the grant and administration of mining tenure. The Bill also contains miscellaneous amendments to other provisions of the Mining Act.

Part 1 introduces the Bill and provides for commencement of its provisions.

Part 2 amends the *Mining Act 1978* to:

- introduce new Part IVAA to consolidate and expand upon provisions relating to environmental management, and to make consequential amendments;
- make a number of changes to provisions of the Act dealing with consents to mine, applications for exploration leases, administrative changes relating to exemptions from expenditure requirements, and other minor and miscellaneous matters; and
- introduce new regulation-making powers to aid compliance with environmental obligations.

Part 3 repeals section 8 of the *Mining Legislation Amendment Act 2014* (which has not yet commenced) as the need for this provision, the reference to a “proscribed official”, has been superseded by the introduction of new Part IVAA.

Part 4 amends the *Environmental Protection Act 1986* (EP Act) with the effect that clearing of native vegetation that is approved or is a low-impact activity under new Part IVAA, and is carried out in accordance with the approval or the applicable requirements, will not require a native vegetation clearing permit under the EP Act.

Part 5 contains minor amendments to the *Mining Rehabilitation Fund Act 2012*.

Part 1 – Preliminary

Clause 1 – Short title

The title of the Bill is the *Mining Legislation Amendment Bill 2015*.

Clause 2 – Commencement

The amendments will come into effect on a day fixed by proclamation published in the Government Gazette or different days may be fixed for some provisions, if necessary. New sections 103AZC and 103AZD, which impose obligations on mining lease holders regarding environmental management systems, and provisions that support those sections, will not come into effect until two years after the commencement of proposed new Part IVAA.

Part 2 – Mining Act 1978 amended

Clause 3 – Act amended

This Part amends the *Mining Act 1978*.

Clause 4 - Section 6 amended

The amendments in this clause update references to provisions of the Mining Act that are being repealed and re-enacted in new Part IVAA. The effect of the changes is that section 38 of the EP Act (which deals with the referral of certain proposals to the Environmental Protection Authority) will continue to apply to programmes of work and mining proposals, whether they are submitted because of a tenement condition or as the result of a requirement of the Director General of Mines.

Clause 5 - Section 8 amended

The definition of “ground disturbing equipment” is being repealed as a consequence of the introduction of new Part IVAA.

Clause 6 – Section 12 replaced

Existing section 12 provides for the Minister to delegate any power or duty to an officer or person occupying a position within the Department. The proposed new section updates the drafting of the provision and extends the capacity to delegate statutory functions to the Director General of Mines. The new provision does not continue in force the existing section 12(2), which currently has the effect that Ministerial delegations cease to have effect when the Minister is replaced by another Minister.

Clause 7 - Section 20 amended

This clause amends subsection (5a) by replacing paragraph (d)(i) with a better representation of the need for the holder of a Miner’s Right to prevent damage or injury to property or livestock when passing or re-passing over occupied Crown land.

Clause 8 - Section 23A inserted

This clause amends inserts a new section 23A, which clarifies the procedure applicable when a mining tenement is forfeited under section 23(3), and allows the Minister to impose penalties in lieu of forfeiture. The ability to impose penalties in lieu of forfeiture for breaches of conditions on consent on mining tenements on reserve land had not previously existed. This ability already existed for breaches of conditions on other mining tenements.

Clause 9 - Section 40D amended

Subclause (1) amends section 40D(2) by replacing the words “*which are likely to*” endanger the safety of any person or animal in paragraph (c)(i) with “*may*”, which is considered a less subjective term.

Subclause (2) replaces paragraph 40D(2)(d) so that it is consistent with the change being made to section 20.

Clause 10 - Section 46 amended

Subclause (1) removes paragraph (aa) as the requirement to lodge a programme of works is included in new Part IVAA.

Subclause (2) is similar to the amendment to section 40D and assessment of potential danger to any person or animal when refilling holes, etc made while prospecting.

Subclause (3) better qualifies the need to prevent damage or injury to property or livestock.

Clause 11 - Section 46A deleted

The intent of this section is included in new Section 103AW.

Clause 12 - Section 48 amended

Subsection 48(b) and (c) are being amended to reflect that the exercise of any rights under a prospecting licence is subject to compliance with the approval and notice conditions outlined in new section 103AE.

Clause 13 - Section 52 amended

The capacity to require the holder of a prospecting licence to lodge security for compliance with environmental conditions is being removed from this section and re-enacted in section 103AZB.

Clause 14 - Section 55 amended

New subsection (5) is being inserted to provide that referral of a retention status application to the Minister responsible for reserved land that is affected by an existing prospecting licence is not required unless the tenement holder has consent to explore within that part of the licence. In some instances a prospecting licence holder does not seek consent to access an affected reserve and, therefore, the subsequent retention status application also will not impact the reserve.

Clause 15 - Section 55A amended

“Programme of work” in this section is being replaced with the more accurate term “works schedule”, so that there is no further confusion between a programme of work application under section 103AD and a works schedule imposed by the Minister.

Clause 16 - Section 56A amended

Subsection 56A(6)(b) is being amended to reflect that the exercise of any rights under a special prospecting licence is subject to compliance with the approval and notice conditions outlined in new section 103AE.

Clause 17 - Section 58 amended

New subsections are being added to address an anomaly that has arisen with processing exploration licence applications. Some applicants have been applying for more than one application over the same or substantially the same ground, then withdrawing the initial application. This has the effect of tying up the ground to the detriment of other applicants.

The new subsections clarify that this cannot occur unless the Minister agrees there are special circumstances for doing so.

Clause 18 - Section 60 amended

The capacity to require the holder of an exploration licence to lodge security for compliance with environmental conditions is being removed from this section and re-enacted in section 103AZB.

Clause 19 - Section 63 amended

Subclause (1) removes paragraph (aa) as the requirement to lodge a programme of works is included in new Section 103AE.

Subclauses (2) and (3) are similar amendments to those in section 46 and clarify the reason for the requirement to fill holes, etc. and to prevent damage or injury to property or livestock as a result of exploration activities.

Clause 20 - Section 63AA deleted

The intent of this section is included in new Section 103AW.

Clause 21 - Section 63A amended

Reference to new provisions relating to compliance with conditions being moved to Part IVAA are being included in section 63A to ensure breach of them renders an exploration licence liable for forfeiture.

Clause 22 - Section 66 amended

Paragraphs (b) and (c) of section 66 are being amended to reflect that the exercise of any rights under an exploration licence is subject to compliance with the approval and notice conditions outlined in new section 103AE.

Clause 23 - Section 69C amended

New subsection (5) is being added for the same reason as Clause 14 affecting prospecting licences. The provision is being amended to make it clear that a retention status application in respect of an exploration licence does not need to be referred to the Minister responsible for an affected reserve where the holder has not previously sought consent to access the reserve.

Clause 24 - Section 69D amended

“Programme of work” in this section is being replaced with the more accurate term “works schedule”, so that there is no further confusion between a Programme of work application under section 103AD and a works schedule imposed by the Minister.

Clause 25 - Section 70F amended

The capacity to require the holder of a prospecting licence to lodge security for compliance with environmental conditions is being removed from this section and re-enacted in section 103AZB.

Clause 26 - Section 70H amended

Subclause (a) removes paragraph (aa) as the requirement to lodge a programme of works is included in new Part IVAA.

Subclause (b) removes paragraph (a) and replaces it with requirements to rehabilitate or make safe any holes, etc. made while exploring for minerals..

Subclause (c) removes paragraph (b) and replaces it with a requirement to prevent damage or injury to property or livestock.

Clause 27 - Section 70I deleted

The intent of this section is included in new Section 103AW.

Clause 28 - Section 70IA amended

Paragraph (a) replaces the term “programme of work” in this section with the more accurate term “works schedule” so that there is no further confusion between a programme of work application under section 103AD and a works schedule imposed by the Minister.

Paragraph (b) revises subsection (2) and updates its drafting and adds new subsections (4A) and (4B) expressly dealing with the manner in which conditions are to be endorsed on tenements. New subsections (4A) and (4B) are required to continue in force the effect of existing section 70IA(3), which now operates by way of reference to section 70I, which is being repealed by clause 27.

Clause 29 - Section 70J amended

Paragraphs (b) and (c) of section 70J are being amended to reflect that the exercise of any rights under a retention licence is subject to compliance with the approval and notice conditions outlined in new section 103AE.

Clause 30 - Section 70K amended

Reference to new provisions relating to compliance with conditions being moved to Part IVAA are being included in section 70K to ensure a breach of them renders the retention licence liable for forfeiture.

Clause 31 - Section 70L amended

This clause updates a reference to section 70I as a consequence of its repeal by clause 27.

Clause 32 - Section 70O amended

This clause removes reference to certain defined terms that are no longer required as a consequence of the enactment of new Part IVAA.

Clause 33 - Section 70P deleted

The requirement to make guidelines publicly available is removed from this Division and is now in the new section 103AM.

Clause 34 - Section 74 amended

References to mining proposals in sections 74(1)(ca)(i) and 74(1AA) are updated as a consequence of the provisions dealing with mining proposals being moved to new Part IVAA.

Clause 35 -Section 82 amended

Subclause (1)(a) removes paragraph (ca) as the requirement to lodge a programme of works or mining proposal in respect of a mining lease will be governed by new sections 103AF and 103AH .

Subclause (1)(b) removes paragraph (ga) as the review of mine closure plans will be governed by new Section 103AT.

Subclause (1)(c) updates a reference to the relocated provision relating to security for compliance with environmental conditions, to ensure that a breach of the relocated provision continues to make the leaseholder liable to forfeiture.

Subclause (2) omits paragraph (1b) as it relates only to paragraph (ca), the substance of which is being re-enacted in new sections 103AF and 103AH. The substance of paragraph (1b) (which exempts mining tenure connected with State Agreements from the programme of works and mining proposal requirements) will also be re-enacted in those sections.

Clause 36 - Section 82A deleted

This section, dealing with the requirement to lodge a mining proposal for certain mining leases, is now contained in the new section 103AH.

Clause 37 - Section 84AA deleted

This section covered the review of mine closure plans, which is now incorporated into proposed new sections 103AJ and 103AK.

Clause 38 - Section 84 deleted

Conditions for the prevention or reduction of injury to land will now be addressed by new section 103AW.

Clause 39 - Section 84A amended

Subclause (1) removes the capacity to require the holder of a mining lease to lodge security for compliance with environmental conditions, which is being re-enacted in section 103AZB.

Subclause (2) makes a consequential amendment to subsection (3) to remove reference to the deleted subsection (2).

Clause 40 - Section 90 amended

Clause 40 revises references in section 90 so that:

- the existing Mining Act provisions dealing with the referral of certain proposals to the Environmental Protection Authority and the requirement to lodge of mining proposals continue to apply to general purpose leases in the same way as they apply to mining leases; and
- the proposed new Mining Act provisions relating to low-impact activities, environmental management systems and the general environmental duty will apply to general purpose leases in the same way as they apply to mining leases.

Clause 41 - Section 92 amended

Section 92 outlines the sections applying to a prospecting licence that also apply to a miscellaneous licence. This clause replaces a reference to section 46A (which is to be repealed) with a reference to new section 103AW that will apply in its place.

Clause 42 - Section 96 amended

Additional section references are included in section 96 to reflect that a prospecting or miscellaneous licence may be liable for forfeiture for breach of conditions included in Part IVAA.

Clause 43 - Section 102 amended

Subclause (1) replaces subsection (1) and removes reference to a “certificate of exemption” being granted as there is no longer a requirement to provide paper certificates. The provision is also being reworded to provide better clarity.

Subclause (2) adds new subsection (1B) to clarify when an application for annual expenditure exemption should be made.

Subclauses (3) and (4) remove reference to a certificate in line with the amendment in subclause (1).

Subclause (5) deletes subsections (5) to (7) and inserts new subsections (5) to (10) dealing with objections to the granting of an exemption and how the Warden and the Minister are to conduct any consideration of these objections.

Clause 44 - Section 102A amended

This clause amends subsection (1) to reflect that a certificate of exemption is no longer required.

Clause 45 - Section 103 deleted

This section is not required as a certificate of exemption will no longer be issued.

Clause 46 Part IVAA added – Environmental management

This clause inserts new Part IVAA into the Mining Act. The new Part will deal with environmental management of mining tenements, including:

- requiring certain activities to be approved by submitting a programme of works or mining proposal (including mine closure plans);
- allowing certain activities to be carried out without approval, but in accordance with prescribed requirements, if they are low-impact activities; and
- providing for conditions to be placed on mining tenements for preventing, reducing or remediating environmental harm, and directly imposing certain other conditions to do with environmental management.

Some provisions of the proposed new Part substantially re-enact other provisions of the Mining Act that are being repealed by provisions of this Bill. Some new provisions extend and clarify the nature of environmental obligations on mining tenements. Some other new provisions allow the clearing of native vegetation associated with mining to be approved and administered under the Mining Act, consistently with the exemption of those activities (by the amendments to the *Environmental Protection Act 1986* in Part 4) from the native vegetation clearing permit provisions under that Act.

Proposed Division 1 – Preliminary

Proposed section 103AA Terms used

This section defines certain terms used in proposed Part IVAA.

Proposed section 103AB (Object of Part)

Section 103AB states the object of the proposed Part, which is to support the responsible environmental management of mining, including environmental rehabilitation and the closure of mines.

Proposed section 103AC (Low-impact activities)

Section 103AC enables regulations to be made setting out what is a low-impact activity. Mining tenement holders will not need approval under the new Part for low-impact activities but instead may carry them out after giving the required notice and providing they are carried out in accordance with prescribed requirements.

Proposed section 103AD (False or misleading information)

This section will make it an offence, with a maximum penalty of \$20,000, to make a statement or provide information that is false or misleading in a document lodged or notice given under the proposed new Part.

Proposed Division 2 – Programmes of work

This proposed Division sets out the notification and approval requirements applying to prospecting or exploring for minerals and related activities. The provisions in the Division impose conditions on mining tenements preventing specified activities from being undertaken on particular tenement types until the holder has met requirements under proposed Division 4 or 5.

Proposed section 103AE (Conditions attached to prospecting licences, exploration licences and retention licences)

This section sets out the notification and approval requirements for prospecting and exploring, and associated activities, on prospecting licences, exploration licences and retention licences.

It will be a condition of every prospecting licence, exploration licence and retention licence that a licensee who proposes to carry out prospecting or exploring for minerals, or clear land or use ground disturbing equipment for the purposes of prospecting or exploring (a “relevant activity”):

- if the relevant activity is prescribed as a low-impact activity in regulations made under the new Part – the licensee must first either give a notice of low-impact activity in accordance with proposed Division 5 or have the activity approved by way of a programme of works in accordance with proposed Division 4; or
- if the relevant activity is not a prescribed low-impact activity, the licensee must first have the activity approved by way of a programme of works in accordance with proposed Division 4.

It will also be a condition of every licence that a relevant activity approved by way of a programme of works must be carried out in accordance with the approval.

Proposed section 103AF (Conditions attached to mining leases)

This section sets out the notification and approval requirements for exploring for minerals (and some associated activities) proposed to be carried out on a mining lease. Section 103AH will apply to prescribed mining operations on a mining lease.

It will be a condition of every mining lease that a licensee who proposes to explore for minerals, or clear land or use ground disturbing equipment for the purposes of exploring for minerals (a “relevant activity”):

- if the relevant activity is prescribed as a low-impact activity in regulations made under the new Part – the licensee must first either give a notice of low-impact activity in accordance with proposed Division 5, or have the activity approved by way of a programme of works in accordance with proposed Division 4; or
- if the relevant activity is not a prescribed low-impact activity, the licensee must first have it approved by way of a programme of works in accordance with proposed Division 4.

It will also be a condition of every mining lease that a relevant activity approved by way of a programme of works must be carried out in accordance with the approval. The new conditions will not apply:

- if the relevant activity has been approved by way of a mining proposal under proposed Division 4; or
- to a mining lease granted under, or held in connection with, a State Agreement, unless the State Agreement itself provides otherwise.

Proposed section 103AG (Conditions attached to miscellaneous licences)

This section sets out the notification and approval requirements for carrying out activities in relation to which a miscellaneous licence has been granted that are not prescribed mining operations, and some associated activities (a “relevant activity”). [Section 103AI] will apply to prescribed mining operations on a miscellaneous licence.

It will be a condition of every miscellaneous licence that a licensee who proposes to explore for minerals, or clear land or use ground disturbing equipment for the purposes of exploring for minerals (a “relevant activity”):

- if the relevant activity is prescribed as a low-impact activity in regulations made under the new Part – the licensee must first either give a notice of low-impact activity in accordance with proposed Division 5, or have it approved by way of a programme of works in accordance with proposed Division 4; or
- if the relevant activity is not a prescribed low-impact activity, the licensee must first have it approved by way of a programme of works in accordance with proposed Division 4.

It will also be a condition of every miscellaneous licence that a relevant activity approved by way of a programme of works must be carried out in accordance with the approval.

The new conditions will not apply:

- if the relevant activity has been approved by way of a mining proposal under proposed Division 4; or
- to a miscellaneous licence granted under, or held in connection with, a State Agreement, unless the State Agreement itself provides otherwise.

Proposed Division 3 – Mining proposals

This Division sets out the notification and approval requirements that apply to mining operations and related activities. The provisions in the Division impose conditions on mining tenements preventing specified activities from being undertaken on particular tenement types until the holder has met requirements under proposed Division 4.

Proposed section 103AH (Conditions attached to mining leases)

This section sets out the notification and approval requirements for mining operations (and some associated activities) proposed to be carried out on a mining lease. (Section 103AF will apply to exploring for minerals carried out on a mining lease.)

It will be a condition of every mining lease that a leaseholder who proposes to carry out prescribed mining operations, or clear land or use ground disturbing equipment for the purpose of carrying out such operations (a “relevant activity”):

- if the relevant activity is prescribed as a low-impact activity in regulations made under the new Part – the licensee must first either give a notice of low-impact activity in accordance with proposed Division 5, or have it approved by way of a mining proposal in accordance with proposed Division 4; or
- if the relevant activity is not a prescribed low-impact activity, the licensee must first have it approved by way of a mining proposal in accordance with proposed Division 4.

It will also be a condition of every mining lease that a relevant activity approved by way of a mining proposal must be carried out in accordance with the approval.

The new conditions will not apply to a mining lease granted under, or held in connection with, a State Agreement, unless the State Agreement itself provides otherwise.

Proposed section 103AI (Conditions attached to miscellaneous licences)

This section sets out the notification and approval requirements for mining operations (and some associated activities) proposed to be carried out on a miscellaneous licence lease. (Section 103AG will apply to exploring for minerals carried out on a miscellaneous licence.)

It will be a condition of every miscellaneous licence that a licensee who proposes to carry out prescribed mining operations, or clear land or use ground disturbing equipment for the purpose of carrying out such operations (a “relevant activity”):

- if the relevant activity is prescribed as a low-impact activity in regulations made under the new Part – the licensee must first either give a notice of low-impact activity in accordance with proposed Division 5, or have it approved by way of a mining proposal in accordance with proposed Division 4; or
- if the relevant activity is not a prescribed low-impact activity, the licensee must first have it approved by way of a mining proposal in accordance with proposed Division 4.

It will also be a condition of every miscellaneous licence that a relevant activity approved by way of a mining proposal must be carried out in accordance with the approval.

The new conditions will not apply to a miscellaneous licence granted under, or held in connection with, a State Agreement, unless the State Agreement itself provides otherwise.

Proposed section 103AJ (Review of mine closure plans: condition attached to mining leases)

This section replaces repealed sections 82(1)(ga) and 84AA. It imposes a condition on every mining lease a mine closure plan (which is a required component of a mining proposal) must be periodically reviewed and approved, generally within three years of its first submission or most recent approval.

Proposed section 103AK (Review of mine closure plans: condition attached to miscellaneous licences)

This section replaces repealed sections 82(1)(ga) and 84AA and extends their application to miscellaneous licences in relation to which a mining proposal is required due to the proposed new section 103AI. It imposes the requirement for every mining lease to have a mine closure plan (which is a required component of a mining proposal). The mine closure plan is required to be periodically reviewed and approved, generally within three years of its first submission or most recent approval.

Proposed Division 4 – Programmes of work and mining proposals: requirements and approvals

This proposed Division sets out the administrative and procedural matters applying to programmes of work and mining proposals required under Divisions 2 and 3.

Proposed section 103AL (Terms used)

This section defines terms used in Division 4.

Proposed section 103AM (Guidelines)

This section empowers the Director General of Mines to make statutory guidelines governing the content of programmes of work and mining proposals, setting requirements as to the consultation to be undertaken by a mining tenement holder in respect of activities proposed in a programme of work or mining proposal, and requiring supporting documents to be submitted with a programme of work or mining proposal.

The section continues in force and expands on the requirements of repealed subsections of section 70 and section 70P, and extends them to programmes of work. It also allows guidelines to be made in relation to the clearing of native vegetation proposed in a programme of work or mining proposal, to enable the environmental assessment of clearing on mining tenements otherwise than by way of the native vegetation clearing permit requirements of the *Environmental Protection Act 1986*.

Proposed section 103AN (Requirements as to form and content)

This section requires programmes of work and mining proposal to be in the form, and contain information of the kind, required by guidelines made under section 103AM. It also requires mining proposals to contain mine closure plans.

Proposed section 103AO (Lodging and approving programmes of work)

This section outlines the requirements for submitting programmes of work and substitute programmes of work, and enables a prescribed assessment fee to be charged. The ability to prescribe an assessment fee already exists in sections 46(aa)(ia), 63(aa)(ia), 70H(aa)(ia) and 82(1)(ca)(i). It provides for the Director General of Mines to approve or refuse to approve activities proposed in a programme of work, and sets out the matters to which the Director General must and may have regard when so deciding.

Proposed section 103AP (Lodging and approving mining proposals)

This section outlines the requirements for submitting mining proposals and substitute mining proposals, and enables a prescribed assessment fee to be charged. The ability to prescribe an assessment fee already exists in section 82A(2)(ba). The section provides for the Director General of Mines to approve or refuse to approve activities proposed in a mining proposal, and sets out the matters to which the Director General must and may have regard when so deciding.

Proposed section 103AQ (Matters to be considered when assessing programmes of work or mining proposals)

This section sets out the matters that the Director General of Mines must consider when deciding whether or not to approve an activity proposed in a programme of work or mining proposal.

Proposed section 103AR (Director General of Mines may require revised programme of work or mining proposal to be lodged)

This section empowers the Director General of Mines to require a tenement holder to submit a revised programme of work or mining proposal in respect of an activity previously approved under the new Part if the Director General considers the risk of environmental harm from carrying out the activity has significantly changed since the original approval was given.

Proposed section 103AS (Replacement or change of approvals under this Part)

This section allows a subsequent approval to replace or change an earlier approval.

Proposed section 103AT (Lodging reviewed mine closure plans and approvals)

This section provides for the lodgement and approval of a mine closure plan following its required periodic review.

Proposed Division 5 – Low-impact activities

This Division sets out the requirements for carrying out prescribed low-impact activities where those activities have not been approved by way of a programme of works or mining proposal.

Proposed section 103AU (Giving notice of low-impact activity and notice of completion of low-impact activity)

This section requires proponents to notify the Director General of Mines when a low-impact activity is proposed to be undertaken, and again when the activity has been completed.

Proposed section 103AV (When prescribed requirements for carrying out low-impact activities must be followed)

Under this section, it is a condition of every mining tenement that the tenement holder must only carry out a low-impact activity in accordance with prescribed requirements in respect of that activity, unless the activity has already been approved through a programme of work or a mining proposal.

Proposed Division 6 – Other conditions

This Division enables conditions relating to the prevention, reduction and remediation of environmental harm to be placed on mining tenements. It also imposes conditions for relating to a general environmental duty and requiring an environmental management system on mining leases.

Proposed section 103AW (Conditions for preventing, reducing or remediating environmental harm and for other purposes)

This section allows reasonable conditions to be imposed on a mining tenement for the purposes of preventing, reducing or remediating environmental harm. The section substantially re-enacts sections 46A, 63AA, 70I and 84 of the Mining Act, which are being repealed.

It will also allow conditions to be placed on a mining tenement on a reserve to which section 24 or section 24A applies for purposes related to the statutory or public purposes for which the land is reserved or managed.

Proposed section 103AX (Condition relating to mining operations within specified distance of natural surface of land)

This section allows for conditions be imposed under proposed section 103AX(1) to prevent mining operations being carried out within a specified distance of the natural surface of land. It replaces section 84(2) of the Mining Act, which is being repealed.

Proposed section 103AY (Conditions relating to clearing of native vegetation)

This section provides for the imposition of conditions under proposed section 103AX specific to the clearing of native vegetation, including the ability to apply an offset requirement.

Proposed section 103AZA (Conditions relating to monitoring and reporting of operations and environmental harm)

This section allows for conditions to be imposed requiring tenement holders to monitor operations, analyse monitoring data and report on that monitoring to the Director General of Mines.

Proposed section 103AZB (Security for compliance with conditions for preventing, reducing or remediating environmental harm)

This section allows the Minister to impose a security (bond) on tenement holders for compliance with a condition imposed on the tenement under section 103AX. This section substantially re-enacts sections 52(1a) and (2), 60(1a) and (2), 70F(2) and (3) and 84A(2) and (3) of the Mining Act, which are being repealed.

Clause 47 - Sections 103AZC and 103AZD inserted

Proposed section 103AZC will make it a condition of every mining lease and miscellaneous licence that the tenement holder must maintain an environmental management system in respect of mining operations approved under the new Part, and must ensure that the system is kept current. The new condition will not apply to a mining tenement that is granted under or held in connection with a State Agreement, unless the State Agreement itself provides otherwise.

Proposed section 103AZD will make it a condition of every mining lease and miscellaneous licence that the lessee must take all reasonable and practicable measures to avoid or minimise the risk of environmental harm occurring as a result of mining operations approved under the new Part. Where mining operations are carried out in accordance with an environmental management system under proposed section 103AZC, the lessee or licensee will be taken to have complied with the condition.

These provisions will be inserted in new Part IVAA two years after the commencement of the rest of the provisions in that Part.

Clause 48 - Section 114B amended

This clause amends section 114B to make it clear that the obligations maintained in force by the section apply where a tenement is partially surrendered.

Clause 49 - Section 126 amended

Section 126, which contains general provisions relating to securities on tenements, is extended to apply to securities imposed by way of proposed new section 103AZB.

Clause 50 - section 156 amended

Section 156 deals with offences under the *Mining Act 1978*. This clause revises section 156 to make it an offence to hinder a warden, department officer, inspector or other person carrying out functions under the Act.

Clause 51- Section 158 amended

Subclause (1) redrafts section 158, which deals with the functions of authorised officers and members of the Police Force in respect of requiring information about possible unauthorised mining on land. The amendments correct some inconsistencies in the terms used in the section as it is currently drafted.

Subclause (2) removes subsection (5) as it is no longer required.

Subclause (3) adds new subsection (7) to provide that section 158 does not limit the effect or operation of any regulations relating to dealing with mining without authority or enforcement action that may be taken by inspectors.

Clause 52 - Section 162 amended

This section relates to the power to make regulations to support the Act. Subclause (1) removes the gender-specific “he” and inserts “Governor”.

Subclause (2) (a) - (d) set out new regulation-making powers in respect of inspectors’ powers. Specifically, it will be possible to make regulations:

- relating to inspectors’ powers, including an ability to enter land, give directions, undertake enquiries, remove samples, take possession of any plant or equipment for examination or testing, take photographs, and require any documents; and
- allowing an inspector to require any person to be interviewed, and providing for an interview to be conducted in private in specified circumstances;
- allowing an inspector to give directions to a tenement holder to require the tenement holder to develop, revise, deal with matters in and to provide information about an environmental management system.

Subclause (2)(e) – (k) enable regulations to be made dealing with the resolution of disputes about tenement boundaries, including regulations concerning tenement survey dispute resolution and confirming that that pegs or other identifying marks on the ground are the primary indicators of a tenement’s position.

Paragraph (g) adds new paragraphs (oa) and (ob) to subsection 162(2) to allow regulations to be made requiring a tenement holder to notify the Director General of Mines of the occurrence of prescribed incidents relating to environmental harm, and to provide environmental reports (which are currently Annual Environmental Reports).

Clause 53 - Second Schedule amended

This Division inserts a new Division 3 into the Second Schedule of the *Mining Act 1978* containing transitional provisions consequent on the amendment of the proposed new Act.

Proposed clause 20 – defines “commencement day” for the purposes of the new transitional provisions as the day section 46 of that Act (which inserts proposed new Part IVAA) comes into operation.

Proposed clause 21 - provides that conditions imposed for the prevention or reduction of injury to land under provisions that are removed or repealed by the Amendment Act are taken to be conditions imposed under new section 103AW.

Proposed clause 22 – provides that securities lodged in respect of requirements under provisions that are removed or repealed by this Amendment Act are taken to be securities lodged in respect of requirements under new section 103AZB.

Proposed clause 23 – has the effect that a programme of work lodged and not yet determined, or approved, under provisions that are removed or repealed by this Amendment Act are taken to be a programme of work lodged or approved under new Part IVAA, as the case may be.

Proposed clause 24 – has the effect that:

- a mining proposal lodged under the Mining Act, but not yet determined before the commencement date, is taken to have been lodged under new Part IVAA; and
- for six years following the commencement date, an approval given in respect of a mining proposal before the commencement date is taken to have been given under new Part IVAA.

Part 3 – Mining Legislation Amendment Act 2014 amended

Clause 54 - Act amended

This Part amends the *Mining Legislation Amendment Act 2014*.

Clause 55 - Section 8 deleted

This section repeals an amendment to the reference to “prescribed official” in some sections of the *Mining Act 1978* that was to have been made on the commencement of section 8 of the *Mining Legislation Amendment Act 2014*. The need for this amendment has been superseded by the inclusion of new Part IVAA into the *Mining Act 1978*.

Part 4 – Environmental Protection Act 1986 amended

Clause 56 - Act amended

This Part amends the *Environmental Protection Act 1986*.

Clause 57 - Schedule 6 amended

This section amends Schedule 6 to the *Environmental Protection Act 1986* so that when native vegetation clearing is approved under new Part IVAA of the *Mining Act 1978*, it does not require a separate clearing permit under the Environmental Protection Act.

Part 5 – Mining Rehabilitation Fund Act 2012 amended

Clause 58 – Act amended

This Part amends the *Mining Rehabilitation Fund Act 2012*.

Clause 59 - Section 3 amended

A new term of “register” is being added to mean the register kept under the *Mining Act 1978*.

Clause 60 - Section 12 amended

Section 12 of the *Mining Rehabilitation Fund Act 2012* is amended to make it clear that the person liable to pay the mining rehabilitation levy under that Act in respect of a mining tenement is the person shown as the holder of the tenement on the register on the prescribed day.

Clause 62 - Section 15 amended

Section 15 of the *Mining Rehabilitation Fund Act 2012* is amended to make it clear that the person required to provide assessment information under that Act in respect of a mining tenement is the person shown as the holder of the tenement on the register on the prescribed day.