

Passed by both Houses



New South Wales

# Mining and Petroleum Legislation Amendment Bill 2017

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**The Legislature of New South Wales enacts:**

**1 Name of Act**

This Act is the *Mining and Petroleum Legislation Amendment Act 2017*.

**2 Commencement**

This Act commences on the date of assent to this Act.

## **Schedule 1 Amendment of Mining Act 1992 No 29**

### **[1] Whole Act (except Schedule 6 and where otherwise amended by this Schedule)**

Omit “mining purposes”, “a mining purpose”, “particular mining purpose”, “the mining purpose”, “any mining purpose” and “specified mining purpose” wherever occurring.

Insert instead “ancillary mining activities”, “an ancillary mining activity”, “particular ancillary mining activity”, “the ancillary mining activity”, “any ancillary mining activity” and “specified ancillary mining activity”, respectively.

### **[2] Section 6**

Omit the section. Insert instead:

#### **6 Unauthorised carrying out of designated ancillary mining activities**

##### **(1) Carrying out of designated ancillary mining activities within authorisation area**

A person must not carry out a designated ancillary mining activity on land within an authorisation area except in accordance with the authorisation.

##### **(2) Carrying out of designated ancillary mining activities outside mining area**

A person must not, on land that is not within the mining area of a mining lease, carry out a designated ancillary mining activity that is in the immediate vicinity of and that directly facilitates the mining lease concerned, except in accordance with:

- (a) a condition of the mining lease that regulates the carrying out of the activity, or
- (b) another mining lease in respect of an ancillary mining activity or activities only that authorises the carrying out of the activity.

##### **(3) Carrying out of designated ancillary mining activities outside claim area, but within mineral claims district**

A person must not, on land that is not within the claim area of a mineral claim, but is within a mineral claims district, carry out a designated ancillary mining activity, except in accordance with:

- (a) a mining lease in respect of an ancillary mining activity or activities only that authorises the carrying out of the activity, or
- (b) a mineral claim in respect of an ancillary mining activity or activities only that authorises the carrying out of the activity.

##### **(4) Carrying out of designated ancillary mining activities outside mineral claims district**

A person must not, on land that is not within a mineral claims district, carry out a designated ancillary mining activity that is in the immediate vicinity of and that directly facilitates a mineral claim, except in accordance with a mining lease in respect of an ancillary mining activity or activities only that authorises the carrying out of the activity.

##### **(5) Exemptions**

The regulations may provide for the exemption (including by order of the Minister) of a person or class of persons from the operation of this section with respect to the carrying out of a designated ancillary mining activity, or a class of designated ancillary mining activities.

(6) **Definition**

In this section, *designated ancillary mining activity* means the following:

- (a) the construction, maintenance or use of any reservoir, dam (including a tailings dam), drain or water race, other than any reservoir, dam, drain or water race principally used for purposes not connected with mining or any other activities regulated by or under an authorisation,
- (b) opal puddling,
- (c) the removal, stockpiling or depositing of overburden, ore or tailings to the extent that it is associated with mineral extraction or mineral beneficiation.

Maximum penalty:

- (a) in the case of a corporation—10,000 penalty units, and, in the case of a continuing offence, a further penalty of 1,000 penalty units for each day that the offence continues, or
- (b) in the case of a natural person—2,000 penalty units or imprisonment for 5 years, or both, and, in the case of a continuing offence, a further penalty of 200 penalty units for each day that the offence continues.

[3] **Section 13 Application for exploration licence**

Insert after section 13 (5) (e):

- (e1) if the application is for an exploration licence over land that is the subject of another exploration licence for the same group or groups of minerals, the written consent of the holder of that other exploration licence,

[4] **Sections 51 (4) (a), 63 (5), 72 (b), 73 (1A), 178 (2) (b), 194 (2) (b) and 195 (1B)**

Omit “the mining purpose or mining purposes” wherever occurring.

Insert instead “the ancillary mining activity or activities”.

[5] **Sections 63 (5) and (6), 73 (1A), 75 (1A) and 195 (1B) and clause 7A (2) of Schedule 1B and clauses 12 (b) and 16 (b) of Schedule 1**

Omit “a mining purpose or mining purposes” wherever occurring.

Insert instead “an ancillary mining activity or activities”.

[6] **Section 63 Power of decision-maker in relation to applications**

Omit “in connection with and in the immediate vicinity of” from section 63 (5).

Insert instead “in the immediate vicinity of and to directly facilitate”.

[7] **Section 63 (7)**

Insert after section 63 (6):

- (7) The decision-maker, in deciding whether to grant or refuse an application for a mining lease for an ancillary mining activity or activities only, is to have regard to guidelines issued (and made publicly available) by the Secretary for the purposes of this subsection.

**[8] Section 65 Development consents under Environmental Planning and Assessment Act 1979**

Insert after section 65 (3):

- (4) In this section, a reference to granting a mining lease over land includes a reference to imposing a condition on a mining lease relating to the carrying out of an ancillary mining activity on land (whether or not within the mining area of the mining lease).

**[9] Section 240A Prohibition notices**

Insert after section 240A (1):

- (1A) If the Secretary or an inspector reasonably suspects that a person is carrying out, or is about to carry out, an activity in contravention of section 6 (Unauthorised carrying out of designated ancillary mining activities), the Secretary or inspector may direct the person to discontinue that activity.

**[10] Section 246P Conditions for mandatory audits**

Insert “by the decision-maker” after “imposed” in section 246P (1).

**[11] Section 261G Lapsing of security deposit requirement and return of money**

Omit section 261G (1). Insert instead:

- (1) Any money obtained under a security deposit that is not used under section 261F is to be paid (without interest) as follows:
- (a) to the person who provided the deposit,
  - (b) if the person who provided the deposit is unable to be located despite reasonable endeavours, to the holder of the authorisation concerned,
  - (c) if the person who provided the deposit and the holder of the authorisation are unable to be located despite reasonable endeavours, into the Derelict Mine Sites Fund.

**[12] Section 378C Providing false or misleading information**

Omit the penalty provision. Insert instead:

Maximum penalty:

- (a) in the case of a corporation—10,000 penalty units, or
- (b) in the case of a natural person—2,000 penalty units.

**[13] Section 378C (2)–(4)**

Insert at the end of section 378C:

- (2) A holder of an authorisation must ensure that an agent, employee or any other person acting on behalf of the holder does not provide any information, record or return in purported compliance with any requirement by or under this Act in connection with the holder’s authorisation in contravention of subsection (1).

Maximum penalty:

- (a) in the case of a corporation—10,000 penalty units, or
- (b) in the case of a natural person—2,000 penalty units.

- (3) It is a defence to a prosecution of the holder of an authorisation for an offence against subsection (2) if the holder establishes that the holder took all reasonable steps to prevent the contravention of the subsection.

- (4) A holder of an authorisation may be proceeded against and convicted under subsection (2) whether or not the agent, employee or other person has been proceeded against or been convicted for the offence against subsection (1).

**[14] Section 378H Proceedings for offences**

Omit “378D or 378ZF” from section 378H (1) (a).

Insert instead “378C, 378D, 378ZF or 378ZFE”.

**[15] Sections 378H (3) and 378I (1) (a) and (2) (a)**

Omit “6 (1),” wherever occurring. Insert instead “6,”.

**[16] Section 378ZFB Secretary may accept enforceable undertakings**

Insert after section 378ZFB (3):

- (4) The Secretary must publish, and make public, a copy of each enforceable undertaking accepted by the Secretary under this section.

**[17] Section 378ZFF Contravention of enforceable undertaking**

Omit “District Court” from section 378ZFF (1).

Insert instead “Land and Environment Court”.

**[18] Section 378ZFF (2)**

Omit “, in addition to the imposition of any penalty,”.

**[19] Section 378ZFF (2A)**

Insert after section 378ZFF (2):

- (2A) The Court may make an order under this section whether or not proceedings have been instituted for an offence against section 378ZFE for the contravention of the enforceable undertaking.

**[20] Section 378ZFG Withdrawal or variation of enforceable undertaking**

Omit section 378ZFG (3). Insert instead:

- (3) The Secretary must publish, and make public, the following:
- (a) notice of the withdrawal of an enforceable undertaking,
  - (b) notice and a copy of the variation of an enforceable undertaking.

**[21] Section 378ZFH Proceeding for alleged contravention**

Omit “if an enforceable undertaking is in effect in relation to that contravention” from section 378ZFH (1).

Insert instead “if the person has made an enforceable undertaking in relation to that contravention and the enforceable undertaking is in effect”.

**[22] Section 383 Service of documents**

Omit section 383 (1) (d). Insert instead:

- (d) by sending it by email to an email address specified by the person for the service of notices or documents of that kind, or

**[23] Schedule 1B Further provisions relating to authorisations generally**

Insert after clause 5 (2):

- (3) In this clause, in relation to an application to approve the transfer of an authorisation, a reference to a person who makes an application to which this Schedule applies or to an applicant includes a reference to the proposed transferee concerned.

**[24] Schedule 1B, clause 6 (d) and (d1)**

Omit clause 6 (d). Insert instead:

- (d) the applicant has failed to lodge any information required to accompany the application within 10 business days after the application is lodged (other than a written consent referred to in section 13 (5) (e1)),
- (d1) the applicant has failed to lodge a written consent with the application (as referred to in section 13 (5) (e1)),

**[25] Schedule 1B, clause 7 (1) (b1)**

Omit “clause 7A”. Insert instead “clauses 7A and 7B”.

**[26] Schedule 1B, clause 7B**

Insert after clause 7A:

**7B Conditions of mining leases relating to ancillary mining activities**

- (1) Without limiting clause 7 (1) and (2), a condition imposed by the relevant decision-maker or prescribed by the regulations under that clause in the case of a mining lease may regulate the carrying out of one or more ancillary mining activities.  
**Note.** Section 65 (2) provides that nothing in this Act permits an activity, for which development consent is required, to be carried out without the consent being obtained in accordance with the *Environmental Planning and Assessment Act 1979*.
- (2) Without limiting subclause (1), a condition of a mining lease that regulates the carrying out of an ancillary mining activity may require any one or more of the following:
  - (a) that the ancillary mining activity be carried out in a specified manner in order to protect or prevent, control or mitigate harm to the environment,
  - (b) that, in specified circumstances, the ancillary mining activity not be carried out in order to protect or prevent, control or mitigate harm to the environment,
  - (c) that the holder of the mining lease rehabilitate land or water that is or may be affected by the carrying out of the ancillary mining activity,
  - (d) that the holder of the mining lease provide the Minister with reports detailing any non-compliance with the conditions of the mining lease, or any requirements of this Act or the regulations relating to activities under the authorisation, and any action taken, or to be taken, to prevent any recurrence, or to mitigate the effects of that non-compliance,
  - (e) that the holder of the mining lease provide reports regarding the carrying out of the ancillary mining activity (including compliance with conditions of the mining lease regarding the ancillary mining activity).

- (3) A condition may regulate the carrying out of an ancillary mining activity on land that is not within the mining area that is the subject of the mining lease only if:
  - (a) the mining lease is a mining lease in respect of a mineral or minerals, and
  - (b) the ancillary mining activity is to be carried out in the immediate vicinity of and to directly facilitate the mining lease concerned.
- (4) Nothing in a condition referred to in subclause (3) authorises the carrying out of an ancillary mining activity (or the exercise of any power or right in connection with an ancillary mining activity) that is not authorised to be carried out (or exercised) under another Act or law.
- (5) However, a reference to the following:
  - (a) an exercise of rights conferred by a lease in section 265 (Compensation arising under mining lease),
  - (b) an exercise of a right or power in section 383C (General immunity of landholders),includes a reference to the carrying out of the following activities:
  - (c) an activity required by a condition referred to in subclause (3), but not the carrying out of the ancillary mining activity itself,
  - (d) an activity consisting of the environmental management, protection or rehabilitation of land on which an ancillary mining activity is being or has been carried out in accordance with a condition referred to in subclause (3).
- (6) A decision-maker, in deciding whether to impose a condition relating to an ancillary mining activity, is to have regard to guidelines issued (and made publicly available) by the Secretary for the purposes of this clause.
- (7) A reference in this Act or the regulations to the carrying out of an activity under an authorisation (however expressed) is taken to include a reference to the carrying out of an ancillary mining activity that is regulated by a condition of a mining lease as referred to in this clause.
- (8) For the avoidance of doubt, section 62 (Dwelling-houses, gardens and significant improvements) applies to the imposition of a condition referred to in this clause in the same way that it applies to the grant of a mining lease.

**[27] Schedule 1B, clause 12 (7A)**

Insert after clause 12 (7):

- (7A) The variation of an authorisation (other than a variation of a condition of an authorisation) by the relevant decision-maker takes effect when written notice of the variation is served on the holder of the authorisation or at a later time specified in the notice.

**[28] Schedule 1 Public consultation with respect to the granting of assessment leases and mining leases**

Omit “that purpose or those purposes” wherever occurring in clauses 12 (b) and 16 (b).

Insert instead “that activity or those activities”.

**[29] Schedule 4 Regulation making powers**

Insert after clause 12:

**13 Meaning of “immediate vicinity” and “directly facilitates”**

Specifying circumstances in which an ancillary mining activity is taken for the purposes of the Act:

- (a) to be or not to be in the immediate vicinity of a mining lease or mineral claim, or
- (b) to directly facilitate or not to directly facilitate a mining lease or mineral claim.

**[30] 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 Act 2017**

**Definition**

In this Part, *the 2017 amending Act* means the *Mining and Petroleum Legislation Amendment Act 2017*.

**References to mining purposes**

A reference in any Act, instrument or document to a mining purpose or mining purposes is taken to be a reference to an ancillary mining activity or ancillary mining activities, respectively.

**Existing exempt ancillary mining activities**

- (1) For the avoidance of doubt, section 6, as substituted by the 2017 amending Act, does not apply to the carrying out of an ancillary mining activity that was a mining purpose exempted from the operation of section 6, as in force immediately before that substitution, by an order of the Minister published in the Gazette on 11 September 2015.
- (2) Subclause (1) ceases to have effect on 15 November 2017.
- (3) However, on and from 16 November 2017, section 6, as substituted by the 2017 amending Act, does not apply to the carrying out of an ancillary mining activity if:
  - (a) the activity is an ancillary mining activity referred to in subclause (1), and
  - (b) an application was lodged before 16 November 2017 for:
    - (i) the variation of a mining lease in respect of a mineral or minerals to impose a condition to regulate the ancillary mining activity, or
    - (ii) a mining lease in respect of an ancillary mining activity or activities only that would authorise the carrying out of the ancillary mining activity, and
  - (c) the application is pending final determination.

**Applications relating to ancillary mining activities**

- (1) An application for the grant of a mining lease in respect of a mining purpose or mining purposes only, that has been made but not finally determined on the

commencement of this clause is taken to be an application for the grant of a mining lease in respect of an ancillary mining activity or activities only.

- (2) An applicant may withdraw any such application.

**Publication of existing enforceable undertakings and relevant withdrawals and variations**

The Secretary must publish, and make public, the following:

- (a) a copy of an enforceable undertaking accepted by the Secretary before the commencement of this clause,
- (b) notice of the withdrawal of an enforceable undertaking made before the commencement of this clause,
- (c) notice and a copy of the variation of an enforceable undertaking made before the commencement of this clause.

**Proceedings relating to enforceable undertakings**

Sections 378H and Division 4B of Part 17A (as amended by the 2017 amending Act) extend to contraventions of enforceable undertakings that occurred before the commencement of those amendments (except where proceedings for a contravention have commenced before that commencement).

**Lapsing of security deposit requirement and return of money**

Section 261G (as amended by the 2017 amending Act) extends to money provided under a security deposit before the commencement of that amendment.

**Pending applications for approval of transfer of authorisation**

Clause 5 of Schedule 1B (as amended by the 2017 amending Act) extends to an application to approve the transfer of an authorisation that has been made but not finally determined on the commencement of that amendment.

**Existing ancillary mining activities**

Despite clause 7B (8) of Schedule 1B, section 62 (Dwelling-houses, gardens and significant improvements) of the Act does not apply to or in respect of an application for the variation of a mining lease in respect of a mineral or minerals to impose a condition that regulates the carrying out of an ancillary mining activity on land that is not within the mining area that is the subject of the mining lease if the carrying out of that ancillary mining activity:

- (a) commenced before 15 November 2010, and
- (b) has not ceased for a continuous period of 12 months since that date (other than for repair or maintenance).

**[31] Dictionary**

Insert in alphabetical order:

*ancillary mining activity* means any activity prescribed by the regulations as an ancillary mining activity for the purposes of this definition.

**[32] Dictionary, definition of “mining purpose”**

Omit the definition.

## **Schedule 2 Amendment of Mining Regulation 2016**

**[1] Whole Regulation**

Omit “mining purpose” and “mining purposes” wherever occurring.

Insert instead “ancillary mining activity” and “ancillary mining activities”, respectively.

**[2] Clause 7 Meaning of “ancillary mining activity”**

Omit “following purposes”. Insert instead “following activities”.

**[3] Clause 7 (g)**

Insert after clause 7 (f):

- (g) the environmental management, protection and rehabilitation of land on which an ancillary mining activity referred to in another paragraph of this clause is being or has been carried out.

**[4] Schedule 9 Fees**

Insert after item 21:

- |     |   |         |
|-----|---|---------|
| 21A | Application for variation of mining lease (clause 12 of Schedule 1B to the Act) to impose a condition to regulate the carrying out of an ancillary mining activity on land that is not within the mining area that is the subject of the mining lease | \$8,000 |
|-----|---|---------|

## **Schedule 3      Amendment of Petroleum (Onshore) Act 1991 No 84**

**[1] Section 83D Conditions for mandatory audits**

Insert “by the Minister” after “imposed” in section 83D (1).

**[2] Section 125D Providing false or misleading information**

Omit the penalty provision. Insert instead:

Maximum penalty:

- (a) in the case of a corporation—10,000 penalty units, or
- (b) in the case of a natural person—2,000 penalty units.

**[3] Section 125D (2)–(4)**

Insert at the end of section 125D:

- (2) A holder of a petroleum title must ensure that an agent, employee or any other person acting on behalf of the holder does not provide any information, record or return in purported compliance with any requirement by or under this Act in connection with the holder’s petroleum title in contravention of subsection (1).

Maximum penalty:

- (a) in the case of a corporation—10,000 penalty units, or
- (b) in the case of a natural person—2,000 penalty units.

- (3) It is a defence to a prosecution of the holder of a petroleum title for an offence against subsection (2) if the holder establishes that the holder took all reasonable steps to prevent the contravention of the subsection.

- (4) A holder of a petroleum title may be proceeded against and convicted under subsection (2) whether or not the agent, employee or other person has been proceeded against or been convicted for the offence against subsection (1).

**[4] Section 125ZJ Secretary may accept enforceable undertakings**

Insert after section 125ZJ (3):

- (4) The Secretary must publish, and make public, a copy of each enforceable undertaking accepted by the Secretary under this section.

**[5] Section 125ZN Contravention of enforceable undertaking**

Omit “District Court” from section 125ZN (1).

Insert instead “Land and Environment Court”.

**[6] Section 125ZN (2)**

Omit “, in addition to the imposition of any penalty,”.

**[7] Section 125ZN (2A)**

Insert after section 125ZN (2):

- (2A) The Court may make an order under this section whether or not proceedings have been instituted for an offence against section 125ZM for the contravention of the enforceable undertaking.

**[8] Section 125ZO Withdrawal or variation of enforceable undertaking**

Omit section 125ZO (3). Insert instead:

- (3) The Secretary must publish, and make public, the following:
  - (a) notice of the withdrawal of an enforceable undertaking,
  - (b) notice and a copy of the variation of an enforceable undertaking.

**[9] Section 125ZP Proceeding for alleged contravention**

Omit “if an enforceable undertaking is in effect in relation to that contravention” from section 125ZP (1).

Insert instead “if the person has made an enforceable undertaking in relation to that contravention and the enforceable undertaking is in effect”.

**[10] Schedule 1B Further provisions relating to petroleum titles generally**

Insert after clause 4 (2):

- (3) In this clause, in relation to an application to approve the transfer of a petroleum title, a reference to a person who makes an application to which this Schedule applies or to an applicant includes a reference to the proposed transferee concerned.

**[11] Schedule 1B, clause 9 (7A)**

Insert after clause 9 (7):

- (7A) The variation of a petroleum title (other than a variation of a condition of a petroleum title) by the Minister takes effect when written notice of the variation is served on the holder of the petroleum title or at a later time specified in the notice.

**[12] 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 Act 2017**

**Publication of existing enforceable undertakings and relevant withdrawals and variations**

The Secretary must publish, and make public, the following:

- (a) a copy of an enforceable undertaking accepted by the Secretary before the commencement of this clause,
- (b) notice of the withdrawal of an enforceable undertaking made before the commencement of this clause,
- (c) notice and a copy of the variation of an enforceable undertaking made before the commencement of this clause.

**Proceedings relating to enforceable undertakings**

The provisions of Division 6 of Part 13A (as amended by the *Mining and Petroleum Legislation Amendment Act 2017*) extend to contraventions of enforceable undertakings that occurred before the commencement of those amendments (except where proceedings for a contravention have commenced before that commencement).

**Pending applications relating to transfer of petroleum title**

Clause 4 of Schedule 1B (as amended by the *Mining and Petroleum Legislation Amendment Act 2017*) extends to an application to approve a transfer of a petroleum title that has been made but not finally determined on the commencement of that amendment.