

South Australia

# **Mining Regulations 2020**

under the *Mining Act 1971*

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## Part 1—Preliminary

### 1—Short title

These regulations may be cited as the *Mining Regulations 2020*.

### 2—Commencement

These regulations come into operation on 1 January 2021.

### 3—Interpretation

- (1) In these regulations, unless the contrary intention appears—

*Act* means the *Mining Act 1971*;

*corresponding law* means an Act of another State or a Territory that contains provisions that substantially correspond with the *Mining Act 1971*;

- (2) For the purposes of paragraph (ab) of the definition of *declared equipment* in section 6(1) of the Act, mechanically driven equipment that is capable of drilling to depths of 2.5 metres or more below the ground in order to recover subsurface geological samples or information is prescribed.
- (3) For the purposes of the definition of *exploring* or *exploration operations* in section 6(1) of the Act, the following activities are, in accordance with paragraph (d) of that definition, brought within the ambit of that definition:
- (a) collecting a bulk sample required to evaluate the metallurgical and physical properties of a mineral deposit or the economic potential of such a deposit and rehabilitating the land from which the sample was taken to be as close as reasonably practicable to the state of the land before the sample was taken;

- (b) undertaking geotechnical test work and rehabilitating the land on which the test work was undertaken to be as close as reasonably practicable to the state of the land before the test work was undertaken.

#### **4—Exercise of rights over a road, street or highway**

- (1) A person must not exercise a right under the Act or these regulations on a public road, street or highway without the written consent of the authority that has the care, control or management of the road, street or highway.
- (2) However, a consent under subregulation (1) is not required to identify an area for a mineral claim on land (in a manner determined or approved under section 56E of the Act) consisting (partially or entirely) of a public road, street or highway.
- (3) An application to register a claim on land consisting (partially or entirely) of a public road, street or highway must be accompanied by the consent required under subregulation (1).

#### **5—Exempt land—prescribed distance**

- (1) This regulation applies in relation to—
  - (a) a miscellaneous purpose licence; and
  - (b) a retention lease; and
  - (c) a mining lease.
- (2) For the purposes of section 9(5) of the Act, the *prescribed distance* for the recovery of industrial minerals under a mineral tenement to which this regulation applies is, in accordance with paragraph (c)(i) of that definition, 400 metres.

#### **6—Waiver of exemption**

- (1) For the purposes of section 9AA(8)(b) of the Act, a tenement holder must provide the owner of land with the following information in relation to each relevant tenement or proposed tenement in relation to the land:
  - (a) a copy of the approved program (if any) under Part 10A of the Act;
  - (b) a copy of the relevant proposal;
  - (c) a copy of any response of the tenement holder as required by the Minister under section 56H(4)(b) of the Act;
  - (d) information as to the rights of the owner of land under section 9AA(9)(b) and (14) of the Act in a manner and form determined by the Minister that is made publicly available on a website determined by the Minister.
- (2) A tenement holder who is a party to an agreement to waive the benefit of an exemption under section 9AA of the Act must, within 21 days after the agreement is entered into, give notice of the agreement to the Mining Registrar.
- (3) A tenement holder who is party to an agreement to waive the benefit of an exemption under section 9AA of the Act must, if the agreement is made prior to the registration of the tenement, include a copy of the agreement with the application for the tenement.

## **Part 2—Administration**

**To be released in Package 2**

## **Part 3—Royalty**

**To be released in Package 2**

## **Part 4—Mining register**

**To be released in Package 2**

## **Part 5—Information**

**To be released in Package 2**

## **Part 6—Mineral claims**

### **18—Application to establish a mineral claim**

- (1) For the purposes of section 21(7)(f) of the Act, the following information is prescribed:
  - (a) a statement of the proposed operations to be carried out within the area of the mineral claim;
  - (b) a plan delineating any exempt land within the area of the mineral claim.
- (2) For the purposes of sections 21(10) and 24A(a)(ii) of the Act, the period of 28 days, or such longer period as the Mining Registrar may determine or approve, is prescribed.

### **19—Area of claim**

For the purposes of section 23 of the Act (but subject to section 23(2)), the maximum permissible area of a mineral claim is 250 hectares.

### **20—Notification of registration**

The Mining Registrar must, on the registration of a mineral claim, give notice of the registration of the claim to the applicant.

### **21—Cancellation of claim**

- (1) If the Mining Registrar discovers or determines, after a mineral claim is registered, that the claim should not have been registered on account of a contravention of, or a failure to comply with, a provision or requirement of the Act or these or any other regulations made under the Act, the Mining Registrar may, by notice in writing to the owner of the claim, give notice of the Mining Registrar's intention to cancel the registration of the claim on a day specified in the notice (which must be at least 21 days after the date of the notice).
- (2) A person who receives a notice under subregulation (1) may apply to the Warden's Court to have the decision of the Mining Registrar reviewed.

- (3) An application for review must be made within 14 days of service of the notice (unless the Warden's Court allows an extension of time).
- (4) Pending the determination of an application for review, the Mining Registrar must not cancel the registration of the claim.
- (5) At the conclusion of the review, the Warden's Court may—
  - (a) confirm the decision of the Mining Registrar; or
  - (b) cancel the notice.
- (6) Subject to a decision of the Warden's Court under this regulation, the Mining Registrar may, after the day specified in a notice under this regulation, cancel the registration of the relevant claim.

## **22—Cessation of claim if lease granted**

If the Minister grants a mining lease or a retention lease over the whole or part of the area of a mineral claim—

- (a) the claim will cease to the extent to which the lease applies to the area of the claim; and
- (b) if there is no other application for a mineral tenement in relation to the mineral claim under consideration under the Act and these regulations at that time, the claim will cease and determine.

## **Part 7—Exploration licences**

### **23—Application for licence**

- (1) For the purposes of section 29A(1)(c) of the Act, the following information is prescribed:
  - (a) a statement—
    - (i) outlining the exploration operations that the tenement holder intends to carry out under the exploration licence during—
      - (A) the first 2 years of operations under the licence; or
      - (B) a period determined by the Minister; and
    - (ii) declaring the amount of expenditure that is estimated to occur in carrying out those operations;
  - (b) a statement of the technical, operational and financial capabilities and resources available to the applicant for the purpose of carrying out operations under the exploration licence;
  - (c) a statement nominating the principal mineral or minerals that the applicant is seeking under the exploration licence and the exploration model that the applicant intends to employ for the purposes of exploring for that mineral or those minerals;
  - (d) a statement outlining the applicant's history of non-compliance in relation to authorised operations carried out under a corresponding law;

- (e) a statement, in the form of a statutory declaration, declaring whether the applicant or a related body corporate has, within the preceding period of 3 months, held an exploration licence (or an interest in an exploration licence) in relation to any area in respect of which the exploration licence is being sought.
- (2) Any information provided under subregulation (1) must be in a form determined by the Minister, be supported by such evidence as the Minister may determine, and comply with any requirement of the Minister relating to the amount or detail of information that must be provided.

## **24—Notification of grant of licence**

For the purposes of section 29B of the Act, notice of the grant of an exploration licence will be given in the manner prescribed by regulation 78.

## **25—Expenditure**

For the purposes of section 30AAA of the Act—

- (a) the period applying under subsection (3)(a)(i) of that section is—
  - (i) unless subparagraph (ii) applies—every 2 years (with the first period commencing on the date on which the exploration licence is granted); or
  - (ii) a period determined by the Minister; and
- (b) the period applying under section (3)(b)(i) of that section is—
  - (i) unless subparagraph (ii) applies—every ensuing period of 2 years (with the period commencing on the second anniversary of the date on which the exploration licence is granted); or
  - (ii) a period determined by the Minister; and
- (c) the time within which a return must be furnished under subsection (3) of that section is within 60 days of the end of each period applying in accordance with paragraphs (a) and (b).

## **26—Application for retention status**

For the purposes of section 33B(2)(c) of the Act, the following information is prescribed:

- (a) in the case of a tenement holder who applies for the grant of retention status in relation to the exploration licence under section 33B(3)(a) of the Act—
  - (i) a statement of the approval or approvals under another Act or Acts that the tenement holder has been unable to obtain, and details of any attempts to obtain such approvals; and
  - (ii) a statement summarising the exploration operations undertaken under the exploration licence; and
  - (iii) an estimate of the expenditure that has been incurred in respect of exploration operations undertaken on the area of land to which the application relates; and

- (iv) an estimate of the time that the applicant considers will be required to obtain the approvals under another Act or Acts that are required before the tenement holder can commence or continue exploration operations in relation to the land to which the application relates;
- (b) in the case of a tenement holder who applies for the grant of retention status in relation to the exploration licence under section 33B(3)(b) of the Act—
  - (i) details of the mineral resource located in, on or under the land to which the application relates; and
  - (ii) a statement declaring that the mineral resource has been appropriately identified and estimated; and
  - (iii) a statement outlining the reasons the applicant considers it unreasonable to expect an application to be made for a mining lease or a retention lease because it is not commercially viable to spend time and money on developing the resource; and
  - (iv) a statement outlining the reasons the applicant considers that mining the relevant land will become commercially viable within the next 6 years;
- (c) in the case of a tenement holder who applies for the grant of retention status in relation to the exploration licence under section 33B(3)(c) of the Act—
  - (i) a statement summarising the exploration operations undertaken under the exploration licence; and
  - (ii) an estimate of the expenditure that has been incurred in respect of exploration operations undertaken on the area of land to which the application relates; and
  - (iii) a statement of the circumstances that the applicant considers justify the application, including details of any steps taken by the applicant to resolve those circumstances by other means; and
- (d) such other information as may be determined by the Minister for the purposes of this regulation

## **27—Division of area of licence**

For the purposes of section 30AA(4)(b) of the Act, the following information is prescribed:

- (a) a description of the area that is to be surrendered in accordance with the requirements of section 56E of the Act;
- (b) an application that complies with the requirements of section 29A of the Act as if the designated party were applying for a new exploration licence in relation to the land to which the application applies and as if the land were open ground (subject to any necessary modifications);
- (c) a statement, in the form of a statutory declaration, declaring that—
  - (i) the designated party is not, in relation to the tenement holder, a related body corporate; and

- (ii) the designated party or a related body corporate has not, within the preceding period of 2 years, held a mineral tenement in respect of the land to be surrendered;
- (d) a statement that there are no outstanding obligations or liabilities in respect of the land to which the application relates or, if there are any such obligations or liabilities, a commitment from the designated party to assume responsibility for those obligations and liabilities;
- (e) if the exploration licence falls within the ambit of regulation 70(1)(b)—a final compliance report as if the land to which the application relates were a tenement that was being surrendered by the tenement holder;
- (f) if the exploration licence falls within the ambit of regulation 71—a final technical exploration report as if the land to which the application relates were a tenement that was expiring, or being surrendered, cancelled or forfeited by the tenement holder;
- (g) such other information as may be determined by the Minister for the purposes of this regulation.

## 28—Renewal of licence

- (1) For the purposes of section 30A(4a)(a) of the Act, the following information is prescribed:
  - (a) a statement of performance for the previous term which includes such information as the Minister may determine;
  - (b) a statement—
    - (i) outlining the exploration operations that the tenement holder intends to carry out under the exploration licence during—
      - (A) the first 2 years of operations under the renewed licence; or
      - (B) a period determined by the Minister; and
    - (ii) declaring the amount of expenditure that is estimated to occur in carrying out those operations;
  - (c) a statement nominating the principal mineral or minerals that the applicant is seeking over the next term of the licence and the exploration model that the applicant intends to employ for the purposes of exploring for that mineral or those minerals;
  - (d) a statement of the technical, operational and financial capabilities and resources available to the applicant for the purposes of carrying out operations under the renewed licence;
  - (e) a statement outlining the applicant's history of non-compliance in relation to authorised operations carried out under a corresponding law;
  - (f) such other information as may be determined by the Minister for the purposes of this regulation.
- (2) An application under section 30A(4) of the Act must be accompanied by the prescribed fee.

**29—Excise of land for public purposes**

- (1) For the purposes of section 30AB of the Act, the Minister may excise land by notice in the Gazette in a form determined by the Minister.
- (2) If the Minister gives a notice under subregulation (1), the Minister must serve a copy of the notice on the tenement holder.

**Part 8—Leases****To be released in Package 3****33—Notice of decision**

The Minister must give an applicant for a mining lease or a retention lease notice of the outcome of the application.

**Part 9—Miscellaneous purposes licences****To be released in Package 3****37—Notice of decision**

The Minister must give an applicant for a miscellaneous purposes licence notice of the outcome of the application.

**Part 10—Screening and scoping phases****To be released in Package 3****Part 11—Common provisions****42—Consultation on proposed tenement**

- (1) This regulation applies to—
  - (a) a mining proposal under section 36(1)(c) of the Act; or
  - (b) a retention proposal under section 44(1)(c) of the Act; or
  - (c) a proposal accompanying an application for a miscellaneous purposes licence under section 49(1)(c) of the Act.
- (2) For the purposes of sections 36(1)(c)(iv), 44(1)(c)(iv) and 49(1)(c)(iv) of the Act—
  - (a) the consultation must at least comply with the following requirements:
    - (i) there should be an express focus on engagement about the environmental outcomes that are expected to occur in connection with the proposed authorised operations;
    - (ii) reasonable steps should be taken to consult with the owner of land where the authorised operations are proposed to be carried out;
  - (b) the results of the consultation undertaken in relation to a proposal must at least set out the following:

- (i) the persons consulted;
- (ii) any issues of concern raised by the persons consulted;
- (iii) the steps (if any) taken or proposed to be taken by the applicant to address those concerns.

#### **43—Notice**

For the purposes of section 56H(1)(a)(ii) of the Act, an application for a retention lease where the applicant proposes to conduct only exploration operations in relation to the land to which the application relates is exempt from the requirements of section 56H of the Act.

### **Part 12—Change in operations**

#### **49—Information on consultation on application for approval for change in operations**

For the purposes of section 56R(b)(ii) of the Act, an application for the approval of the Minister under Part 8B Division 7 of the Act must set out information on the results of consultation undertaken by the tenement holder in relation to a proposal which must at least set out the following:

- (a) the persons consulted;
- (b) any issues of concern raised by the persons consulted;
- (c) the steps (if any) taken or proposed to be taken by the applicant to address those concerns.

#### **50—Consultation by Minister**

For the purposes of section 56S(b) of the Act, the Minister is required to undertake consultation under Part 8B Division 2 of the Act if—

- (a) there is an additional or different impact to the environment as a result of a proposed change to the operations to be carried out under the tenement; and
- (b) the impact is significant.

### **Part 13—Funds**

**To be released in Package 2**

### **Part 14—Forfeiture and transfer of mineral tenement**

**To be released in Package 2**

### **Part 15—Programs for environment protection and rehabilitation**

#### **57—Consultation on program and review of program**

- (1) For the purposes of section 70B(2)(d) and (e) of the Act, a program under Part 10A of the Act must, in addition to the requirements set out in that section and these regulations—
  - (a) include information on all consultation undertaken in connection with the preparation of the program in relation to—
    - (i) engagement about the environmental outcomes that are expected to occur in connection with the authorised operations carried out under the program being reviewed; and
    - (ii) reasonable steps taken to consult with the owner of the land where the authorised operations are proposed to be carried out,that must at least set out the following:
    - (iii) the persons consulted;
    - (iv) any issues of concern raised by the persons consulted;
    - (v) the steps (if any) taken or proposed to be taken by the tenement holder to address those concerns.
- (2) For the purposes of section 70C(3)(a) of the Act, a tenement holder conducting a review of a program under Part 10A of the Act must—
  - (a) undertake consultation that at least complies with the following requirements:
    - (i) there should be an express focus on engagement about the environmental outcomes that are expected to occur in connection with the authorised operations to be carried out under the program being reviewed;
    - (ii) reasonable steps should be taken to consult with the owner of land where the authorised operations are proposed to be carried out; and
  - (b) include, in any revised program, information on all consultation undertaken in connection with the review which must at least set out the following:
    - (i) the persons consulted;
    - (ii) any issues of concern raised by the persons consulted;
    - (iii) the steps (if any) taken or proposed to be taken by the applicant to address those concerns.

## Part 16—General provisions—environmental protection

To be released in Package 3

## Part 17—Special mining enterprises

To be released in Package 3

## Part 18—Entry on land

### 64—Entry on land

- (1) A person must, on serving a notice of entry under section 58A of the Act, keep a record that the notice has been served.
- (2) For the purposes of section 58A(6) of the Act, a notice under section 58A of the Act must be served on the Mining Registrar.

## Part 19—Private mines

To be released in Package 3

## Part 20—Reports

To be released in Packages 2

## Part 21—Miscellaneous

### 78—Service of documents

- (1) A notice or document required or authorised by or under the Act to be given to or served on a person (other than a designated person or a person who holds or may hold native title in land) may—
  - (a) be served on the person personally; or
  - (b) be posted by registered post in an envelope addressed to the person—
    - (i) at the person's last known address; or
    - (ii) if the person has an address for correspondence or service—at that address; or
  - (c) be served by email sent to an email address provided by the person (in which case the notice or document will be taken to have been given or served at the time of sending).

**Note—**

Part 5 of the *Native Title (South Australia) Act 1994* sets out the method of service on all who hold or may hold native title in land.

- (2) A notice or document required or authorised by or under the Act or these regulations to be provided or given to or served on a designated person must be given or served in the manner specified by the relevant designated person by notice in the Gazette.

- (3) If a notice or document is given or served under subregulation (2)—
- (a) by email—the notice or document will be taken to have been given or served at the time of sending the email; or
  - (b) by other electronic means—the notice or document will be taken to have been given or served when the person giving or serving the notice or document receives confirmation by those electronic means that the notice or document has been received by the designated person.
- (4) Subregulation (2) operates subject to any other provision made by these regulations.
- (5) In this regulation—
- designated person* means—
- (a) the Minister; or
  - (b) the Mining Registrar; or
  - (c) the Director of Mines.

## Schedule 1—Items to be registered on mining register

**The remaining schedule will be released in Package 2**

## Schedule 2—Rental

**To be released in Packages 2**

## Schedule 3—Administrative penalties

**To be released in Packages 2**

## Schedule 4—Expiation fees

**To be released in Packages 2**

## Schedule 5—Revocation of *Mining Regulations 2011*

The *Mining Regulations 2011* are revoked.

**Note—**

As required by section 10AA(2) of the *Subordinate Legislation Act 1978*, the Minister has certified that, in the Minister's opinion, it is necessary or appropriate that these regulations come into operation as set out in these regulations.

### Made by the Governor

with the advice and consent of the Executive Council

on

No            of 2020