

Mining Amendment (ICAC Operations Jasper and Acacia) Bill 2014

Explanatory note

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

Overview of Bill

It is proposed that the Parliament, being satisfied because of information that has come to light as a result of investigations and proceedings of the Independent Commission Against Corruption known as Operation Jasper and Operation Acacia, that the grant of certain exploration licences, and the decisions and processes that culminated in the grant of those licences, were tainted by serious corruption (the ***tainted processes***), and recognising the exceptional nature of the circumstances, enact this Bill for the following purposes:

- (a) restoring public confidence in the allocation of the State's valuable mineral resources,
- (b) promoting integrity in public administration above all other considerations, including financial considerations, and deterring future corruption,
- (c) placing the State, as nearly as possible, in the same position as it would have been had those licences not been granted, recognising that it is not practicable in the circumstances to achieve, through financial adjustments or otherwise, an alternative outcome in relation to the licences based on what would have happened had the relevant licences been granted pursuant to processes other than the tainted processes.

To those ends, the object of this Bill is to amend the *Mining Act 1992* (the ***principal Act***) as follows:

- (a) to cancel the relevant licences and ensure that the tainted processes have no continuing impact and cannot affect any future processes (such as for the grant of further authorities) in respect of the relevant land,
- (b) to ensure that the State has the opportunity, if considered appropriate in the future, to allocate mining and prospecting rights in respect of the relevant land according to proper processes in the public interest,
- (c) to ensure that no person (whether or not personally implicated in any wrongdoing) may derive any further direct or indirect financial benefit from the tainted processes,
- (d) to protect the State against the potential for further loss or damage and claims for compensation, without precluding actions for personal liability against individuals, including public officials, who have been implicated in the tainted processes and have not acted honestly and in good faith.

The exploration licences that are cancelled by the proposed Act are as follows:

- (a) exploration licence number 7270 dated 15 December 2008,
- (b) exploration licence number 7405 dated 21 October 2009,
- (c) exploration licence number 7406 dated 21 October 2009.

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 Principal amendment of Mining Act 1992 No 29

The principal amendment is set out in **Schedule 1**. It inserts proposed Schedule 6A (proposed clauses 1–16) in the principal Act.

Clause 1 provides that the proposed Schedule has effect despite any other provision of the principal Act or the *Environmental Planning and Assessment Act 1979* (the ***Planning Act***).

Clause 2 defines expressions used in the proposed Schedule. In particular:

- (a) ***relevant land*** means the exploration area of a relevant licence or any part of the exploration

area of a relevant licence, and

(b) **relevant licence** means an exploration licence referred to in the Overview (that is, a licence this is cancelled by the proposed Act).

Clause 3 provides for the purposes and objects of the proposed Act, similar to the Overview.

Clause 4 cancels the relevant licences.

Clause 5 makes void certain applications made, and other actions taken, under the principal Act and the Planning Act in connection with the relevant licences and relevant land.

Clause 6 provides for the refund of certain fees.

Clause 7 provides that compensation is not payable by or on behalf of the State:

(a) because of the enactment or operation of proposed Schedule 6A, the proposed Act or any Act that amends proposed Schedule 6A, or

(b) because of any direct or indirect consequence of any such enactment or operation (including any conduct under the authority of any such enactment), or

(c) because of any conduct relating to any such enactment or operation.

Clause 8 absolves the State, and employees of the State acting honestly and in good faith, from liability for conduct before the cancellation date in relation to a relevant licence or mining on relevant land (whether occurring before or after the grant of a relevant licence).

Clause 9 continues the obligation of a holder of a relevant licence to provide a report under section 163C of the principal Act (reports on prospecting activities).

Clause 10 makes provision for the obtaining of exploration information and records of exploration information.

Clause 11 provides for the use and disclosure of information obtained in respect of relevant licences or relevant land.

Clause 12 makes it clear that the former holder of a relevant licence is required to clear away mining plant as provided for by section 245 of the principal Act.

Clause 13 continues the operation of certain conditions of relevant licences (principally conditions relating to the rehabilitation, remediation or repair of land, disturbed areas or utilities, the giving and maintaining of security and reporting).

Clause 14 requires security deposits provided under a relevant licence to be maintained until a determination is made as to whether further rehabilitation is required and conditions of licences have been fulfilled.

Clause 15 provides for the effect of the cancellation of the relevant licences on access arrangements.

Clause 16 prevents the making of any application for consent or approval under the Planning Act to development on the relevant land for the purposes of mining or prospecting, except by a person who is the holder of an authority that is in force in relation to the relevant land.

Schedule 2 Further amendment of Mining Act 1992 No 29

Schedule 2 [1] increases the penalty for the offence of failing to prepare or lodge a report in accordance with section 163C of the principal Act.

Schedule 2 [3] makes the section 163C offence an offence that is to be dealt with summarily before the Land and Environment Court.

Schedule 2 [4] provides for savings and transitional matters.

Schedule 2 [5] inserts a definition of **former holder** of an authorisation in the principal Act.

Schedule 2 [2] is a consequential amendment.