

Consultation on draft mining regulations

GUIDANCE MATERIALS

Package two: compliance and enforcement

- *Compliance and enforcement*
- *Warden's Court*
- *Mining Register*
- *Royalties and finance*
- *Mine managers*
- *Opal mining*



**Government
of South Australia**

Department for
Energy and Mining

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Introduction

The Department for Energy and Mining (DEM) is now developing updated mining regulations to enable the revised *Statutes Amendment (Mineral Resources) Act 2019* to commence on 1 January 2021.

The regulations outline how the provisions of the revised Act are applied.

By law, the regulations cannot introduce new issues and topics outside the scope of the Act, and need to be written in a way that explains how the Act will operate and how DEM will regulate mining in our state.

Commencing at the start of August 2020, the draft mining regulations will be released in three separate packages for public consultation. These packages have been prepared to support you to make a submission as part of the consultation process and include:

- **Package one** – focussed on land access, including access to land, exploration licences, and mineral claims. Package was released on **Monday 3 August**
- **Package two** – discusses compliance and enforcement matters, including compliance and enforcement, opal mining, Warden’s Court, Mining Register, royalties and finance and competency of mining managers. Package will be released from **Monday 10 August**
- **Package three** – will focus on operating approvals, including private mines, and a consolidated mining approvals approach made up of topics on common provisions, production tenements, and operating approvals. Package will be released from **Monday 17 August**.

DEM will carefully consider submissions when finalising the regulations.

Please note this explanatory document also contains information relating to the revised Act. While the revised Act is not under consultation, this information is important to help you understand the draft regulations and provide a submission.

Compliance and enforcement

Introduction

The Department for Energy and Mining (DEM) uses the *Mining Act 1971* (Mining Act) and other laws and compliance tools to regulate, monitor and enforce compliance in the mining sector. The regulator, made up of authorised officers and other delegates from DEM, is responsible for administering these laws and rules.

The revised Act will strengthen regulation of the industry and improve transparency of compliance and enforcement activities. The Act delivers an expanded range and use of compulsive tools available to ensure the protection of our environment, including emergency direction powers. This will continue to reinforce industry and community confidence in the regulator, and the environmental and social performance of the mineral resources sector in South Australia.

What are the key changes in the draft regulations supporting the Act?

Offences and penalties

The revised Act introduces a new civil penalty regime modelled on leading practice environmental management regimes. This reform allows the Director of Mines to pursue civil penalties in lieu of criminal penalties and aligns with civil penalties in modern environmental legislation.

The government is committed to rehabilitating all mined land to support future land uses where possible. The Mining Rehabilitation Fund (MRF) has been established to fund land rehabilitation monitoring and maintenance programs. Any penalties or expiation fees owed under the Mining Act or the draft regulations are paid into the MRF. DEM intends to undertake further work and consultation on the operation of the MRF in 2021.

Reviewed penalty provisions under the draft regulations will ensure penalties are proportionate to the risk associated with non-compliance.

Compliance monitoring

The regulator can request audits, reports, and verification of information from the tenement holder, as required.

Under the draft regulations:

- compliance and incident reports may be published in the Mining Register to promote transparency, accountability and access to information in the industry
- compliance and incident reporting can be applied to extractive mineral leases and private mines
- a 'reportable incident' will include the breach of an outcome, a lease condition or a general duty, a failure to comply with a direction or order, illegal mining, and/or undue damage to the environment

- compliance and incident reports can be submitted by industry using improved digital tools.

Public liability insurance

Public liability insurance must be maintained by the tenement holder to cover any action or damage arising out of exploration or mining operations. Existing requirements have been maintained and modernised under the draft regulations. A tenement holder must provide a:

- copy of its insurance policy before commencing operations and as requested thereafter
- insurance coverage certificate and all endorsements and waivers, every year
- notification within 14 days of a lapse in insurance cover or if there is a change to the insurance policy or level of cover.

Insurance information may be published on the Mining Register.

Confirmation of emergency direction

The revised Act gives the regulator broader emergency direction powers to respond swiftly and effectively to matters of environmental emergency. The draft regulations provide for written confirmation of an emergency direction that is issued verbally.

Forfeiture

A clear process for surrender and forfeiture in the revised Act will strengthen environmental and rehabilitation requirements and ensure they are complied with before the whole, or part, of a tenement is surrendered.

The draft regulations expand the framework for an interested person to apply to the Warden's Court to seek the forfeiture of a given mining tenement, to encourage greater competition and compliance within the mining industry.

The alleged breach, failure or non-compliance that forms the basis of an application must be significant enough to justify the serious consequence of the mineral tenement's forfeiture.

The tenement will return to good standing if the regulator has addressed the non-compliance through alternative measures and enforcement tools. There will then be no grounds for forfeiture.

Draft regulations expand the scope of forfeiture to include exploration licences. However, a forfeiture application cannot be made in the first two years from the grant or transfer of a licence.

The regulations also define the requirements for a person to have the necessary 'standing to apply' to the Warden's Court for forfeiture of a tenement.

Under the draft regulations, an application for forfeiture must demonstrate the applicant's history of compliance under the Mining Act or similar interstate Acts and capability to:

- meet the outcomes, criteria and requirements of the relevant approved program
- meet the terms and conditions of the relevant mineral tenement
- replace any security already in place
- undertake the relevant operations and rectify any non-compliances existing at the time of the application.

Transfer of the tenement may only happen when the:

- Warden's Court is satisfied the tenement should be forfeited and recommends it to the Minister

- Applicant applies for the transfer, within 14 days of the date the Warden’s Court made the recommendation
- Minister or delegate consents to the transfer.

Cancellation and suspension

Under the revised Act, written notice of an intention to cancel or suspend a tenement or parts of the operation may be provided if the tenement holder fails to comply with, or disregards, a term of the tenement or provision of the Act. This will increase clarity for industry and stakeholders, reduce duplication and remove inconsistencies.

The draft regulations require written notice of an intention to cancel or suspend a tenement be provided by personal service, registered post or by email.

Reinstatement and extension of term

The revised Act provides a range of compliance and enforcement tools to ensure all non-compliance matters are dealt with and address situations where a tenement holder fails or refuses to renew a tenement when there are outstanding obligations.

The term of a mineral tenement can be extended or reinstated for an expired tenement if the tenement holder has failed to comply with a provision of the Mining Act. The tenement holder will continue to be subject to the terms and conditions of the tenement and the requirements of the Act but can only undertake rehabilitation activities.

The draft regulations require written notice of the reinstatement or extension be provided by personal service, registered post or by email.

Authorised officers

Under the revised Act, authorised officers have expanded powers to conduct authorised investigations. To ensure some of these new powers are used appropriately, officers are required to obtain a warrant issued by a magistrate, warden or justice before exercising certain powers in respect of residential and non-residential premises. A draft regulation describes the procedure that must be followed when applying for a warrant.

What other changes were finalised in the revised Act?

This information summarises other key changes finalised through the revised Act. These changes are not being consulted on through this engagement process.

Compliance and enforcement reforms in the revised Act

Part 10B: New dedicated part of the Act for improved and modernised compliance and enforcement tools.

Section 70E: Expanded power to issue environmental directions – Expanded to allow direction of specified tests or monitoring to be undertaken, as well as the requirement to develop a plan for remedial action.

Section 70F: Clarification that a rehabilitation direction may be issued at any time, including after a mineral tenement has expired or been cancelled or surrendered.

Section 70FB: New emergency direction power – to be issued verbally.

Section 70FC: Power to issue a direction that may be in contravention of the Act.

Section 70HA: Expanded power to allow refusal of a mineral claim for non-compliance with a direction.

Section 70HB: Self-incrimination is not a defence for failure to comply with a direction.

Offence and penalties reforms in the revised Act

Part 10C: A dedicated part of the Act for offences and penalties.

Section 70HE: New civil penalty and offence regime.

Section 70HF: New Mining-specific court powers – Expanded court’s power to make orders necessary to address environmental offences and aligns with modern environmental legislation.

Section 70HG: New continuing offences – A person who is convicted of an offence against a provision of this Act and continues the offence, or disregards the conditions associated with the offence, will be subject to a daily penalty, in addition to the penalty for the offence.

Section 70HH: New directors penalties – Offences against directors of a body corporate (for offences of the body corporate) if the directors knew, or ought reasonably to have known, that there was a significant risk that such an offence would be committed, was in a position of influence, and the directors failed to exercise due diligence to prevent the offence.

Part 10C: Modernised framework for penalties to reflect modern environmental regulation – Updated evidentiary provisions and expanded timeframe for enforcement. All offences are summary offences.

Authorised officer reforms in the revised Act

Section 14B: Modernised inquiry powers for examining and making inquiries as well as gathering information.

Section 14C: Break and enter powers (with a warrant) – Able to enter, search, inspect and examine any premises, land or vehicle in connection with any operations or activities regulated by the Act and, where necessary, break into or open a part of, or anything in, the premises, land or vehicle.

Section 14D: Compel identity – Expanded to include a requirement for a person to identify themselves.

Sections 14E and H: Seizure powers – Authorised officers have the power to seize and retain things.

Section 14G: Expiation notices – Authorised officers are empowered to issue notices. Regulations will list expiable offences.

Other miscellaneous compliance reforms in the revised Act

Section 74AA: Alternative penalties via enforceable voluntary undertakings – Rather than prosecuting, a specific undertaking may be accepted from a tenement holder.

Section 79A: New offence for providing false and misleading information.

Section 81: Clearer and enforceable accountability and liability – Includes joint and several liability and vicarious liability.

Section 70HK: Tenement holder assumed liable – Unless there is evidence to the contrary the tenement holder is assumed liable.

Section 85: Priority charge – New statutory interest in favour of Crown for debts to be recognised on the Personal Property Securities Register held by the Commonwealth.

Section 56W: Modernised and flexible cancellation and suspension of operations (all or part) – The ability to cancel or suspend operations but ensure the tenement holder meets relevant obligations.

Sections 56Y to 56Z: New abilities to prevent expiry of a tenement – Abilities to extend the term or reinstate an expired tenement to manage non-compliance.

Section 70: Updated and strengthened forfeiture provisions – An application can be made to forfeit and transfer a tenement due to a breach of the Act, regulations, term or conditions of a tenement, or a program for environment protection and rehabilitation (PEPR), or undue damage to the environment or failure to carry out authorised operations.

Warden's Court

Introduction

The *Mining Act 1971* (Mining Act) established the Warden's Court and confers essential judicial and administrative functions. The Warden's Court is a specialist court dealing with matters related to all mineral tenements. It provides an accessible, cost-effective jurisdiction for parties involved in a mining dispute and can hear claims up to \$250,000.

The Supreme Court and the Environment, Resources and Development (ERD) Court are also conferred jurisdictions under the Mining Act. The jurisdiction of each of these courts depends on the nature of the relevant application.

The revised Act will streamline the administrative processes of the Warden's Court and allow it to function as consistently, efficiently and effectively as possible.

What are the key changes in the draft regulations supporting the Act?

Powers and authority of the Warden's Court

A warden is a magistrate nominated by the Attorney-General to exercise the jurisdiction and power of a warden. Part 10 of the Mining Act now ensures that powers and authorities of the Warden's Court are consistent with those prescribed under the *Magistrates Court Act 1991*.

The warden, or any other officer authorised by the rules of the court, can now issue a summons on behalf of the court requiring a person to appear and give evidence, or produce evidentiary material.

Section 65 of the Mining Act allows for the powers of a warden to be limited or expanded by the regulations. No limitation or expansion is contemplated at this time.

Warden's Court jurisdiction and rules

Changes to the Warden's Court jurisdiction as a result of the revised Act relate to:

- exempt land matters (section 9AA)
- warrants (section 14C)
- mortgages and caveats (section 15AF)
- restriction of claims (section 70HA)
- authority to establish a successive mineral claim (section 27)
- compensation for excise of land for public purposes (section 30AB)
- rectification of boundary (section 56O)
- notices of entry and operations (section 58A)
- compensation (section 61)
- conditions under which land may be simultaneously subject to more than one tenement (section 80)
- forfeiture and transfer of a mineral tenement (section 70).

Draft regulation changes related to these jurisdictional amendments are addressed under the relevant topics.

Warden's Court rules and procedures will be updated by the Senior Warden to reflect any jurisdictional changes.

What other changes were finalised in the revised Act?

This information summarises other key changes finalised through the revised Act. These changes are not being consulted on through this engagement process.

Warden's Court reforms in the revised Act

Section 64: Establishment of the Warden's Court – expanded to allow the jurisdiction of the Warden's Court to be conferred or contemplated by the Mining Act or any other Act.

Section 65: Powers and authorities of the Warden's Court – updated to ensure that the powers and authorities of the Warden's Court are consistent with the Magistrate's Court of South Australia, and those powers can be limited or expanded by the regulations.

Section 66: Senior Warden – allows the senior warden to make rules relating to the practice and procedure of the Warden's Court. This will ensure quicker and more efficient court processes and reduce red-tape.

Section 67: Monetary claims – the Warden's Court has been given the power to determine a maximum monetary claim up to \$150,000, increased from the previous amount of \$100,000.

Section 70: Updated and strengthened forfeiture provisions – allows an interested person to seek forfeiture of a mineral tenement due to a breach of the Mining Act, regulations,

term or conditions of a tenement, or a program for environment protection and rehabilitation (PEPR), or undue damage to the environment, or failure to carry out authorised operations.

Section 15AA: Modern and expansive Register – a new Mining Register will record the commencement and completion of Warden's Court matters as well as its decisions, determinations and orders (see Mining Register section of these guidance materials).

Mining Register

Introduction

The state uses the Mining Register to manage private mines, mineral claims, leases and licences, also known as mineral tenements. The Mining Register contains a record of all mineral tenements granted in the state, and other dealings that occur in relation to those tenements such as caveats, mortgages and transfers.

It also records and provides information on matters relating to each mineral tenement, such as renewals, financial assurances, environmental approvals and non-compliances. The Mining Registrar administers, manages and maintains the Mining Register.

The revised Act will significantly expand the scope of the Mining Register.

What are the key changes in the draft regulations supporting the Act?

A new Mining Register, with a substantially expanded scope, was introduced under Part 2A of the revised Act. It recognises a broader range of dealings affecting a tenement and information related to a tenement.

The draft regulations provide a comprehensive list of items that may be registered on the new Mining Register to meet the requirements of the revised Act, which includes:

- mineral tenements including mineral claims, exploration licences, mining leases, retention leases, miscellaneous purpose licences and private mines

- the terms and conditions of a mineral tenement
- transfers of registered title holders
- mortgages and caveats
- instruments, agreements, determinations, dealings and agreements required to be registered under the Mining Act such as waivers on exempt land and appointment of operators
- notices that must be served or given to the Mining Registrar such as a notice of entry onto land
- Warden's Court information on proceedings and decisions
- other documents required to be registered under the regulations, such as environmental directions, bonds, penalties and compliance reporting by explorers or miners.

Further information about some of the key items that may be registered (transfer of title, mortgages and caveats, other dealings, notification of operator and information) is provided below to support understanding of the draft regulations.

The revised Act gives the Mining Registrar broad discretion to control the level of information contained on the Mining Register and encourages public access to a broader range of information.

Under the revised Act, explorers and miners have obligations to ensure the right information is furnished promptly to the Mining Registrar. Failure to do so may result in a penalty of up to \$5,000.

Dealings

'Dealings' are commercial arrangements that create an interest in a mineral tenement or security over a mineral tenement. Dealings commonly include:

- creation and transfer of proprietary, equitable or contractual interests in a mineral tenement
- creation and withdrawal of a security interest over a mineral tenement.

Dealings are usually registered on the Mining Register so parties can be notified of changed circumstances relating to the tenement that may affect their interest.

Transfer of title

The revised Act describes an updated framework for transfer of title in a mineral tenement. A transfer or change in the registered titleholder of a mineral tenement must have ministerial consent. The transfer can only happen if:

- the Minister or delegate agrees to it
- it is registered on the Mining Register.

The revised Act makes it clear that consent is only required for the transfer of a legal or proprietary interest in a mineral tenement.

Information may be requested to help decide whether to approve a transfer. For example:

- for an exploration licence the new tenement holder, or transferee, must demonstrate their financial and technical capability to meet the minimum expenditure requirements on the tenement
- for a mining lease the transferee needs to demonstrate the technical capability to effectively and efficiently mine the lease

in accordance with the conditions and environmental outcomes outlined in the program for environment protection and rehabilitation (PEPR).

Mortgages and caveats

Under the revised Act, a mortgage is any form of charge over a mineral tenement agreed on between the contracting parties. A mineral tenement, or an interest or share in it, may be mortgaged as security in the form of any charge, for example for the repayment of money, discharge of liability or to secure the performance of an obligation.

A caveat is a legal way to protect an interest in a mineral tenement, as agreed to between the contracting parties. A caveat may prevent the registration of any other dealings on the tenement, which affect the interest, with certain conditions.

The contracting parties decide whether the dealing is a mortgage or caveat. If they disagree, an appropriate court – the Warden's Court, Environment, Resources and Development (ERD) Court or Supreme Court – can resolve the matter.

Caveats and mortgages do not require consent under the revised Act. They may be lodged with the Mining Registrar for registration on the Mining Register by any party to the dealing.

The Mining Registrar determines the manner and form of applications to lodge a mortgage or caveat, as well as the supporting documents and information required. The Mining Registrar's role is to verify the application requirements have been met, not whether the mortgage or caveat is valid.

When the tenement holder is not the submitting party, applications must be appropriately prepared and include a statutory declaration if a caveat is included.

Other dealings

Under the revised Act, tenement holders can also register other dealings or documents relating to a mineral tenement, an interest in a mineral tenement or operations to be carried out on the tenement. These include:

- royalty agreements
- mineral rights agreements
- farm-in agreements – an agreement that allows a third party to earn a right to acquire a legal interest in the tenement, usually by spending a certain amount of money on exploration and development
- joint venture agreements.

These documents are likely to be of commercial interest to the mining industry and registering them on the Mining Register gives others notice of these dealings.

Notification of operator

The revised Act obliges the tenement holder to notify the Minister or delegate within 14 days if any person starts authorised operations on the mineral tenement on their behalf. This authorisation must also be registered on the Mining Register. Failure by a tenement holder to register a dealing or provide notification may result in a penalty of up to \$5,000.

Information

The revised Act gives broader powers to request the tenement holder to create, collect and provide materials. These materials may be recorded on the Mining Register.

It also provides broad discretionary powers to release relevant materials, unless the release would:

1. be contrary to any other Act or law
2. be in breach of a court order or tribunal
3. involve the disclosure of a trade secret
4. be contrary to any requirement or restriction outlined in the regulations.

Materials relating to a private mine cannot be released unless the material is to be published on the Mining Register, or the Mining Act expressly requires the material to be released, eg mine operation plans.

Materials may be released subject to any conditions determined to be relevant. Any person/company who fails to comply with those conditions may be fined up to \$120,000.

What other changes were finalised in the revised Act?

This information summarises other key changes finalised through the revised Act. These changes are not being consulted on through this engagement process.

Mining Register reforms in the revised Act

Section 15AA: Modern and expansive Register – Includes the life of tenement, interest in a tenement, non-compliance and Warden’s Court matters.

Section 15 AB: Transfers and registered ownership – Register will record the legal owner of the tenement. The tenement holder is liable for obligations under the Act, and the owner of rights granted under the Act. Change in legal owner requires consent (the only dealing to require consent).

Section 15AC and 15AD: Mortgages –

Modernised commercial process to better protect financiers (to attract project finance), with flexibility for tenement holders.

Limited regulatory involvement to promote commercial flexibility.

Section 15AE and 15AF: Caveats –

Improved system to meet modern commercial needs to industry and investors. Limited regulatory involvement to promote commercial flexibility.

Section 15AG: Other interests and

dealings – A new mechanism for recognition of non-proprietary interests and alternative investment arrangements. Includes a process for registering operators acting on behalf of tenement holders.

Royalties and finance

Introduction

The *Mining Act 1971* (Mining Act) and Mining Regulations set out the regulatory framework for royalties and fees, financial assurance mechanisms and debt recovery processes for the mining sector in South Australia.

The revised Act will modernise and streamline the processes for calculating and assessing royalties. The reforms provide for increased oversight and rehabilitation of mined land, ensuring improved environmental outcomes. The reforms also promote transparency and the proper use of public resources by ensuring the costs of providing services under the Mining Act are recovered in full or part.

What are the key changes in the draft regulations supporting the Act?

ROYALTIES

Calculation of royalty

There are no changes to the royalty rates. However, to create certainty for industry and bring South Australia in line with other leading jurisdictions, royalty valuation methods have been updated to reflect contemporary mining practices. This will ensure the South Australian community continues to receive appropriate value for the extraction of the state's mineral resources.

Arm's length transactions

The method for calculating the value of minerals sold as part of a contract with a genuine purchaser at arm's length has been updated to reflect the 'First Sale' approach used in Western Australia.

Arm's length transactions will now be calculated on the invoiced value rather than the price at the time the minerals leave the mine gate. This is the first valuation method, which will ensure the calculation reflects true market value.

Non-arm's length transactions

The methods for calculating the value of minerals sold at non-arm's length remain generally the same, with some modernisation. The assessment date for determining royalty in these cases will be at the mine gate or when the mineral is used on the tenement. The market value will be set according to:

1. The 'spot price', the price available for the mineral on any market recognised and gazetted by the Treasurer. This is the second valuation method.
2. A set price or recognised method of calculation, as gazetted by the Treasurer – the third valuation method.
3. A price for the minerals obtained in other arm's length transactions in the relevant return period – the fourth valuation method.
4. A new method, which allows the tenement holder to make a self-assessment based on an estimate of the reasonable value of the minerals. This is the fifth valuation method.

Under this method, the draft regulations prescribe that the tenement holder must demonstrate the reasonableness of the estimated market value and provide any other information requested by the Treasurer.

The person liable to pay royalty cannot choose a valuation method. The methods apply in cascading order - ie if the second valuation doesn't apply then move to the third and so on.

Extractive royalty rate

The extractive royalty rate is set at 55 cents per tonne. However, a lesser amount may be prescribed by the regulations. The draft regulations retain the current rate of 52 cents.

Private mines

The royalty calculation for private mines has not changed. Royalty is only due on minerals from a private mine if there has been a relevant event, such as a change in ownership. This does not apply to extractive minerals.

A private mine proprietor or a person operating at a private mine must notify of the any change in who has the right to mine within 30 days to establish who is liable for royalties.

To reflect modern standards and align private mines with other extractive operators, the maximum penalty for failure to notify has been increased from \$5,000 to \$20,000, and the draft regulations prescribe an expiation fee.

Deductions

The list of deductions that can be applied when calculating the amount of royalty due has been expanded to include costs **before and after** the minerals leave the tenement

area. The draft regulations provide for the following deductions, all excluding GST:

- costs of transporting the minerals from the final stockpile to a point of sale – eg packaging, storage, loading, permit, fees, insurance costs and depreciation
- costs of shipping the minerals to a genuine purchaser in a sale at arms-length
- any other costs determined under the revised Mining Act.

The guidance materials will clarify that assaying costs and transport infrastructure costs are not deductible unless otherwise determined.

Furnishing returns

Tenement holders must still provide ongoing six-monthly returns to the Director of Mines about tenement operations, recovered minerals and the sale or disposal of minerals from the tenement and, where relevant, prescribed costs. However, under the draft regulations, holders of exploration licences, mineral claims, miscellaneous purpose licences and retention leases are exempt from submitting royalty returns. The Treasurer will have a discretionary power to determine whether this exemption applies to miscellaneous purpose licences and retention leases on a case-by-case basis.

The final royalty return is due three months after the tenement is cancelled, suspended, transferred or forfeited – and before it has expired or been surrendered. The regulations do not prescribe any additional requirements at the cancellation, suspension, transfer, forfeit or expiry of a mineral tenement.

Under the draft regulations, failure to supply a return by the due date will now be subject to an expiation fee.

Payment of royalty

The revised Act prescribes the date that royalty becomes due and payable. The regulations can specify any other time that royalty is due and payable. However, no changes to the due date are currently being proposed.

Under the draft regulations royalty payments can now be made via electronic funds transfer or credit card. DEM will no longer accept cheques for royalty payments.

Financial assurance

Tenement holders have specific mine closure and rehabilitation obligations under the Mining Act. However, the EARF and Mine Rehabilitation Fund (MRF) have been established to protect the state from assuming post-mining rehabilitation or abandoned liabilities. These provide surety where:

- a tenement holder has failed to meet their legal obligations to carry out rehabilitation in line with agreed environmental outcomes, including outcomes for mine closure and completion
- those rehabilitation obligations continue post-surrender.

Mine Rehabilitation Fund

Under the revised Act, the MRF will consist of any penalties, expiation fees or funds required to be paid under the legislation. DEM intends to undertake further work and consultation on the operation of the MRF in 2021. The Act also introduces a residual risk payment – a payment made by a tenement holder before or after cancellation, surrender or expiry of the tenement, as required, to cover any ongoing environmental risks.

Under the draft regulations, a residual risk payment can be requested within 24 months for any tenements surrendered, cancelled or expired.

Extractive Areas Rehabilitation Fund

Funds are contributed by the Treasurer to the Extractive Areas Rehabilitation Fund (EARF). The EARF will continue to operate in accordance with its governance and guidance policies.

To reflect this, the current EARF administrative processes will be removed from the regulations.

Fees

The Mining Act provides authority for fees to be charged for services undertaken or provided under the Act. The regulations set a range of fees in line with this authority.

Decisions on fees and amounts are primarily based on cost-recovery principles. Non-government recipients of specific government services are charged some or all of the costs of those activities, where appropriate. This promotes consistent, transparent and accountable charging for government activities and supports the proper use of public resources.

Fees are reviewed and updated periodically based on factors such as consumer price increases (CPI), the adequacy of cost recovery, use of services and benchmarking against other jurisdictions.

The draft regulations have been updated, and, where applicable, the Treasurer, Minister, Director of Mines and Mining Registrar may, on application, exercise their discretion to:

- waive, exempt or refund a fee in whole or part
- refuse a fee
- allow for fees to be paid in instalments
- prescribe an exemption for a class of persons.

What other changes were finalised in the revised Act?

This information summarises other key changes finalised through the revised Act. These changes are not being consulted on through this engagement process.

Royalties and finance reforms in the revised Act

Section 6: Proppant sand – Proppant sand is defined as a mineral, not an extractive mineral, and is therefore subject to mineral royalty rates.

Part 3: Redrafted to clarify administrative and legal matters – Royalty provisions continue to operate in largely the same manner but this part of the Act has been redrafted to ensure the provisions operate as intended.

Section 17(5): Modernised calculation of arm’s length transactions – Adopting the first sale approach to align with other jurisdictions to allow the royalty to be calculated on the invoiced amount.

Section 17(6): Modernised calculation of non-arm’s length transactions – A new calculation method has been introduced and will apply if no other method is applicable for non-arm’s length transactions. This method is estimated based on a self-assessment.

Section 17(8) and (8a): Deductions – The deductions available when determining royalty payable have been expanded to include costs before and after the minerals leave the tenement.

Section 17AC: Notification of relevant event – There has been no change to the process of notifying of a relevant event for the purpose of a private mine proprietor paying royalty. However, the maximum penalty for non-compliance has been increased from \$5,000 to \$20,000.

Section 17B: Assessment by the Treasurer – The Treasurer’s powers to make assessments have been expanded.

Section 17E: Modernised default interest calculations – The calculation for determining penalties for unpaid royalties has been aligned with the economic benchmark used by RevenueSA.

Section 62: Bond – Clarification that a bond is due before granting a tenement.

Section 62: Failure to pay a bond is a debt – A debt arises to empower recovery of the money if necessary.

Section 62AA: Introduction of the Mining Rehabilitation Fund – To be used as a last resort and to address abandoned mines.

Section 62AA: Establishment of residual risk payment – Payment to the government by a tenement holder to monitor and manage ongoing externalities post-surrender.

Competency of mine managers

Introduction

Mine managers are appointed to mines and quarries in South Australia to supervise operations and ensure the safety and wellbeing of the people on site. Previously mine managers were certified under the *Mines and Works Inspection Act 1920* and *Mines and Works Inspection Regulations 2013*.

During the process of finalising the *Statutes Amendment (Mineral Resources) Act 2019*, the regulation of mine manager competency was transferred from the Department for Energy and Mining (DEM) to the state's workplace health and safety regulator, Safework SA.

Safework SA administers the *Work Health and Safety Act 2012* and *Work Health and Safety Regulations 2012*. These provide for the health, safety and welfare of persons at work, including at mines and quarries.

DEM, in collaboration with Safework SA, has developed draft regulations under the *Work Health and Safety Act 2012*. The draft regulations establish a modernised performance-based approach to ensure mines and quarries around South Australia have suitably competent mine managers. This approach was informed by a 2011 comprehensive South Australian review of a mine manager's duties in ensuring safety on mines. The draft regulations reflect the approach of other Australian jurisdictions while being adaptive to the risks associated with South Australian mines and quarries.

What are the key changes in the draft regulations supporting the Act?

Mine managers appointed to manage and supervise safety on mine sites will no longer need to sit government exams to demonstrate competency, nor will the government certify competency or issue certificates.

The mine operator will now be responsible for appointing a competent manager. Safework SA will audit and fine operators who fail to appoint a competent person or maintain the appointment.

The draft regulations require the mine operator to appoint a mine manager who:

- has the relevant training, qualifications, experience, knowledge and skills to manage and supervise the risks to mine employees
- is capable of managing hazards
- has an appropriate level of competency for the nature and scale of the mine and its relevant hazards
- has comprehensive knowledge of workplace health and safety law in South Australia.

As the safety risk is higher for workers at underground mines, managers of underground mines with 20 or more employees must meet additional competency requirements. They must have the necessary training,

qualifications, experience, knowledge and skills, as well as:

- a degree or diploma in mining engineering from a university or tertiary institution in Australia or equivalent institution
- five years of experience working on mines, with three of those five in an underground mine. Two of those three years must have been in underground operations and supervising underground mining.

Opal mining

Introduction

Opals have been mined in South Australia since 1915. Prospecting and mining of precious stones in South Australia is regulated by the *Opal Mining Act 1995* (Opal Mining Act) and *Opal Mining Regulations 2012* (Opal Mining Regulations).

The revised Opal Mining Act will establish a modern government and industry approach to opal mining and ensure the legislative framework is more transparent and accountable.

What are the key changes in the draft regulations supporting the Act?

Opal Mining Registrar and Opal Mining Register

Under the revised Act, a tailored approach to opal mining through the creation of the Opal Mining Registrar and Opal Mining Register will improve services offered to opal miners and efficiency in the administration and regulation of opal mining matters. A dedicated Opal Mining Registrar will be set up in Coober Pedy to administer statutory functions under the Opal Mining Act. A distinct, public Opal Mining Register will record:

- registered precious stones prospecting permits and tenements
- agreements required to be registered under the Opal Mining Act, such as a land access agreement

- notices required to be served on or given to the registrar, such as notice of entry
- Warden's Court proceedings, information and decisions
- other documents required to be registered under the draft regulations, such as compliance directions and penalties.

Permits and tenements

The draft regulations have amended the processes of applying for, renewing and surrendering precious stones prospecting permits or precious stones tenements to allow applications, notices and other documents to be lodged electronically.

Modern methods, such as GPS coordinates may now be used to identify claim areas and locations to peg a precious stones claim.

A precious stones claim must be 'diligently worked'. The requirements for diligent work have been updated in DEM's [Mineral Policy 002: Working conditions under the Mining Act and Opal Mining Act](#) and replace the hours-per-week scheme.

Exempt land

The Opal Mining Act defines exempt land as areas of land outside a precious stones field over which mining operations cannot occur without the owner of that exempt land waiving their right to the exemption and allowing authorised operations to occur.

Under the revised Act, exempt land is defined to include (among other things) land that is situated within 150 metres of a building or

structure with a value equal to or exceeding \$2500, as prescribed by the draft regulations.

Cancellation and suspension

Under the revised Opal Mining Act, the Opal Mining Registrar may provide written notice of an intention to cancel or suspend a tenement or parts of the operation if the tenement holder fails to comply with or disregards a term of the tenement or provision of the Act.

The draft regulations require the Opal Mining Registrar to provide written notice of an intention to cancel or suspend a tenement by personal service, registered post or by email.

Authorised Officers

Under the revised Opal Mining Act, authorised officers now have greater powers to:

- enter and search premises, land or vehicles with the authority of a warrant
- seize and retain samples suspected as being evidence of non-compliance
- secure information from individuals.

The revised Act also now requires authorised officers to obtain a warrant issued by a magistrate, warden or justice before exercising certain powers in respect of residential and non-residential premises. A draft regulation describes the procedure that must be followed when applying for a warrant.

Administrative penalties

New administrative penalties enable the Director of Mines to impose monetary penalties of up to \$15,000 without the need to give warning or prior notice.

What other changes were finalised in the revised Act?

This information summarises other key changes finalised through the revised Act. These changes are not being consulted on through this engagement process.

Opal mining reforms in the revised Act

Part 2: Precious stones prospecting permit – amendments ensure that a precious stones prospecting permit falls entirely within or outside of a precious stones field.

Section 28: Removal of machinery – extends the timeframe for the removal of machinery or goods from an expired, surrendered or cancelled precious stones tenement from 28 days to three months.

Sections 26 and 26A: Caveats – enables the registration of caveats, which may operate to prevent the transfer or surrender of a precious stones tenement.

Section 33: Notice of Entry – extends the duration of a notice of entry from 6 to 12 months.

Sections 35A and 35B: Compliance directions – compliance directions can be issued to ensure compliance with tenements terms or conditions, prevent or end operations contrary to the Act, or require the rehabilitation of land as a result of tenement operations.

Section 87: Evidentiary provisions – expanded to enable the Opal Mining Registrar to certify a broader range of documents for the purpose of putting evidence before a court.

Various: Offences – introduction of new offences (eg provision of false or misleading information) and increased maximum penalties, proportionate to the risk associated with non-compliance.

Section 98B: Mining Rehabilitation Fund – establishes that all penalties under the Act will be paid to assist with the rehabilitation of former mine sites.

Have your say

The draft regulations in *Package two: compliance and enforcement* will be open for input until **11 September 2020**. For further information please:

- Register on the [Department for Energy and Mining website](#) to receive email updates (energymining.sa.gov.au/minerals/mining/update_on_mining_regulations_2020)
- Visit the South Australian Government's [YourSAy website](#) (<https://yoursay.sa.gov.au/>)

To provide a submission:

- Visit the DEM mining regulations website and submit a completed form online.
- Alternatively, download the form, then post or email to:

Mining Regulations Submission Form
Resource Policy and Engagement
Department for Energy and Mining
GPO Box 320
Adelaide SA 5001

Email: DEM.MiningRegs@sa.gov.au

