

Passed by both Houses



New South Wales

Mining and Petroleum Legislation Amendment (Grant of Coal and Petroleum Prospecting Titles) Bill 2015

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I certify that this public bill, which originated in the Legislative Assembly, has finally passed the Legislative Council and the Legislative Assembly of New South Wales.

*Clerk of the Legislative Assembly,
Legislative Assembly,
Sydney,*

, 2015



New South Wales

Mining and Petroleum Legislation Amendment (Grant of Coal and Petroleum Prospecting Titles) Bill 2015

Act No , 2015

An Act to amend the *Mining Act 1992* and the *Petroleum (Onshore) Act 1991* to make provision for competitive selection for prospecting titles for coal and petroleum.

See also the *Mining and Petroleum Legislation Amendment (Harmonisation) Act 2015*, the *Mining and Petroleum Legislation Amendment (Land Access Arbitration) Act 2015*, the *Protection of the Environment Operations Amendment (Enforcement of Gas and Other Petroleum Legislation) Act 2015* and the *Work Health and Safety (Mines and Petroleum) Legislation Amendment (Harmonisation) Act 2015*.

I have examined this bill and find it to correspond in all respects with the bill as finally passed by both Houses.

Assistant Speaker of the Legislative Assembly.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Mining and Petroleum Legislation Amendment (Grant of Coal and Petroleum Prospecting Titles) Act 2015*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

Schedule 1 Amendment of Mining Act 1992 No 29

[1] Section 13 Application for exploration licence

Insert after section 13 (3):

- (3A) An application that relates to land in a controlled release area may not be made in relation to any group of minerals that includes a controlled release mineral except:
- (a) pursuant to an invitation under Schedule 1A (Competitive selection process for controlled release prospecting titles), or
 - (b) under section 13C (Application for operational allocation licence by existing authority holders), or
 - (c) by the Secretary on behalf of the Crown under section 13D (Crown pre-competitive exploration licences).

[2] Section 13A Notice of application for exploration licence

Insert after section 13A (2):

- (3) This section does not apply to an application made pursuant to an invitation under Schedule 1A (Competitive selection process for controlled release prospecting titles).

[3] Sections 13C and 13D

Insert after section 13B:

13C Application for operational allocation licence by existing authority holders

- (1) The holder of an exploration licence, assessment lease or mining lease for coal may apply under this section for an exploration licence for coal.
- (2) An application under this section is subject to the following requirements:
 - (a) the application must be for a purpose that is prescribed by the regulations as an *operational allocation purpose*,
 - (b) the land to which the application relates must comply with the regulations in relation to shape, size and such other features as may be prescribed,
 - (c) such other requirements as may be prescribed by the regulations.
- (3) Without limiting any other provision of this Act, an application under this section may be refused on any one or more of the following grounds:
 - (a) the decision-maker is not satisfied that the application is for an operational allocation purpose,
 - (b) the decision-maker is satisfied that there is sufficient interest from other potential applicants to justify a competitive selection process for the grant of an exploration licence over the area concerned,
 - (c) the decision-maker is satisfied that the application does not comply with any requirement of this section or the regulations.
- (4) Without limiting any other provision of this Act, in deciding whether to grant or refuse an application under this section the decision-maker may take into account any guidelines issued (and made publicly available) by the Minister for the purposes of this section.

13D Crown pre-competitive exploration licences

- (1) The Secretary may apply on behalf of the Crown for an exploration licence (a *Crown pre-competitive exploration licence*) for a controlled release mineral within a controlled release area to authorise prospecting for the purpose of obtaining information about the potential mineral bearing qualities of land in the State.
- (2) The regulations may make provision for or with respect to the following:
 - (a) requirements for prospecting conducted under a Crown pre-competitive exploration licence including the purposes for which prospecting is to be undertaken and the criteria that prospecting under the licence is to satisfy,
 - (b) procedures for the relinquishment of a Crown pre-competitive exploration licence when prospecting under the licence is completed.
- (3) The rights conferred by section 29 (Rights under exploration licence) on the holder of a Crown pre-competitive exploration licence are subject to the requirements of the regulations under this section.

[4] Section 19 (1A)

Insert after section 19 (1):

- (1A) Despite subsection (1) (c) (i), an exploration licence may be granted over land the subject of a preceding application for an exploration licence if:
 - (a) the application for the firstmentioned exploration licence was made pursuant to an invitation under Schedule 1A (Competitive selection process for controlled release prospecting titles), and
 - (b) that invitation was issued before the preceding application was lodged.

[5] Section 33 Application for assessment lease

Insert after section 33 (3):

- (3A) An application that relates to land in a controlled release area may not be made in relation to a controlled release mineral except:
 - (a) by the holder of an exploration licence or mining lease over that land in respect of that mineral or group of minerals, or
 - (b) pursuant to an invitation under Schedule 1A (Competitive selection process for controlled release prospecting titles).

[6] Section 33A Notice of application for assessment lease

Insert after section 33A (2):

- (3) This section does not apply to an application made pursuant to an invitation under Schedule 1A (Competitive selection process for controlled release prospecting titles).

[7] Section 37 (1A)

Insert after section 37 (1):

- (1A) Despite subsection (1) (c) (i) and (ii), an assessment lease may be granted over land the subject of a preceding application for an exploration licence or assessment lease if:
- (a) the application for the firstmentioned assessment lease was made pursuant to an invitation under Schedule 1A (Competitive selection process for controlled release prospecting titles), and
 - (b) that invitation was issued before the preceding application was lodged.

[8] Section 41 Power of decision-maker in relation to applications

Omit section 41 (4). Insert instead:

- (4) However, Part 1 of Schedule 1 does not apply to an application for an assessment lease made:
- (a) by the holder of a mining lease over the same land as that over which the assessment lease is sought, or
 - (b) pursuant to an invitation under Schedule 1A (Competitive selection process for controlled release prospecting titles).

[9] Section 51 Application for mining lease

Omit “or assessment lease” from section 51 (3) (a).

Insert instead “, assessment lease or mining lease”.

[10] Section 51 (3A)

Insert after section 51 (3):

- (3A) An application that relates to land in a controlled release area may not be made in relation to a controlled release mineral except by the holder of an exploration licence, assessment lease or mining lease over that land in respect of that mineral.

[11] Section 52 Invitations for tenders

Insert “and to controlled release minerals in land within a controlled release area” after “area” in section 52 (1).

[12] Section 52 (2)

Insert “(within a mineral allocation area) or a controlled release mineral (within a controlled release area)” after “allocated mineral”.

[13] Section 52 (3) (b)

Insert “or controlled release mineral” after “allocated mineral”.

[14] Section 182 Opal prospecting blocks, reserves, mineral allocation areas and controlled release areas

Insert “or controlled release area” after “area” in section 182 (2).

[15] Section 223 Certain land not to be included in opal prospecting area

Insert “, a controlled release area,” after “exempted area” in section 223 (1) (c).

[16] Section 364 (2)

Insert “or for a controlled release mineral in respect of land within a controlled release area” after “area”.

[17] Section 368 Mineral allocation areas

Insert after section 368 (3):

- (4) A mineral is not an allocated mineral in an area while the mineral is a controlled release mineral in that area.

[18] Section 368A

Insert after section 368:

368A Controlled release areas

- (1) The Minister may, by order published in the Gazette, constitute any land as a controlled release area and may, by the same or a subsequent order so published, name the area and fix its boundaries.
- (2) A controlled release area may be constituted for all minerals, for specified minerals or groups of minerals or for all minerals other than specified minerals or groups of minerals.
- (3) The whole State is constituted as a controlled release area for coal.
- (4) More than one controlled release area may be constituted in respect of any area.

[19] Schedule 1A

Insert before Schedule 1:

Schedule 1A Competitive selection process for controlled release prospecting titles

(Sections 13 and 33)

1 Definition

In this Schedule *controlled release prospecting title* means an exploration licence or assessment lease that relates to a controlled release mineral in a controlled release area.

2 Invitations for competitive selection applications

- (1) The decision-maker may by notice published in the Gazette invite applications (*competitive selection applications*) for the grant of a controlled release prospecting title in a specified area on the basis of competitive selection for the grant of the title.
- (2) An invitation for competitive selection applications can stipulate information that is to accompany the application in addition to information required to accompany the application under section 13 or 33.
- (3) An invitation for competitive selection applications can relate to more than one area of land.
- (4) The decision-maker may by notice published in the Gazette vary or withdraw an invitation for competitive selection applications, and the regulations may

make provision for or with respect to the consequences of the variation or withdrawal of an invitation.

- (5) Section 136 does not apply to an invitation for competitive selection applications or to a competitive selection application.

3 Competitive selection process

- (1) The decision-maker is to determine the process for competitive selection for the grant of a controlled release prospecting title.
- (2) The process for competitive selection can be different for different areas of land and for different controlled release minerals.
- (3) An invitation for competitive selection applications is to include such information as to the process for competitive selection as the decision-maker considers appropriate.

4 Matters to be taken into account in competitive selection process

- (1) Without limiting any other provision of this Act, the decision-maker must take into account in the competitive selection process:
- (a) any matter that the decision-maker is required under this Act to take into account in considering an application for the grant of an exploration licence or assessment lease, and
- (b) any matter prescribed by the regulations.
- (2) The decision-maker may determine any other matters that are to be considered in the competitive selection process and the weight or emphasis to be given to those matters.

5 Consideration for grant of controlled release prospecting title

- (1) An invitation for competitive selection applications can include a requirement for applications to include an undertaking that the applicant will pay an amount specified in the application or an amount determined through a competitive selection process as consideration offered for the grant of the controlled release prospecting title.
- (2) The process for competitive selection can include the public release of information as to the consideration offered by applicants for the grant of a controlled release prospecting title.
- (3) The amount of consideration undertaken to be paid by an applicant for the grant of a controlled release prospecting title is a factor that can be a relevant consideration in the competitive selection process.
- (4) The grant of a controlled release prospecting title can be delayed until the amount of any consideration payable for the grant of the title is paid or arrangements for payment or security for payment that are satisfactory to the decision-maker have been entered into.
- (5) Any amount paid as consideration for the grant of a controlled release prospecting title is not refundable in the event of the title being cancelled.

6 Determination of applications

- (1) After a competitive selection application has been considered in accordance with this Schedule, the application is to be dealt with and determined in accordance with the provisions of this Act as they relate to an application for an exploration licence or assessment lease (as appropriate). Accordingly, a power of the decision-maker under this Act to refuse an application for an

exploration licence or assessment lease applies to a competitive selection application.

Note. A competitive selection process does not guarantee that a controlled release prospecting title will be issued (because all competing applications may be refused).

- (2) If a competitive selection application fails to meet the requirements of the invitation in relation to which it is made, the application can be refused at any time during the competitive selection process without waiting for the process to be finalised.

[20] Schedule 6 Savings, transitional and other provisions

Insert at the end of the Schedule with appropriate Part and clause numbering:

Part Provisions consequent on enactment of Mining and Petroleum Legislation Amendment (Grant of Coal and Petroleum Prospecting Titles) Act 2015

Definition

In this Part, *2015 amending Act* means the *Mining and Petroleum Legislation Amendment (Grant of Coal and Petroleum Prospecting Titles) Act 2015*.

Existing consents and pending applications

- (1) An application for the consent of the Minister under section 13 (3) made before the commencement of section 13 (3A) and relating to coal is to be dealt with as if the 2015 amending Act had not been enacted.
- (2) Section 13 (3) continues to apply (as if the 2015 amending Act had not been enacted) to and in respect of an application for an exploration licence, or assessment lease, for coal for which the consent of the Minister is in force immediately before the commencement of section 13 (3A) or that is given after that commencement pursuant to an application for consent made before that commencement.

[21] Dictionary

Insert in alphabetical order:

controlled release area means a controlled release area constituted under section 368A.

controlled release mineral in relation to a controlled release area, means a mineral or group of minerals in respect of which the controlled release area is constituted.

Schedule 2 Amendment of Petroleum (Onshore) Act 1991 No 84

[1] Section 8

Omit the section. Insert instead:

8 Application for petroleum title

- (1) Any person may apply for a petroleum title.
- (2) The following applications may not be made except pursuant to an invitation under Schedule 1A (Competitive selection process for petroleum prospecting titles):
 - (a) an application for an exploration licence or special prospecting authority,
 - (b) an application for an assessment lease made by an applicant other than the holder of an exploration licence over the land in respect of which the assessment lease is sought.

[2] Section 9 (1A)

Insert after section 9 (1):

- (1A) Despite subsection (1) (c), the Minister may grant a petroleum title over an area included in another application for a petroleum title if that other application and the applicant's application are both made pursuant to an invitation under Schedule 1A (Competitive selection process for petroleum prospecting titles).

[3] Section 10 Applications to relate to one area only

Omit the section.

[4] Section 19 Renewal of title

Insert after section 19 (4):

- (4A) The area of land over which a petroleum title is renewed may differ from the area of land over which the renewal of the title is sought, but not so as to include any land that was not subject to the title immediately before the renewal.

[5] Section 28B

Insert before section 29:

28B Land over which exploration licence granted

An exploration licence may be granted over all or part of the land over which a licence was sought.

[6] Section 32A

Insert before section 33:

32A Land over which assessment lease granted

An assessment lease may be granted over all or part of the land over which a lease was sought.

[7] **Schedule 1A**

Insert before Schedule 1:

Schedule 1A Competitive selection process for petroleum prospecting titles

(Section 8)

1 Definition

In this Schedule, *petroleum prospecting title* means an exploration licence, assessment lease or special prospecting authority under this Act.

2 Invitations for competitive selection applications

- (1) The Minister may by notice published in the Gazette invite applications (*competitive selection applications*) for the grant of a petroleum prospecting title for a specified area of land on the basis of competitive selection for the grant of the title.
- (2) An invitation for competitive selection applications can stipulate information that is to accompany the application in addition to information required to accompany the application under Division 1 of Part 3 of this Act.
- (3) An invitation for competitive selection applications can relate to more than one area of land.
- (4) The Minister may by notice published in the Gazette vary or withdraw an invitation for competitive selection applications, and the regulations may make provision for or with respect to the consequences of the variation or withdrawal of an invitation.

3 Competitive selection process

- (1) The Minister is to determine the process for competitive selection for the grant of a petroleum prospecting title.
- (2) The process for competitive selection can be different for different areas of land.
- (3) An invitation for competitive selection applications is to include such information as to the process for competitive selection as the Minister considers appropriate.

4 Matters to be taken into account in competitive selection process

- (1) Without limiting any other provision of this Act, the Minister must take into account in the competitive selection process:
 - (a) any matter that the Minister is required under this Act to take into account in considering an application for the grant of an exploration licence, assessment lease or special prospecting authority, and
 - (b) any matter prescribed by the regulations.
- (2) The Minister may determine any other matters that are to be considered in the competitive selection process and the weight or emphasis to be given to those matters.

5 Consideration for grant of petroleum prospecting title

- (1) An invitation for competitive selection applications can include a requirement for applications to include an undertaking that the applicant will pay an amount specified in the application or an amount determined through a competitive selection process as consideration offered for the grant of the petroleum prospecting title.
- (2) The process for competitive selection can include the public release of information as to the consideration offered by applicants for the grant of a petroleum prospecting title.
- (3) The amount of consideration undertaken to be paid by an applicant for the grant of a petroleum prospecting title is a factor that can be a relevant consideration in the competitive selection process.
- (4) The grant of a petroleum prospecting title can be delayed until the amount of any consideration payable for the grant of the title is paid or arrangements for payment or security for payment that are satisfactory to the Minister have been entered into.
- (5) Any amount paid as consideration for the grant of a petroleum prospecting title is not refundable in the event of the title being cancelled.

6 Determination of applications

- (1) After a competitive selection application has been considered in accordance with this Schedule, the application is to be dealt with and determined in accordance with the provisions of this Act as they relate to an application for an exploration licence, assessment lease or special prospecting authority (as appropriate). Accordingly, a power of the Minister under this Act to refuse an application for an exploration licence, assessment lease or special prospecting authority applies to a competitive selection application.
Note. A competitive selection process does not guarantee that a petroleum prospecting title will be issued (because all competing applications may be refused).
- (2) If a competitive selection application fails to meet the requirements of the invitation in relation to which it is made, the application can be refused at any time during the competitive selection process without waiting for the process to be finalised.

[8] Schedule 1 Savings and transitional provisions

Insert at the end of the Schedule with appropriate Part and clause numbering:

Part Provisions consequent on enactment of Mining and Petroleum Legislation Amendment (Grant of Coal and Petroleum Prospecting Titles) Act 2015

Definition

In this Part, *2015 amending Act* means the *Mining and Petroleum Legislation Amendment (Grant of Coal and Petroleum Prospecting Titles) Act 2015*.

Grant of exploration licence for designated area

- (1) A designated area application is not affected by the amendments made by the 2015 amending Act and accordingly is to be dealt with as if the 2015 amending Act had not been enacted.

- (2) An application is a *designated area application* if:
- (a) it is an application for an exploration licence made (and not withdrawn or otherwise finally disposed of) under this Act before the commencement of the amendment made by the 2015 amending Act that substitutes section 8, and
 - (b) on the commencement of that amendment, a designation is in force under section 9 (1) (a) in respect of the area over which the exploration licence is sought.

[9] Schedule 2 Expunged petroleum title applications

Omit “take fresh title action in respect of any area for which an expunged application was made (a *relevant area*)” from clause 6 (1).

Insert instead “grant a petroleum title in respect of any area for which an expunged application was made”.

[10] Schedule 2, clause 6 (1) (a)

Omit “a new application for the petroleum title concerned”.

Insert instead “an application pursuant to an invitation under Schedule 1A in relation to the petroleum title concerned (a *competitive selection application*)”.

[11] Schedule 2, clause 6 (1) (b)

Omit “new” wherever occurring. Insert instead “competitive selection”.

[12] Schedule 2, clause 6 (2)

Omit the subclause.