

Mineral Resources Development (Amendment) Bill

Circulation Print

EXPLANATORY MEMORANDUM

- Clause 1 states the purpose of the Bill.
- Clause 2 states the commencement provisions.
- Clause 3 amends the purpose provisions of the Act to include the objective of ensuring that just compensation be paid for the use of native title land as well as private land.
- Clause 4 substitutes the definitions of "graticular section", "tailings", and "worksite"; inserts definitions of "Director of Mines", "low impact exploration", "Native Title Act", "native title land" and "work authority"; amends the definitions of "Aboriginal place", "accident", agricultural land", "dispute", "land affected", "occupier", "owner", "private land" and "worksite"; repeals the definition of "authority to commence work", "chief mining inspector", "registrar" and "work".
- Clause 5 provides for Crown land other than wilderness Crown land that is also native title land to be considered to be native title land.
- Clause 6 makes technical amendments to a number of provisions that exempt certain lands from being available for exploration and mining.
- Clause 7 makes technical amendments to section 7 of the Act to amend the process and basis for exempting land from exploration or mining and for the removal of the exemption.
- Clause 8 provides for the Minister to declare, by Notice in the Government Gazette the meaning of "graticular section". Pursuant to the definition of "graticular section" in section 4, the Minister's declaration of the meaning will override the definition that would otherwise apply but for the declaration.

Also provides for the Minister and Minister administering the **Conservation, Forests and Lands Act 1987** to jointly declare a low impact exploration activity.

- Clause 9 makes technical amendments to section 8(1) of the Act to clarify the intention of the sub-section.
- Clause 10 inserts section 8A into the Act that will permit aerial surveys to be undertaken without an authority provided certain information is provided.
- Clause 11 amends section 12 of the Act to provide that any royalty to be paid on the disposal of tailings under section 14(2)(b) only applies to tailings produced as a consequence of work under a licence over Crown land.
- Clause 12 amends section 13 of the Act to provide that an exploration licence may remain current for up to 5 years unless surrendered or cancelled earlier.
- Clause 13 amends section 14 of the Act to allow the Minister to allow exploration to be undertaken under a mining licence for a period of up to 2 years.
- Clause 14 amends sections 15(1A) and 15(1B), substitutes sections 15(2), (3), (8) and (9) and repeals sections 15(10) to (19) and section 16.

Sub-clause (1)(a) amends section 15(1A)(c) to allow for an application for a mining licence to be accepted over land that is subject to an exploration licence held by another party, with the consent of the holder of the exploration licence or where the application is for less than 5 hectares and the exploration licence has been effective for more than 2 years.

Sub-clause (1)(b) substitutes sub-section (d) of section 15(1A) with the effect that applications cannot be accepted over the area where a prior application has been made unless the applications are made on the same day.

Sub-clause (1)(c) inserts new paragraphs (f), (g), (h) and (i) to section 15(1A).

The new paragraph (f) ensures that an application over land that is the subject of an exemption under section 6 or 7 is ineffective and cannot be granted. This ensures that applications cannot be lodged in anticipation that exemptions may be lifted at some stage.

The new paragraph (g) provides that a mining licence over more than 260 ha is ineffective and cannot be accepted unless the area of the application is covered by an exploration licence and the holder of the exploration licence is the applicant; or the holder of the exploration licence has consented to the grant of the licence and that consent has been lodged with the application in accordance with section 15 (1A).

The new paragraph (h) provides that a person may not apply for a licence over land that was covered by a previous licence until at least 28 days after the previous licence has ceased to apply to the licence.

The new paragraph (i) provides that a person may not apply for a licence over land that was covered by a previous application for a licence until at least 28 after the previous application lapsed, was withdrawn, rejected or not accepted.

Sub-clause (2) inserts new sub-sections (1C),(1D), (1E), (1F) and (1G) in section 15. The new section 15(1C) provides that an application for a licence is ineffective and must not be accepted if it does not contain details required by the regulations for an application for that type of licence. The new subsections 15(1D) to (1G) provide for a process of obtaining further information in order for the Minister to determine whether an application falls within a category of application listed in section 15A.

Sub-clause (3) substitutes the current sub-sections (2) and (3) with provisions that provide a process that applies where an application is accepted or rejected.

Sub-clause (4) substitutes the current sub-sections (8) and (9). Sub-section (8) provides for a new provision that applies where a request for further information has not been complied with. The new sub-section (9) provides for consequential amendments to the current provisions.

Sub-clause (5) repeals sections 15(10) to (19) which deal with statements of economic significance to be lodged in respect of applications for licences over agricultural land. New provisions relating to this are inserted by clause 22 as new sections 26A to 26E.

Sub-clause (6) repeals section 16. This section deals with obtaining the Minister's consent to an application for a mining licence covering land which is 5 hectares or less that is covered by an exploration licence that has been effective for 2 years or more where the applicant could not obtain the consent of the exploration holder. A new provision dealing with this (section 25A) is inserted by clause 20.

- Clause 15 makes a housekeeping amendment to section 18.
- Clause 16 inserts a new section 19 to provide for the withdrawal of a licence application.
- Clause 17 repeals the current sections 19 to 22 that deal with marking out and surveying land, authorities to enter land and security. New provisions dealing with these are provided for in the new sections 38AA to 38AD inserted by clause 35.
- Clause 18 substitutes section 23 of the Act. The new section provides for the Minister to not only consider the relative merits of the applications received on the same day in the determination of priority but also the respective abilities of the applicants to satisfy section 15(6).
- Clause 19 amends section 25 to substitute a provision requiring the consent of the Minister to an application for a mining licence over land covered by an exploration licence where the applicant is not the holder of the exploration licence. The substitute provision allows the grant of such a mining licence where the area of land is 5 hectares or less and the exploration licence was registered more than 2 years from the application and the Minister has waived the need for the consent of the holder of the exploration licence under the new section 25A (inserted by clause 20).
- Clause 20 inserts a new section 25A providing a basis for obtaining a waiver from the Minister of the need to obtain the consent of the exploration licence holder to the grant of a mining lease not exceeding 5 hectares.

Clause 21 sub-clause (1) repeals a provision providing for conditions on licences relating to employment and removes the requirement to determine applications within 3 months.

Sub-clause (2) inserts a new paragraph (ha) into section 26(2) to allow for conditions on licences for the payment of an environment levy.

Sub-clause (3) makes consequential amendments.

Sub-clause (4) makes amendments consequent to the amendment to section 116 made by clause 70.

Clause 22 inserts new provisions dealing with statements of economic significance where a licence covers agricultural land. These provisions are in place of sections 15(10) to (19) which are repealed by clause 14(5) and replace the requirement for the Governor in Council to make a decision in the case of a dispute with the requirement for the Minister to make a decision.

Clause 23 substitutes section 27 of the Act which relates to tenders with a new process that provides for the outcome of the tender process to be the acquisition of a licence rather than a right to lodge an application.

Clause 24 substitutes section 28 of the Act. The substituted provision is redundant consequent to new provisions revising moratorium periods inserted by clause 14. The new section 28 provides that the registration of a mining licence over land that was, immediately before the registration, covered by an exploration licence is no longer covered by the exploration licence.

Clause 25 amends the period within which an application for renewal of a licence must be made before the licence expires from 3 months to 1 month.

Clause 26 repeals section 30 of the Act that deals with relinquishment of parts of an exploration licence. This provision is replaced by the new section 38A inserted by clause 34.

Clause 27 substitutes section 32(2) of the Act to provide that exploration licences can be renewed for up to 5 years if the Minister is satisfied as to the matters specified in paragraph (a).

Clause 28 inserts new sections 33A and 33B.

The new section 33A provides that the holder of a mining licence may transfer an area of land to the holder of an adjoining mining licence and specifies the basis on which this may occur.

The new section 33B makes provisions to allow an area of land covered by a mining licence to be severed and made the subject of another licence that is subject to the same conditions and of the same currency.

Clause 29 inserts new provisions into section 34 to provide that the Minister can vary the term of an exploration licence for the purpose of amalgamating adjoining licences. The Minister can do this at the request of the licensee or on the Minister's own initiative.

Clause 30 substitutes section 35 of the Act to provide for the Minister to treat 2 or more licences of the same type as 1 licence for the purpose of determining whether conditions as to expenditure have been met. The amendment allows this to be done on the Minister's initiative as well as at the request of the licensee. The new section can apply whether or not the areas covered by the respective licences are adjoining.

Clause 31 amends section 36 so that the Minister may on his or her own volition after consultation with the licensee, amalgamate adjacent licences. This is in addition to the situation where a licensee requests such amalgamation which is the current situation. The new sub-section (5) provides that where a licence amalgamates with a former title, ie a mining lease, the rental that applies to the amalgamated licence does not increase above the aggregate of the licence and lease before amalgamation.

Clause 32 inserts a new section 36A. This provision allows the Minister to grant a licence without the need to comply with the usual procedural requirements in certain situations. The provision applies to allow the grant to a person who was a licensee of a licence found to be invalid by a Court or the Victorian Civil and Administrative Tribunal due to circumstances beyond the control of the licensee.

Clause 33 amends section 38 of the Act to include additional grounds upon which the Minister may cancel a licence and make other consequential amendments.

Clause 34 inserts a new section 38A dealing with relinquishment of areas covered by an exploration licence. This new provision is in place of the current section 30 of the Act that is being repealed by clause 30. Under the new section 38A, the licensee must relinquish parts of the licence at the second and fourth anniversary of the licence. These are the same period previously required under clause 30. Also, where a licence holder resists surrender of part of the licence, the Minister has the power to cancel the licence with respect to any portion of land to give effect to these relinquishment provisions.

Clause 35 inserts new sections 38AA to 38AE. The new section 38AA provides for requirements relating to a licence holder surveying and marking out land. The new section 38AB provides for the process to obtain an authority to enter land. Section 38AC makes it an offence not to show an authority to enter land to the owner or occupier of the land when requested to do so. The new section 38AD provides for the licence holder to give a security against damage to the property. Section 38AD provides that a licence holder must not enter land to survey or mark out unless the licence holder is insured against possible injury to the owner or occupier.

Clause 36 substitutes section 39. The new section provides that the holder of a mining licence must obtain the authority to commence work in order to undertake mining but may undertake exploration provided the licensee has complied with section 43(1)(a) to (e). This ensures that exploration can be undertaken under a mining licence as if that exploration were being undertaken on an exploration licence.

Also the requirement that the Department Head must be satisfied that the licensee is insured under a policy of public liability is to be removed. In its place is a provision placing the burden of having the insurance on the licence holder. The penalty provisions for breach of this section is increased to 200 penalty units for an individual, 1000 penalty units for a body corporate. Under the provision it will now be an offence for a licensee to do

work without public liability insurance for the amount determined by the Department Head.

Clause 37 amends section 40 of the Act to provide that some exploration activities of low impact are to be authorised to take place by virtue of the grant of a licence without further approvals. A definition of "low impact exploration" is inserted by clause 4 of the Bill.

The clause also provides for the holder of a mining licence over an area of 5 hectares or less to elect to have a work program lodged at the application stage to be the work plan.

The clause also provides that work plan proposals can be lodged (and considered during the processing of other key approvals) but not approved until other relevant approvals are in place. Under the provision work plans must be approved or rejected within 30 days of—

- the planning approval being in place; or
- the Minister for Planning submitting an assessment of an EES under section 42(7); or
- where the land is agricultural land and there was a dispute, the granting or refusal of any application under the new section 26B; or
- lodgment of the work plan in any other case.

Clause 38 substitutes section 41 of the Act that deals with variations to work plans. The new provision essentially provides that the Department Head can require that workplans be varied after consultation with the licensee. The new section also reflects the amendments made to section 40 regarding the timing of the approval of the work plan where additional consents, particularly further planning approvals may be required.

Clause 39 makes a minor consequential amendment.

Clause 40 amends section 40 that deals with commencement of work under a mining licence.

Sub-clause (1) provides for an authority to describe the area of an approved work plan to which it is subject. Together with sub-

clause (4) this ensures that any further work outside of that area would require a further authority.

Sub-clause (2) amends section 42(2) to reduce the 21 day notice of commencement of work on mining licences to 7 days; provide that where consent of the landowner has been obtained, such consent must be in writing; makes provisions for consents by owners of native title land as well as private land; to provide that the relevant Department Head not only be satisfied that any relevant compensation agreement be lodged but also that it be registered. The sub-clause also inserts a new provision that allows a work authority to be granted where the identity of the landowner could not be determined.

Sub-clause (3) inserts provisions that apply in relation to giving notice in relation to native title land where there is no approved determination of native title and provisions which apply when the licensee was unable to determine the identity of the land owner.

Sub-clause (4) provides that a work authority is only effective once registered and only with respect to the area specified in the authority.

Sub-clause (5) makes a consequential amendment.

Sub-clause (6) substitutes sub-section (5) of section 42 to provide for additional circumstances under which a work authority will lapse. These are: if the work is not permitted on the land under the relevant planning scheme or planning permit and where an Environment Effects Statement was prepared and assessed under sub section (7) before the authority was granted and the work was not considered in that Environment Effects Statement (unless the new section 42A applies (see clause 41 below)).

Sub-clause (7) makes a consequential amendment.

Clause 41 inserts a new section 42A that provides for instances when a planning permit is not required for work variations. This section would apply where there is a proposal to vary an approved work plan for work for which an Environment Effects Statement was prepared and a permit would be required for the new work under a planning scheme. Under the provision, a permit is not required where, after consultation with the Minister administering the **Environment Effects Act 1978**, the Minister is satisfied that the

work will not cause any significant additional environment impacts. The section also provides for a process that applies where the Minister is not so satisfied.

Clause 42 makes amendments to section 43 that deals with when the holder of an exploration licence can commence work. The clause makes amendments consequential to the amendments to section 40 of the Act which provide that some exploration activities of low impact are to be authorised to take place by virtue of the grant of a licence without further approvals.

Consistent with the provisions relating to commencement of work under a mining licence, this provision: reduces the requirement for giving 21 days notice of commencement of work to 7 days; provides for consents to be given by owners of native title land as well as private land holders; provides that the relevant Department Head not only be satisfied that any relevant compensation agreement be lodged but that it also be registered; and inserts a new provision which allows a work authority to be granted where the identity of the landowner could not be determined.

The provision also inserts new provisions that apply in relation to giving notice to owners of native title where there is no approved determination of native title and provisions which apply when the licensee was unable to determine the identity of the land owner.

Clause 43 makes a housekeeping amendment to ensure that the section has its intended effect and cannot be interpreted with the effect that planning requirements do not apply with respect to unrestricted Crown land.

Clause 44 inserts a new section 44(6) of the Act. The new provision provides for a deemed consent to apply where a person or body whose consent is being sought under section 44 is not given or refused after 28 days. The provision does not apply in respect of native title land. The clause also makes housekeeping amendments.

Clause 45 makes technical amendments to section 45 that relates to protection of buildings and sites, to more appropriately provide for the protection given to archaeological and aboriginal sites.

Clause 46 provides that the Minister may—

- after considering the advice of the Mining and Environment Advisory Committee; or
- after consultation with the Council in whose municipal district the land is situated and any member of the community or community group whom the Minister considers should be consulted about the proposed work—

authorise a licensee to do work within the area prohibited by section 45 (1)(a)(i) to (x) or within 100 metres below that area. Under the existing provisions the Minister may only consult with the Mining and Environment Advisory Committee.

Clause 47 repeals section 47 of the Act. Requirements for lodgement of plans at required times will be provided for by regulation.

Clause 48 substitutes section 47A with a new provision providing for the appointment of mine managers. Under the new provisions there is no requirement for managers to have a mine manager's certificate. However there is an onus on the licence holder to appoint a competent person to control and manage the licence worksites. "Competent person" is defined. This amendment is consistent with the repeal of Part 10 dealing with Mine Manager's Certificates made by clause 65 of the Bill.

Clause 49 amends section 55 of the Act which deals with miner's rights to provide that persons operating under the authorisation of a miner's right can remove minerals upon discovery in addition to searching for minerals. It also provides that a miner's right entitles the holder to search for minerals on private, native title land and Crown land covered by a mining licence (other than land excluded by paragraph (1)(b)) with the consent of the licensee. Provision is also made to allow search and removal of minerals on native title land with the consent of the owner as with the current provisions applying to private land.

Clause 50 amends section 58 of the Act which deals with prohibitions on miner's right holders, to clarify that it applies to a person who searches for minerals and also a person who subsequently removes minerals from the land.

It also increases the penalty for the offence of not repairing damage to land resulting from a search from 10 to 100 penalty units.

The clause also inserts a new sub-section to ensure that the holder of a miner's right must produce the miner's right on demand not only to an Inspector but also a person acting under a delegation under section 91(b).

Clause 51 amends section 51 of the Act which deals with the entitlements of a tourist fossicking authority, to provide that the consent of native title owners and occupiers is required in the same way as that of private land owners and occupiers.

Clause 52 amends Part 6 of the Act that deals with the Mining Register.

Sub-clause(1) repeals section 68 that provides for a mining registrar.

Sub-clause (2) substitutes references to the Registrar with references to the "Department Head"

Sub-clause (3) substitutes a reference to "authorities to commence work" with the new reference to "work authorities and provides for the registration in the register of refusals of applications for licences and mortgages".

Sub-clause (4) amends section 74 of the Act to provide for a person who pays the prescribed fee to obtain a copy of a registered work plan and registered variation to a work plan.

Sub-clause (5) makes provision for the Department Head to exclude information which is confidential or commercially sensitive.

Clause 53 amends section 79 that provides requirements for rehabilitation plans. The clause provides for a new requirement that the plans take account of any long term degradation of the environment. An amendment is also made to ensure that owners of native title land are consulted in the same way as owners of private land.

Clause 54 amends section 80 that provides for licensees entering into rehabilitation bonds. The clause ensures that the same consultation occurs in respect of native title land that currently is required in respect of private land. The clause also provides for an increase in the penalty for non compliance with a notice

requiring a further rehabilitation bond and a new default penalty when the offence continues after conviction.

Clause 55 amends section 82 that relates to the return of rehabilitation bonds. The clause provides for a new provision that allows the Minister to require a further rehabilitation bond as a condition of returning a bond if any part of the land has not been rehabilitated. An amendment is also made to ensure that owners of native title land are consulted in the same way as owners of private land.

Clause 56 substitutes the current sub-section (6) of section 83 with a new provision which provides that in making a decision under sub-section (5) to return a rehabilitation bond, the Minister must take account the possibility that damage to the land may not become evident for some time.

Clause 57 amends section 85 of the Act that deals with the basis for which compensation is paid to an owner or occupier of land. The clause inserts as an additional head of compensation the loss of opportunity to use tailings which are produced as a consequence of a section 14(2) consent. The clause also ensures that the owner of native title land has the same rights to compensation as an owner of private land and that that any compensation paid to a native title holder is on just terms where that person is entitled to compensation on just terms under the **Native Title Act 1993** of the Commonwealth.

The clause also provides for applications to the Victorian Civil and Administrative Tribunal for dispute in relation to native title land as well as private land (excluding disputes over "just terms") and to provide that in determining compensation the Court or Tribunal must take into account any amount of compensation that has been determined or agreed under the **Native Title Act 1993** of the Commonwealth.

Clause 58 inserts a new section 85A to provide for compensation to be payable for loss or damage to Crown land. The new provisions provides that the Minister may require compensation to be paid by the licence holder to—

- the Crown; or

- any person who is authorised to undertake activities authorised on the land under a lease, licence, permit or other authority granted under an Act—

for any loss or damage that has been or will be sustained as a direct, natural and reasonable consequence of the approval or the undertaking of the work which involves any of the following—

- deprivation of possession of the whole of or any part of the surface of the land;
- damage to the surface of the land to such an extent that the Minister is satisfied that the land cannot be rehabilitated and returned to its former or commensurate state;
- damage to any improvements on the land;
- severance of the land from other Crown land;
- loss of opportunity to make any planned improvement on the land.

The Minister must take into account any forms of benefit (such as but not limited to the provision of infrastructure) that may accrue to the public from the undertaking of work when determining whether compensation should be required to be paid to the Crown.

Also in determining the amount of compensation to be paid the Minister may, if it is necessary for the Crown to obtain replacement land, take account of the reasonable expenses incurred in obtaining that land.

Also provision is to be made for an ability to pay a solatium of up to 10% to a person specified above in a similar manner as applies to an owner of freehold land.

Clause 59 inserts a new section 88A dealing with determining disputes over compensation payable in respect of Crown land under the new section 85A.

Clause 60 amends section 89 of the Act to limit the amount of compensation that a Court or Tribunal may order to be paid for loss of amenity under clause 85(1)(e) to \$10 000.

- Clause 61 inserts a new section 89A which provides that where the Act provides for processes which are similar to those which have applied under the **Native Title Act 1993** of the Commonwealth, the processes in the Act do not apply.
- Clause 62 amends section 90 of the Act that provides for the employment of a "chief mining inspector" by substituting the reference with a reference to the "Director of Mines". The reference is also substituted wherever else it appears in the Act.
- Clause 63 inserts new penalties for obstructing, threatening etc an inspector, for not complying with a request by an inspector and making false statements to an inspector.
- Clause 64 repeals Part 10 of the Act that deals with Mine Managers' Certificates. This is consistent with the new section 47A inserted by clause 48.
- Clause 65 amends section 110 of the Act to provide the Minister with additional grounds upon which a notice to cease work may be served and more flexibility in what the Notice can order the licensee to do.
- Clause 66 inserts new section 111A to provide for default penalties to accrue for offences that continue after the conviction. This provision applies generally for offences against the Act where default penalties are specified.
- Clause 67 amends section 112 to ensure that the Minister can authorise airborne surveys in addition to other surveys; to reinforce that such authorisation can only apply with respect to surveys on behalf of the Crown; and to clarify that any liability for compensation for entering private land pursuant to an authorisation under this section rests with the Crown and not any contractor or other party actually conducting the survey.
- Clause 68 amends section 114 of the Act that provides for abandoned plant to become property of the Crown.
- The clause provides for the proceeds from the sale of abandoned property to be used to cover the cost of the Minister rehabilitating the land under section 83(1) where the cost of rehabilitation exceeds the amount of the bond. Where money is

not required for rehabilitation it will be paid into the Consolidated Fund.

The clause also provides that the section does not apply where the property is situated on private property in the ownership of the licensee.

- Clause 69 substitutes a provision prohibiting the release of certain documents without consent with a provision that allows the Minister to make a document available for inspection in specified circumstances.
- Clause 70 substitutes the current section 123 that is redundant in light of the amendments made to section 26 by clause 21. The new section 123 limits the jurisdiction of the Supreme Court in relation to the payment of compensation for loss of amenity as a consequence of section 89(3).
- Clause 71 makes consequential amendments to the regulation making powers.
- Clause 72 inserts a new provision stating the savings and transitional provisions are set out in Schedule 5.
- Clause 73 provides for increases in penalty provisions for various offences.
- Clause 74 inserts the new Schedule 5 that provides for the savings and transitional provisions.