



New South Wales

Mining and Petroleum Legislation Amendment Bill 2014

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

This Bill is cognate with the *Criminal Assets Recovery Amendment Bill 2014*.

Overview of Bill

The object of this Bill is to amend mining, petroleum and planning laws to address further issues raised in the Independent Commission Against Corruption's reports on the investigations known as Operation Jasper and Operation Acacia. In particular, this Bill:

- (a) standardises provisions dealing with the basis on which administrative functions affecting mining authorities and petroleum titles may be exercised, and
- (b) removes the public interest test as a ground on which certain administrative decisions about mining rights and petroleum titles may be made, and replaces it with a test based on whether the applicant or other relevant person is a "fit and proper person", and
- (c) prevents an application for development consent under the *Environmental Planning and Assessment Act 1979 (the Planning Act)* to mine coal from being made or determined unless the applicant is the holder of a mining authority for coal on the land (to prevent development consent being used to avoid the mining exploration licence process), and
- (d) provides that the grant, renewal or transfer of a mining lease or petroleum title can be refused on the ground that the applicant is not a fit and proper person despite planning approval for integrated development, State significant development, State significant infrastructure or a Part 3A project under the Planning Act, and
- (e) makes it clear that the public interest can be taken into account in deciding whether or not to approve a transitional Part 3A project under the Planning Act, and

- (f) extends the operation of provisions of the *Mining Act 1992* that relate to the conditions of a mining authority so that they will apply to the preserved conditions of the exploration licences cancelled by the *Mining Amendment (ICAC Operations Jasper and Acacia) Act 2014*.

The Bill also amends the Planning Act to include notes about the effect of the above amendments and makes a consequential change to the requirements for the content of applications for development consent under that Act.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.

Schedule 1 Amendment of Mining Act 1992 No 29

Standardisation of basis for making administrative decisions concerning mining rights

Schedule 1 [1]–[10] and [12]–[22] standardise provisions about the basis on which administrative functions affecting mining rights may be exercised so that the grounds for taking administrative action must be established to the satisfaction of the decision-maker.

Schedule 1 [25] inserts a savings and transitional provision that extends the operation of the amendments to a decision with respect to a matter that was pending on the commencement of the amendments and a decision based on conduct that occurred, or on a matter that arose, before that commencement.

Interrelationship between mining laws and planning laws

Schedule 1 [23] inserts a section that provides that an application for development consent under the Planning Act for consent to mine for coal cannot be made or determined unless the applicant is the holder of an authority under the *Mining Act 1992* that is in force in respect of coal and the land where the mining is proposed to be carried out. The provision also applies to the modification of a development consent. The section provides that a mining lease that is for mining purposes only is not an authority that can be relied on for the purposes of making an application under the Planning Act in compliance with the section. **Schedule 1 [25]** inserts a savings and transitional provision that extends this amendment to applications for development consent that are pending on the date of assent to the Bill.

Schedule 1 [24] inserts (as section 380A (4)) a provision that overrides various provisions of the Planning Act so as to allow the grant, renewal or transfer of a mining lease to be refused on the ground that the Minister is of the opinion that the applicant is not a fit and proper person, even if the mining lease is necessary for the carrying out of State significant development, State significant infrastructure or a transitional Part 3A project or has been approved as integrated development. **Schedule 1 [11]** inserts a note drawing attention to that new provision in a provision about development consent. **Schedule 1 [25]** inserts a savings and transitional provision that extends this amendment to development consents already granted.

Introduction of “fit and proper person” considerations in making certain decisions about mining rights

Schedule 1 [24] omits an existing public interest test (under which the public interest is a relevant ground for making certain decisions about mining rights) and inserts instead a section that provides that certain decisions about mining rights may be made on the ground that, in the opinion of the decision-maker, a relevant person is not a fit and proper person. This does not limit any other

ground on which such a decision may be made. The relevant decisions to which the new section applies are as follows:

- (a) a decision to refuse to grant, transfer or renew a mining right,
- (b) a decision to cancel a mining right or to suspend operations under a mining right,
- (c) a decision to restrict operations under a mining right by the imposition or variation of conditions of a mining right.

Schedule 1 [25] inserts a savings and transitional provision that extends the operation of the fit and proper person test to a decision with respect to an application or other matter that was pending on the commencement of the amendment and a decision based on conduct that occurred, or on a matter that arose, before that commencement.

Application of Act to preserved conditions

Schedule 1 [26] and [27] extend provisions of the Act that apply to conditions of an authority to include the preserved conditions of the exploration licences cancelled by the *Mining Amendment (ICAC Operations Jasper and Acacia) Act 2014*. This extends an existing provision provided for the limited application of provisions to those preserved conditions.

Schedule 2 Amendment of Environmental Planning and Assessment Act 1979 No 203

Schedule 2 [1]–[11] insert notes into various provisions of the Act to draw attention to the new provisions that will allow a mining lease under the *Mining Act 1992* or a production lease under the *Petroleum (Onshore) Act 1991* to be refused on the ground that the applicant is not a fit and proper person and that will prevent the making or grant of an application for development consent to mine coal or petroleum unless an appropriate mining authority or petroleum title is held.

Schedule 2 [12] makes it clear that the public interest can be taken into account in deciding whether to approve a project under Part 3A of the Act, whether or not the Director-General's report on the project gives consideration to or makes any recommendation about the public interest or any particular aspect of the public interest.

Schedule 3 Amendment of Environmental Planning and Assessment Regulation 2000

Schedule 3 amends the requirements for the documents that are required to accompany an application for development consent so that, in the case of development comprising the mining of coal, documentary evidence will be required showing that the applicant holds an authority under the *Mining Act 1992* for coal on the land concerned or has the written consent of the holder of such an authority to make the application.

Schedule 4 Amendment of Mining Amendment Act 2008 No 19

Schedule 4 removes uncommenced amendments to the *Mining Act 1992* concerning the taking into account of environmental performance in decision-making under that Act. Those amendments will become redundant as a result of the amendments made by Schedule 1, to the extent that the new fit and proper person test includes consideration for the conduct of a person, or a body corporate of which the person is a director, under relevant environmental legislation.

Schedule 5 Amendment of Petroleum (Onshore) Act 1991 No 84

Schedule 5 [1] and [2] amend provisions that authorise the cancellation or suspension of a petroleum title so that the grounds that need to be established to justify cancellation or suspension are required to be established to the satisfaction of the Minister. **Schedule 5 [4]** inserts a savings and transitional provision that extends the operation of the amendments to a decision with respect to a matter that was pending on the commencement of the amendments and a decision based on conduct that occurred, or on a matter that arose, before that commencement.

Schedule 5 [3] omits an existing public interest test (under which the public interest is a relevant ground for making certain decisions about petroleum titles) and inserts instead a section that provides that certain decisions about petroleum titles may be made on the ground that, in the opinion of the Minister, a relevant person is not a fit and proper person. This does not limit any other ground on which such a decision may be made. The relevant decisions to which the new section applies are as follows:

- (a) a decision to refuse to grant, renew or transfer a petroleum title,
- (b) a decision to cancel a petroleum title or to suspend operations under a petroleum title,
- (c) a decision to restrict operations under a petroleum title by the imposition or variation of conditions of a petroleum title.

The new section also provides that it overrides various provisions of the Planning Act so as to allow the grant, renewal or transfer of a petroleum title to be refused on the ground that the Minister is of the opinion that the applicant is not a fit and proper person, even if the petroleum title is necessary for the carrying out of State significant development, State significant infrastructure or a Part 3A project or development that has been approved as integrated development.

Schedule 5 [4] inserts a savings and transitional provision that extends the operation of the fit and proper person test to a decision with respect to an application or other matter that was pending on the commencement of the amendment and a decision based on conduct that occurred, or on a matter that arose, before that commencement.



New South Wales

Mining and Petroleum Legislation Amendment Bill 2014

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New South Wales

Mining and Petroleum Legislation Amendment Bill 2014

No. , 2014

A Bill for

An Act to amend mining, petroleum and planning laws to make further provision for the grounds for certain administrative decisions affecting mining rights and petroleum titles and the interrelationship between mining and petroleum laws and planning laws; and for other purposes.

The Legislature of New South Wales enacts:

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1 Name of Act

2

This Act is the *Mining and Petroleum Legislation Amendment Act 2014*.

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2 Commencement

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

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Schedule 1	Amendment of Mining Act 1992 No 29	1
[1]	Section 22 Power of decision-maker in relation to applications	2
	Insert “that the decision-maker is satisfied” before “that the applicant” in section 22 (2) (a).	3
[2]	Section 22 (2) (b)	4
	Omit “decision-maker reasonably considers”. Insert instead “decision-maker is satisfied”.	5
[3]	Section 23 Power of decision-maker in relation to tenders	6
	Insert “that the decision-maker is satisfied” before “that the tenderer” in section 23 (3) (a).	7
[4]	Section 23 (3) (b)	8
	Omit “decision-maker reasonably considers”. Insert instead “decision-maker is satisfied”.	9
[5]	Section 41 Power of decision-maker in relation to applications	10
	Insert “that the decision-maker is satisfied” before “that the applicant” in section 41 (2) (a).	11
[6]	Section 41 (2) (b)	12
	Omit “decision-maker reasonably considers”. Insert instead “decision-maker is satisfied”.	13
[7]	Section 63 Power of decision-maker in relation to applications	14
	Insert “that the decision-maker is satisfied” before “that the applicant” in section 63 (2) (a).	15
[8]	Section 63 (2) (b)	16
	Omit “decision-maker reasonably considers”. Insert instead “decision-maker is satisfied”.	17
[9]	Section 64 Power of decision-maker in relation to tenders	18
	Insert “that the decision-maker is satisfied” before “that the tenderer” in section 64 (3) (a).	19
[10]	Section 64 (3) (b)	20
	Omit “decision-maker reasonably considers”. Insert instead “decision-maker is satisfied”.	21
[11]	Section 65 Development consents under Environmental Planning and Assessment Act 1979	22
	Insert at the end of section 65 (1):	24
	Note. Section 380AA prevents an application for development consent to mine coal from being made or granted unless the applicant is the holder of an authority that is in force in respect of coal and the land concerned.	25 26 27
[12]	Section 114 Power of decision-maker in relation to renewal applications	28
	Insert “that the decision-maker is satisfied” before “that the applicant” in section 114 (2) (a).	29 30
[13]	Section 114 (2) (b)	31
	Insert “that the decision-maker is satisfied” before “that a person”.	32
[14]	Section 114 (2) (c)	33
	Omit “decision-maker reasonably considers”. Insert instead “decision-maker is satisfied”.	34

[15] Section 121 Power of decision-maker in relation to transfer approval applications	1
Insert “that the decision-maker is satisfied” before “that the applicant” in section 121 (2) (a).	2 3
[16] Section 121 (2) (b)	4
Omit “decision-maker reasonably considers”. Insert instead “decision-maker is satisfied”.	5
[17] Section 125 Grounds of cancellation of authority	6
Omit “if the holder of the authority contravenes” from section 125 (1) (b).	7
Insert instead “if the decision-maker is satisfied that the holder of the authority has contravened”.	8 9
[18] Section 125 (1) (b1)	10
Omit “a person contravenes”.	11
Insert instead “the decision-maker is satisfied that a person has contravened”.	12
[19] Section 125 (1) (b2)	13
Omit “the decision-maker reasonably considers”.	14
Insert instead “the decision-maker is satisfied”.	15
[20] Section 125 (1) (c)	16
Omit “the holder of the authority fails”.	17
Insert instead “the decision-maker is satisfied that the holder of the authority has failed”.	18
[21] Section 125 (1) (e)	19
Omit “the land”. Insert instead “the decision-maker is satisfied that the land”.	20
[22] Section 125 (1) (f)	21
Omit the paragraph. Insert instead:	22
(f) if the decision-maker is satisfied that the holder of the authority has failed to use the land comprised in the authority in good faith for the purposes for which the authority has been granted, or has used the land for a purpose other than that for which the authority has been granted.	23 24 25 26
[23] Section 380AA	27
Insert after section 380:	28
380AA Restrictions on planning applications for coal mining	29
(1) An application for development consent, or for the modification of a development consent, to mine for coal cannot be made or determined unless (at the time it is made or determined) the applicant is the holder of an authority that is in force in respect of coal and the land where mining for coal is proposed to be carried out, or the applicant has the written consent of the holder of such an authority to make the application.	30 31 32 33 34 35
Note. The Dictionary to this Act defines <i>development consent</i> to include an approval under Part 3A or Part 5.1 of the <i>Environmental Planning and Assessment Act 1979</i> .	36 37
(2) For that purpose, an authority in respect of coal need not be in force in respect of the whole of the land to which the application for development consent relates but must be in force for the land where mining for coal is proposed.	38 39 40

- (3) For the purposes of this section, an authority that is a mining lease is considered to be in force in respect of the land on which it authorises prospecting or mining for coal, and not in respect of land on which it only authorises the carrying out of mining purposes (and not prospecting or mining for coal). A mining lease is not an authority for the purposes of this section if it is for mining purposes only. 1
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- (4) The Director-General must notify the appropriate planning authority of any decision under this Act to cancel or refuse to renew an authority in respect of coal if the Director-General is aware that an application for development consent, or for the modification of a development consent, to mine for coal on the land concerned has been made but not determined. 7
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- (5) In this section: 12
application includes request. 13
appropriate planning authority means: 14
- (a) the Director of Planning in the case of an application for development consent for State significant development, State significant infrastructure or a transitional Part 3A project under the *Environmental Planning and Assessment Act 1979*, or 15
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- (b) the consent authority under that Act in relation to any other application. 19
mine for coal means to extract coal from land. 20
- [24] Section 380A 21
Omit the section. Insert instead: 22
- 380A Fit and proper person consideration in making certain decisions about mining rights** 23
24
- (1) Despite anything to the contrary in this Act, any of the following decisions under this Act may be made on the ground that, in the opinion of the decision-maker, a relevant person is not a fit and proper person (without limiting any other ground on which such a decision may be made): 25
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- (a) a decision to refuse to grant or renew a mining right (a *relevant person* in such a case being an applicant for the grant or renewal of the mining right), 29
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- (b) a decision to refuse to transfer a mining right (a *relevant person* in such a case being the proposed transferee), 32
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- (c) a decision to cancel a mining right or to suspend operations under a mining right (in whole or in part), a *relevant person* in such a case being a holder of the mining right, 34
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- (d) a decision to restrict operations under a mining right by the imposition or variation of conditions of a mining right (a *relevant person* in such a case being a holder of the mining right). 37
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- (2) For the purpose of determining whether a person is a fit and proper person, the decision-maker may take into consideration any or all of the following matters (but without limiting the matters that can be taken into consideration for that purpose): 40
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- (a) whether the person or (in the case of a body corporate) a director of the body corporate or of a related body corporate has compliance or criminal conduct issues (as defined in this section), 44
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- (b) in the case of a body corporate, whether a director of the body corporate or of a related body corporate is or has been a director of another body 47
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- corporate that has compliance or criminal conduct issues (as defined in this section) but only if the person was a director of that other body corporate at the time of the conduct that resulted in the compliance or criminal conduct issues, 1
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- (c) the person's record of compliance with relevant legislation (established to the satisfaction of the decision-maker), 5
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- (d) in the case of a body corporate, the record of compliance with relevant legislation (established to the satisfaction of the decision-maker) of any director of the body corporate or a related body corporate, 7
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- (e) whether, in the opinion of the decision-maker, the management of the activities or works that are or are to be authorised, required or regulated under the mining right are not or will not be in the hands of a technically competent person, 10
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- (f) whether, in the opinion of the decision-maker, the person is not of good repute, 14
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- (g) in the case of a body corporate, whether, in the opinion of the decision-maker, a director of the body corporate or a related body corporate is not of good repute, 16
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- (h) whether, in the opinion of the decision-maker, the person is not of good character, with particular regard to honesty and integrity, 19
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- (i) in the case of a body corporate, whether, in the opinion of the decision-maker, a director of the body corporate or a related body corporate is not of good character, with particular regard to honesty and integrity, 21
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- (j) whether the person, during the previous 3 years, was an undischarged bankrupt or applied to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounded with his or her creditors or made an assignment of his or her remuneration for their benefit, 25
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- (k) in the case of an individual, whether he or she is or was a director of a body corporate that is the subject of a winding up order or for which a controller or administrator has been appointed during the previous 3 years, 29
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- (l) in the case of a body corporate, whether the body corporate or a related body corporate is the subject of a winding up order or has had a controller or administrator appointed during the previous 3 years, 33
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- (m) whether the person has demonstrated to the decision-maker the financial capacity to comply with the person's obligations under the mining right, 36
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- (n) whether the person is in partnership, in connection with activities that are subject to a mining right or proposed mining right, with a person whom the decision-maker considers is not a fit and proper person under this section, 39
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- (o) whether the person has an arrangement (formal or informal) in connection with activities that are subject to a mining right or proposed mining right with another person whom the decision-maker considers is not a fit and proper person under this section, if the decision-maker is satisfied that the arrangement gives that other person the capacity to determine the outcome of decisions about financial and operating policies concerning those activities, 43
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- (p) any other matters prescribed by the regulations. 50

- (3) A person or body corporate has **compliance or criminal conduct issues** if: 1
- (a) the decision-maker is satisfied that the person or body corporate has 2
contravened any relevant legislation, whether or not the person or body 3
corporate has been prosecuted for or convicted of an offence arising 4
from the contravention, or 5
 - (b) in the previous 10 years, the person or body corporate has been 6
convicted in New South Wales or elsewhere of a serious offence or an 7
offence involving fraud or dishonesty, or 8
 - (c) the person or body corporate has held a mining right, or any other 9
instrument issued or granted under relevant legislation, that has been 10
suspended, cancelled or revoked. 11
- (4) The grant, renewal or transfer of a mining lease can be refused on the ground 12
that the Minister is of the opinion that the applicant is not a fit and proper 13
person even if: 14
- (a) the mining lease is necessary for the carrying out of State significant 15
development that is authorised by a development consent, despite 16
section 89K of the *Environmental Planning and Assessment Act 1979* 17
(**the Planning Act**), or 18
 - (b) the mining lease is necessary for the carrying out of approved State 19
significant infrastructure under Part 5.1 of the Planning Act, despite 20
section 115ZH of that Act, or 21
 - (c) the mining lease is necessary for the carrying out of a transitional 22
Part 3A project under Schedule 6A to the Planning Act, despite 23
section 75V of that Act, or 24
 - (d) section 91A or 93 of the Planning Act would otherwise prevent that 25
refusal. 26
- (5) To avoid doubt, sections 127 (1) and 205 (1) of this Act extend to the 27
cancellation of a mining right under this section. 28
- (6) A relevant person who is aggrieved by a decision of the decision-maker under 29
this section may apply to the Land and Environment Court for a review of the 30
decision, and the following provisions apply to such a review: 31
- (a) a review is to be by way of rehearing, and fresh material or material in 32
addition to, or in substitution for, the material considered on the making 33
of the decision by the decision-maker may be given on the review and 34
taken into consideration by the Land and Environment Court, 35
 - (b) the decision of the Land and Environment Court on a review of a 36
decision is final and is to be given effect to by the decision maker. 37
- (7) In this section: 38
- director** of a body corporate includes any person involved in the management 39
of the affairs of the body corporate. 40
- mining right** means an exploration licence, an assessment lease, a mining 41
lease, a mineral claim or an opal prospecting licence. 42
- related body corporate** has the same meaning as in the *Corporations Act 2001* 43
of the Commonwealth. 44
- relevant legislation** means the following legislation: 45
- (a) this Act, 46
 - (b) the *Petroleum (Onshore) Act 1991*, 47
 - (c) the environment protection legislation, 48

(d)	the <i>Environmental Planning and Assessment Act 1979</i> ,	1
(e)	the work health and safety legislation,	2
(f)	any other legislation prescribed by the regulations under this Act.	3
	<i>serious offence</i> means:	4
(a)	an offence committed in New South Wales that is punishable by imprisonment for life or for a term of 5 years or more or by a fine of \$500,000 or more, or an offence committed elsewhere than in New South Wales that if committed in New South Wales would be an offence so punishable, or	5 6 7 8 9
(b)	an offence committed under a law of the Commonwealth that is punishable by imprisonment for life or for a term of 5 years or more or by a fine of \$500,000 or more.	10 11 12
[25]	Schedule 6 Savings, transitional and other provisions	13
	Insert at the end of the Schedule with appropriate Part and clause numbering:	14
Part	Provisions consequent on enactment of Mining and Petroleum Legislation Amendment Act 2014	15 16
	Operation of planning amendments	17
(1)	Section 380AA (Restrictions on planning applications for coal mining) extends to any application for development consent, or modification of development consent, that was made (but not determined) before the date of assent to the <i>Mining and Petroleum Legislation Amendment Act 2014</i> .	18 19 20 21
(2)	Section 380A (4) (as enacted by the <i>Mining and Petroleum Legislation Amendment Act 2014</i>) extends to permit the Minister to refuse the grant, renewal or transfer of a mining lease even if the development consent that would otherwise have prevented refusal was granted before the date of assent to the <i>Mining and Petroleum Legislation Amendment Act 2014</i> .	22 23 24 25 26
	Operation of fit and proper person test	27
	Section 380A (as enacted by the <i>Mining and Petroleum Legislation Amendment Act 2014</i>) applies to any decision made after the commencement of that section, including:	28 29 30
(a)	a decision with respect to an application or other matter that was pending on that commencement, and	31 32
(b)	a decision based on conduct that occurred, or on a matter that arose, before that commencement.	33 34
	Matters of which decision-maker to be satisfied	35
	An amendment made to section 22, 23, 41, 63, 64, 114, 121 or 125 by the <i>Mining and Petroleum Legislation Amendment Act 2014</i> applies to any decision made after the commencement of the amendment, including:	36 37 38
(a)	a decision with respect to a matter that was pending on that commencement, and	39 40
(b)	a decision based on conduct that occurred, or on a matter that arose, before that commencement.	41 42

[26] Schedule 6A Cancellation of certain authorities	1
Omit clause 13 (3). Insert instead:	2
(3) A reference in a provision of this Act or the regulations to the conditions of an authority includes a reference to a preserved condition of a relevant licence.	3 4
[27] Schedule 6A, clause 13 (4)	5
Omit “A reference in section 378D”.	6
Insert instead “For the purposes of the application of a provision of this Act to and in respect of a preserved condition of a relevant licence, a reference in the provision”.	7 8

Schedule 2	Amendment of Environmental Planning and Assessment Act 1979 No 203	1
		2
[1] Section 78A Application		3
Insert at the end of section 78A (1):		4
Note. Section 380AA of the <i>Mining Act 1992</i> provides that an application for development consent to mine for coal can only be made by or with the consent of the holder of an authority under that Act in respect of coal and the land concerned.		5 6 7
[2] Section 89E Consent for State significant development		8
Insert at the end of section 89E (1):		9
Note. Section 380AA of the <i>Mining Act 1992</i> provides that an application in respect of State significant development for the mining of coal can only be determined if it is made by or with the consent of the holder of an authority under that Act in respect of coal and the land concerned.		10 11 12 13
[3] Section 89K Approvals etc legislation that must be applied consistently		14
Insert at the end of section 89K (1) (c):		15
Note. Under section 380A of the <i>Mining Act 1992</i> , a mining lease can be refused on the ground that the applicant is not a fit and proper person, despite this section.		16 17
[4] Section 89K (1) (d)		18
Insert at the end of the paragraph:		19
Note. Under section 24A of the <i>Petroleum (Onshore) Act 1991</i> , a production lease can be refused on the ground that the applicant is not a fit and proper person, despite this section.		20 21 22
[5] Section 91A Development that is integrated development		23
Insert at the end of section 91A (5):		24
Note. Under section 380A of the <i>Mining Act 1992</i> and section 24A of the <i>Petroleum (Onshore) Act 1991</i> , a mining lease or production lease can be refused on the ground that the applicant is not a fit and proper person, despite this section.		25 26 27
[6] Section 93 Granting and modification of approval by approval body		28
Insert at the end of section 93 (1):		29
Note. Under section 380A of the <i>Mining Act 1992</i> and section 24A of the <i>Petroleum (Onshore) Act 1991</i> , a mining lease or production lease can be refused on the ground that the applicant is not a fit and proper person, despite this section.		30 31 32
[7] Section 96 Modification of consents—generally		33
Insert at the end of section 96 (1):		34
Note. Section 380AA of the <i>Mining Act 1992</i> provides that an application for modification of development consent to mine for coal can only be made by or with the consent of the holder of an authority under that Act in respect of coal and the land concerned.		35 36 37 38
[8] Section 115X Application for approval of State significant infrastructure		39
Insert at the end of section 115X (1):		40
Note. Section 380AA of the <i>Mining Act 1992</i> provides that an application in respect of State significant infrastructure for the mining of coal can only be made by or with the consent of the holder of an authority under that Act in respect of coal and the land concerned.		41 42 43 44

[9] Section 115ZH Approvals etc legislation that must be applied consistently	1
Insert at the end of section 115ZH (1) (c):	2
Note. Under section 380A of the <i>Mining Act 1992</i> , a mining lease can be refused on the ground that the applicant is not a fit and proper person, despite this section.	3 4
[10] Section 115ZH (1) (d)	5
Insert at the end of the paragraph:	6
Note. Under section 24A of the <i>Petroleum (Onshore) Act 1991</i> , a production lease can be refused on the ground that the applicant is not a fit and proper person, despite this section.	7 8 9
[11] Section 115ZI Modification of Minister’s approval	10
Insert at the end of section 115ZI (2):	11
Note. Section 380AA of the <i>Mining Act 1992</i> provides that a request for the modification of approval for State significant infrastructure for the mining of coal can only be made by or with the consent of the holder of an authority under that Act in respect of coal and the land concerned.	12 13 14 15
[12] Schedule 6A Transitional arrangements—repeal of Part 3A	16
Insert after clause 2:	17
2A Public interest consideration for Part 3A projects	18
(1) To avoid doubt, it is declared that the Minister is authorised (and is taken always to have been authorised) to take the public interest into account when deciding whether or not to approve the carrying out of a project or to give approval for a concept plan under Part 3A, before or after the repeal of that Part.	19 20 21 22 23
(2) It does not matter whether the Director-General’s report on the project did or did not give consideration to or make any recommendation about the public interest or any particular aspect of the public interest.	24 25 26

Schedule 3	Amendment of Environmental Planning and Assessment Regulation 2000	1
		2
Schedule 1 Forms		3
Insert after clause 2 (1) (k):		4
(k1)	in the case of development comprising mining for coal (within the meaning of section 380AA of the <i>Mining Act 1992</i>)—documentary evidence that the applicant holds an authority under the <i>Mining Act 1992</i> in respect of coal and the land concerned or has the written consent of the holder of such an authority to make the development application,	5 6 7 8 9

Schedule 4	Amendment of Mining Amendment Act 2008	1
	No 19	2
[1]	Schedule 1 Amendment of Mining Act 1992	3
	Omit the definitions of <i>environmental performance</i> , <i>other relevant legislation</i> and <i>relevant person</i> from proposed section 237 in Schedule 1 [204].	4 5
[2]	Schedule 1 [204]	6
	Omit the heading to proposed section 238. Insert instead:	7
	238 Environment to be taken into account	8
[3]	Schedule 1 [204]	9
	Omit proposed section 238 (1) (b).	10
[4]	Schedule 1 [204]	11
	Omit proposed section 238 (4).	12
[5]	Schedule 1 [204]	13
	Omit proposed section 239 (Meaning of environmental performance).	14

Schedule 5	Amendment of Petroleum (Onshore) Act 1991	1
	No 84	2
[1] Section 22 Cancellation and suspension of title		3
Omit section 22 (1). Insert instead:		4
(1) A petroleum title may be cancelled by the Minister if the Minister is satisfied that its holder has, at any time during the term of the title:		5
(a) contravened or failed to fulfil any of the conditions of the title, or		6
(b) failed to use the land comprised in the title in good faith for the purposes for which it has been granted, or		7
(c) used the land for a purpose other than that for which the title has been granted, or		8
(d) contravened a provision of this Act or the regulations (whether or not the holder has been prosecuted or convicted of an offence arising from the contravention).		9
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[2] Section 22 (3A)		15
Omit the subsection. Insert instead:		16
(3A) The Minister may suspend all or any specified operations under a petroleum title until further notice if the Minister is satisfied that the holder of the title has contravened:		17
(a) a requirement under this Act to pay royalty, or to give or maintain security for the performance of the holder's obligations under the title, or		18
(b) any condition of the title that is identified as a condition related to environmental management.		19
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[3] Section 24A		25
Omit the section. Insert instead:		26
24A Fit and proper person consideration in making certain decisions about petroleum titles		27
(1) Despite anything to the contrary in this Act, any of the following decisions under this Act may be made on the ground that, in the opinion of the Minister, a relevant person is not a fit and proper person (without limiting any other ground on which such a decision may be made):		28
(a) a decision to refuse to grant or renew a petroleum title (a <i>relevant person</i> in such a case being an applicant for the grant or renewal of the petroleum title),		29
(b) a decision to refuse to transfer a petroleum title (a <i>relevant person</i> in such a case being the proposed transferee),		30
(c) a decision to cancel a petroleum title or to suspend operations under a petroleum title (in whole or in part), a <i>relevant person</i> in such a case being a holder of the petroleum title,		31
(d) a decision to restrict operations under a petroleum title by the imposition or variation of conditions of a petroleum title (a <i>relevant person</i> in such a case being a holder of the petroleum title).		32
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(2) For the purpose of determining whether a person is a fit and proper person, the Minister may take into consideration any or all of the following matters (but		44
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without limiting the matters that can be taken into consideration for that purpose):	1 2
(a) whether the person or (in the case of a body corporate) a director of the body corporate or of a related body corporate has compliance or criminal conduct issues (as defined in this section),	3 4 5
(b) in the case of a body corporate, whether a director of the body corporate or of a related body corporate is or has been a director of another body corporate that has compliance or criminal conduct issues (as defined in this section) but only if the person was a director of that other body corporate at the time of the conduct that resulted in the compliance or criminal conduct issues,	6 7 8 9 10 11
(c) the person's record of compliance with relevant legislation (established to the satisfaction of the Minister),	12 13
(d) in the case of a body corporate, the record of compliance with relevant legislation (established to the satisfaction of the Minister) of any director of the body corporate or a related body corporate,	14 15 16
(e) whether, in the opinion of the Minister, the management of the activities or works that are or are to be authorised, required or regulated under the petroleum title are not or will not be in the hands of a technically competent person,	17 18 19 20
(f) whether, in the opinion of the Minister, the person is not of good repute,	21
(g) in the case of a body corporate, whether, in the opinion of the Minister, a director of the body corporate or a related body corporate is not of good repute,	22 23 24
(h) whether, in the opinion of the Minister, the person is not of good character, with particular regard to honesty and integrity,	25 26
(i) in the case of a body corporate, whether, in the opinion of the Minister, a director of the body corporate or a related body corporate is not of good character, with particular regard to honesty and integrity,	27 28 29
(j) whether the person, during the previous 3 years, was an undischarged bankrupt or applied to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounded with his or her creditors or made an assignment of his or her remuneration for their benefit,	30 31 32 33
(k) in the case of an individual, whether he or she is or was a director of a body corporate that is the subject of a winding up order or for which a controller or administrator has been appointed during the previous 3 years,	34 35 36 37
(l) in the case of a body corporate, whether the body corporate or a related body corporate is the subject of a winding up order or has had a controller or administrator appointed during the previous 3 years,	38 39 40
(m) whether the person has demonstrated to the Minister the financial capacity to comply with the person's obligations under the petroleum title,	41 42 43
(n) whether the person is in partnership, in connection with activities that are subject to a petroleum title or proposed petroleum title, with a person whom the Minister considers is not a fit and proper person under this section,	44 45 46 47

- (o) whether the person has an arrangement (formal or informal) in connection with activities that are subject to a petroleum title or proposed petroleum title with another person whom the Minister considers is not a fit and proper person under this section, if the Minister is satisfied that the arrangement gives that other person the capacity to determine the outcome of decisions about financial and operating policies concerning those activities, 1
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- (p) any other matters prescribed by the regulations. 8
- (3) A person or body corporate has ***compliance or criminal conduct issues*** if: 9
- (a) the Minister is satisfied that the person or body corporate has contravened any relevant legislation, whether or not the person or body corporate has been prosecuted for or convicted of an offence arising from the contravention, or 10
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- (b) in the previous 10 years, the person or body corporate has been convicted in New South Wales or elsewhere of a serious offence or an offence involving fraud or dishonesty, or 14
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- (c) the person or body corporate has held a petroleum title, or any other instrument issued or granted under relevant legislation, that has been suspended, cancelled or revoked. 17
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- (4) The grant, renewal or transfer of a petroleum title can be refused on the ground that the Minister is of the opinion that the applicant is not a fit and proper person even if: 20
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- (a) the petroleum title is necessary for the carrying out of State significant development that is authorised by a development consent, despite section 89K of the *Environmental Planning and Assessment Act 1979 (the Planning Act)*, or 23
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- (b) the petroleum title is necessary for the carrying out of approved State significant infrastructure under Part 5.1 of the Planning Act, despite section 115ZH of that Act, or 27
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- (c) the petroleum title is necessary for the carrying out of a transitional Part 3A project under Schedule 6A to the Planning Act, despite section 75V of that Act, or 30
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- (d) section 91A or 93 of the Planning Act would otherwise prevent that refusal. 33
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- (5) To avoid doubt, section 22 (5) of this Act extends to the cancellation of (or suspension of operations under) a petroleum title under this section. 35
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- (6) A relevant person who is aggrieved by a decision of the Minister under this section may apply to the Land and Environment Court for a review of the decision, and the following provisions apply to such a review: 37
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- (a) a review is to be by way of rehearing, and fresh material or material in addition to, or in substitution for, the material considered on the making of the decision by the Minister may be given on the review and taken into consideration by the Land and Environment Court, 40
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- (b) the decision of the Land and Environment Court on a review of a decision is final and is to be given effect to by the Minister. 44
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(7)	In this section:	1
	<i>director</i> of a body corporate includes any person involved in the management of the affairs of the body corporate.	2
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	<i>related body corporate</i> has the same meaning as in the <i>Corporations Act 2001</i> of the Commonwealth.	4
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	<i>relevant legislation</i> means the following legislation:	6
	(a) this Act,	7
	(b) the <i>Mining Act 1992</i> ,	8
	(c) the environment protection legislation,	9
	(d) the <i>Environmental Planning and Assessment Act 1979</i> ,	10
	(e) the work health and safety legislation within the meaning of the <i>Mining Act 1992</i> ,	11
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	(f) any other legislation prescribed by the regulations under this Act.	13
	<i>serious offence</i> means:	14
	(a) an offence committed in New South Wales that is punishable by imprisonment for life or for a term of 5 years or more or by a fine of \$500,000 or more, or an offence committed elsewhere than in New South Wales that if committed in New South Wales would be an offence so punishable, or	15
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	(b) an offence committed under a law of the Commonwealth that is punishable by imprisonment for life or for a term of 5 years or more or by a fine of \$500,000 or more.	20
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[4]	Schedule 1 Savings and transitional provisions	23
	Insert at the end of the Schedule with appropriate Part and clause numbering:	24
Part	Provisions consequent on enactment of Mining and Petroleum Legislation Amendment Act 2014	25
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	Operation of fit and proper person test	27
(1)	Section 24A (as enacted by the <i>Mining and Petroleum Legislation Amendment Act 2014</i>) applies to any decision made after the commencement of that section, including:	28
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	(a) a decision with respect to an application or other matter that was pending on that commencement, and	31
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	(b) a decision based on conduct that occurred, or on a matter that arose, before that commencement.	33
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(2)	Section 24A (4) (as enacted by the <i>Mining and Petroleum Legislation Amendment Act 2014</i>) extends to permit the Minister to refuse the grant, renewal or transfer of a petroleum title even if the development consent that would otherwise have prevented refusal was granted before the date of assent to the <i>Mining and Petroleum Legislation Amendment Act 2014</i> .	35
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Grounds for cancellation or suspension of petroleum title	1
An amendment made to section 22 by the <i>Mining and Petroleum Legislation Amendment Act 2014</i> applies to any decision made after the commencement of the amendment, including:	2 3 4
(a) a decision with respect to a matter that was pending on that commencement, and	5 6
(b) a decision based on conduct that occurred, or on a matter that arose, before that commencement.	7 8