

# Summary of key amendments to the Mining Act

as proposed by the Statutes Amendment (Mineral Resources) Bill 2018



Government of South Australia  
Department for Energy and Mining



## DEFINITIONS

	Act Ref
<b>Moss rocks</b> - removed from the Mining Act. To be managed by the Department for Environment and Water (DEW) under the Natural Resources and Management Act after detailed consultation with DEW.	S.6
<b>Outcome-based definitions</b> - (low impact exploration, advanced exploration, mining or ancillary) outcomes based definitions with the ability to expand or limit the definitions via regulation or determinations by Gazette. Future proofs the Act, as advances in technology decrease the impact of operations.	S.6
<b>Owner of land</b> – limited the obligation to notify or obtain consents or waivers from an owner that has statutory care, control or management of land, or an owner that is in lawful occupation of the land if the tenement holder is not aware of the person or it is reasonable to expect the tenement holder to not be aware.	S.6
<b>Proppant sand</b> – now a mineral, not an extractive mineral. High-value sand used in fracking fluid, which should be subject to mineral royalty rates not extractive per tonnage rates.	S.6
<b>Related body corporate</b> – recognition in Act of modern corporate structures. Eg, subsidiary or parent company of tenement holder can hold a PEPR or apply for a subsequent tenement.	S.6
<b>Tenement holder</b> (rather than mining operator) - expanded to include proprietor of a private mine (where relevant), prospector under section 20, or an executor, administrator or successor at law. Ensures the Minister or Director can regulate the success to ensure compliance and environmental safety.	S.6



## EXEMPT LAND

	Act Ref
<b>Exempt land legal advice increased</b> by 500% (from \$500 to \$2500 per landowner).	S.9AA(14)
<b>Increased exempt land radius</b> by 50% from 400m to 600m for high impact mineral operations.	S.9(5)
<b>Improved access to justice</b> by changing the jurisdiction of exempt land matter to a choice of an 'appropriate' court (a term under the Act for Warden's, Environment Resources Development (ERD) and Supreme Court).	S.9AA
<b>New right for landowners</b> to commence exempt land proceedings.	S.9AA(8a)



## ADMINISTRATION

Act Ref

**Mining Act to regulate extractive operations approved under other Acts** – allow for the regulation of operations that previously would have been regulated by the *Mines and Works Inspection Act 1920*.

S. 7

**Improved delegation powers** – aligns with powers under the *Petroleum and Geothermal Energy Act 2000*. Allows for sub-delegation without consent and also allows the Minister to delegate his powers and functions administered under corresponding Acts, in particular, the *Aboriginal Lands Trust Act 2013 (SA)*, *Anangu Pitjantjatjara Yankunytjatjara Land Rights Act 1981 (SA)* and *Maralinga Tjarutja Land Rights Act 1984 (SA)*.

S.12

**Act restructure** – much of the Act has been restructured and reorganised for clearer interpretation and modernised drafting techniques.

various

**Removal of regulatory hurdles to rectifying the boundary of tenement** when requested by tenement holder.

S. 56O

**Removal of requirement to pay rental and refund rental to Treasury.**

S. 56M



## AUTHORISED OFFICERS

Act Ref

**Modernised inquiry powers** to examining and making inquiries as well as gather information.

S. 7

**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.

S.12

**Compel identity** – expanded to include a requirement for a person to identify themselves.

various

**Seizure powers** – authorised officers have the power to seize and retain things.

S. 56O

**Expiation notices** – authorised officers empowered to issues notices. Regulations will list expiable offences.

S. 56M



## MINING REGISTER

Act Ref

**Modern and expansive Register** – includes the life of tenement, interest in a tenement, non-compliance and Warden's Court matters.

S. 7

**Transfers and registered ownership** – register will record the legal owner of the tenement. The tenement holder is liable for obligations under the Act, and owner of rights granted by Minister. Change in legal owner requires the Minister's consent (only dealing to require consent).

S.12

**Mortgages** – modernised commercial process to better protect financiers (to attract project finance), with flexibility for tenement holders. Limited regulatory involvement to promote commercial flexibility.

various

**Caveats** – inventive regime to meet modern commercial needs to industry and investors. Limited regulatory involvement to promote commercial flexibility.

S. 56O

**Other interests/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.

S. 56M



## DATA AND INFORMATION

Act Ref

### **EXPANSIVE new powers to set out:**

**What** information must be compiled or created;

**How** information must be kept and in what form, in what place and for how long;

**When** information must be provided to the Director; and

**Where** information must be provided to the Director.

Specifics to be included in the Regulations.

S.15AI -  
15AK

**Broad disclosure powers to promote transparency and accountability** – everything can be released (as prescribed) unless it falls within one of the exemptions. Exceptions to release align with ASX Listing rules to protect industries' commercial interests.



## ROYALTIES

Act Ref

**Redrafted to fix administrative and legal errors** – operation of Royalty provisions will remain largely the same as the Act has been redrafted to ensure it operates as intended.

Pt. 3

**Modernised calculation of arms-length transactions** – adopting the first sale approach to align with other jurisdictions. Royalty calculated on the invoiced amount.

S.17(5)

**Modernised default interest calculations** – aligned with RevenueSA.

S.17E



## MINERAL CLAIMS

Act Ref

**Modernised and lean processes for the establishment** – flexible means of establishing area (not just pegging).

S.21 &  
S.56E

**Mineral Claim not needed to proceed to mining** – an explorer with an exploration licence can apply for a mining lease without needing a mineral claim.

S.36



## RETENTION LEASE

Act Ref

**Explorers can apply for a mining lease without a mineral claim.**

S.36

**Mining lease can be granted for both minerals and extractive minerals** – the current process is for a mining lease and an extractive mineral lease to overlap and the holders to comply with double regulation and pay double fees.

S.35(2)

**New power for the Minister to grant a retention lease instead of a mining lease** – rather than rejecting an application for a mining lease if the Minister considers that sufficient investigations have not been carried out, the Minister can grant a retention lease.

S.37

**New term to align with mine life** – the Minister can grant a mining licence for any term the Minister determines.

S.38

**New grant test** – the Minister will not grant a mining lease if the environmental outcomes cannot be met.

S.37



## EXPLORATION LICENCES

Act Ref

**Flexibility to include more area in ERA (Exploration Release Areas)** – new powers for the Minister to release more areas of the State.

S.28 and 29A

**Reduced administration and faster release of areas** – burdensome notice requirements have been removed to allow the Minister to release areas in a timely fashion and to better manage the areas up for release.

S.29A

**Stronger powers to set expenditure to give tenure certainty** – expenditure is currently managed through the Minister’s power to set conditions at grant and renewal. These processes have been separated to allow the Minister to grant full exploration licence terms and manage expenditure commitments at the times set out in the regulations. This will provide further security of tenure for explorers.

S.30AAA

**Investment attracting power to subdivide exploration licences** – new power to allow explorers to subdivide an area of the exploration licence, and surrender the area on the condition that the area will be granted to a third party. Alternative means of attracting exploration investment to SA.

S.30AA

**New limited term for exploration licences to promote turnover of the area** – new 6 year terms (to best accommodate industry’s 2 yearly programs and budgets), to be renewed for a maximum of 18 years. At the 12-year anniversary, the area will be reduced by 50% (based on the original area of the licence) and at the 18-year anniversary, the licence will expire.

S.30A

**New retention status** – status can reduce or exempt relinquishment requirements, expenditure commitments, or the payment of fees and can only be granted if a mineral resource has been identified but mining of that resource is impracticable for one or more reasons, or where one or more approvals are required before activities can commence or continue.

S.33B



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S.37



## MISCELLANEOUS PURPOSE LICENCE

Act Ref

**Application process aligned with other production tenements** – a requirement of miscellaneous purpose licence proposal included in the Act.

S.49

**Broaden the scope of use of miscellaneous purpose licences** – broad and flexible definition of ancillary operations expands use for miscellaneous purpose licences.

Pt 8

**New term to align with miscellaneous purpose licence use** – the Minister can grant a miscellaneous purpose licence for any term the Minister determines.

S. 51



## SPECIAL MINING ENTERPRISES (SMEs)

Act Ref

**Improved rigour of assessment** – similar rigour as a mining lease application and must include public consultation, relevant referrals to the Minister for DEW and consideration of Aboriginal heritage and the environment.

S.56B

**Clearer purpose of SMEs** – rather than listed what in the Act can be exempted or modified by granting an SME, the Act lists the sections of the Act, which cannot be exempted.

S.56C

**Improved transparency** – applications are subject to public consultation, the SME agreement must be published and the Minister can require consultation on the guidelines for application.

Pt 8A



## ENTRY UPON LAND AND COMPENSATION

Act Ref

**Improved notices to reflect impact and proposed exploration activity** to ensure the type of exploration operations being proposed are clear e.g. a notice to authorise 'advanced exploration' operations.

S. 58A

**New notice of intention to apply for production tenement** with rights to object, or progress negotiations, prior to the grant.

S. 58A

**Increased time to enter or commence activities** from 21 to 42 days after notice.

S. 58A

**New right for pastoral lessees** to object to notices of entry and all activity based notices.

S. 58A

**Right to compensation protected** by clarifying that rent paid by a mining operator to a landowner is in addition to any compensation payable.

S. 56M



## FINANCIAL ASSURANCE

Act Ref

**Clarification that a bond is due before granting a tenement.**

S. 62

**Failure to pay a bond is a debt** – clarification that debt arises to empower the Minister to recover the money if necessary.

S. 62

**Introduction of the Mining Rehabilitation Fund** – to be used as a last resort and addresses abandoned mines.

S. 62

**Establishment of the residual risk payment** – payment to the government by tenement holder to monitor and manage ongoing externalities post-surrender.

S. 62



## COMMON PROVISIONS

Act Ref

**New part of the Act to consolidate duplication of tenement related provisions.**

Pt 8B

**Modern approach to establish an area of a tenement** – to modernise and adapt with technology and create an outcomes-based identification system.

S. 56E

**Expanded powers for the Minister to amend terms and conditions of a tenement** – allows an amendment to manage environmental risk and consistency with the *Environment Protection and Biodiversity Conservation Act 1999 (Cth)*.

S. 56J

**Access to extractive minerals during operations without unnecessary regulation** – new power to authorise the use of extractive minerals obtained during the course of authorised operations and may, in some circumstances, be exempt from paying royalties on those by-products.

S. 56K

**New power to amalgamate tenement areas** – tenement holder can apply to the Minister to apply for areas of tenements to be transformed into one tenement.

S. 56P

**New transparent process for applications to change the terms and conditions of a tenement** – outcome-based approach for tenement holder to apply to the Minister to change the terms and conditions of their tenement.

S. 56Q –  
S. 56V

**Modernised and flexible cancellation and suspension of operations (all or part)** – the ability for the Minister to cancel or suspend operations, but ensure the tenement holder meets obligation.

S. 56W

**New abilities for the Minister to prevent expiry of a tenement** – Minister can either extend the term or reinstate an expired tenement to manage non-compliance.

S. 56Y –  
S. 56Z

**New obligation on Minister to prepare assessment reports** – obligation is needed for alignment with the *Environment Protection and Biodiversity Conservation Act 1999* and bilateral agreement.

S. 56ZA



## ACCESS CLAIMS

Act Ref

**Replaced by Opal Mining Act 1995, and an amendment to section 80 to allow for overlapping tenements granted at different stratum.**

Pt 9A



## NATIVE TITLE

Act Ref

**Timeframes updated to align with Commonwealth.**

Pt 9B

**Consultation is ongoing as part of Stronger Partners, Stronger Futures.**

Pt 9B



## OPERATING APPROVALS - PEPRS

Act Ref

**PEPRs can be lodged by the related body corporate of tenement holder – accommodates commercial structures.**

S. 70B

**New power to condition a PEPR – Minister can propose conditions on a PEPR in addition to PEPR requirements.**

S. 70B

**Clarification that the Minister can reject a PEPR application on the basis it does not comply with the Act (not just require alterations).**

S. 70B

**Clarification that a PEPR can be approved over exempt land on the basis that the tenement holder will comply with exempt land requirements.**

S. 70B

**Consultation on PEPR required if it triggers EPBC Act and bilateral agreement – this is required to ensure compliance with the EPBC Act and bilateral agreement.**

S. 70D

**New audit power to require tenement holder to demonstrate through various means (e.g. specified tests, environmental monitoring or other investigations) the tenement holder's ability to achieve the outcomes of the PEPR.**

S. 70DA

**PEPRs must be published and made publically available.**

S. 70DB



## COMPLIANCE AND ENFORCEMENT

Act Ref

**New dedicated part of the Act for improved and modernised compliance and enforcement tools.**

Pt 10B

**Expanded power to issue environmental directions – expanded to allow the Minister to direct specified tests or monitoring to be undertaken as well as the requirement to develop a plan for action.**

S. 70E

**Clarified that a rehabilitation direction may be issued at any time, including after a mineral tenement has expired or been cancelled or surrendered.**

S. 70F

**New emergency direction power – to be issued orally.**

S. 70FB

**Power to issue a direction that may be in contravention of the Act.**

S. 70FC

**Expanded power to allow the Minister to refuse a mineral claim for non-compliance with a direction.**

S. 70HA

**Self-incrimination is not a defence to failure to comply with a direction.**

S. 70HB



## PRIVATE MINES

Act Ref

All private mines MOPs to transition to PEPRs after 15 years.

Pt 11B

Modern definition of environment to apply to all private mines in the same way that it applies to all other tenement types, *except* for the words 'the aesthetic or cultural value of an area'.

Pt 11B

Part 10B's modern compliance and enforcement tools will not apply to all private mines, even after the transition of MOPs to PEPRs. However, the compliance tools available in Part 11B have been updated.

Pt 11B

- Firstly, a new emergency order power has been introduced to allow authorised officers to issue verbal orders to respond efficiently to matters of environmental emergency.
- Secondly, the general duty obligation has been updated to remove compromising language which qualified a private mine holders obligation to avoid damage to the environment.

All offences and penalties under the Bill apply to private mines in the same way they apply to other tenements *except* continuing offences.

Pt 11B

New streamlined process for private mine holders to surrender private mines.

S. 56X

New process for Minister to revoke unworkable private mines via notice.

S. 73N



## OFFENCE AND PENALTIES

Act Ref

A dedicated part of the Act for offences and penalties.

Pt 10C

New civil penalty and offence regime.

S. 70HE

New Mining specific court powers – expanded court's power to make orders necessary to address environmental offences and aligns with modern environmental legislation.

S. 70HF

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.

S. 70HG

New directors penalties – offences against Directors (for offences of a 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.

S. 70HH

Modernised framework for penalties to reflect modern environmental regulation – all offences are summary offences, updated evidentiary provisions and expanded timeframe for enforcement.

Pt 10C





## WARDEN'S COURT

Act Ref

**Expanded to allow the jurisdiction** of the Warden's Court to be conferred by or contemplated by this or any other Act.

S. 64

**Updated to ensure the powers and authorities of the Warden's Court are consistent with the Magistrates Court of South Australia** and those powers can be limited or expanded by the regulations.

S. 65

**Senior Warden to make rules of Court** – quicker and more efficient court processes and cutting red-tape aligned with other courts of the State.

S. 66

**Updated and strengthen forfeiture provisions** – tenement can be plighted due to a breach of the Act, regulations, term or conditions of a tenement, or a PEPR, or undue damage to the environment or failure to carry out authorised operations.

S. 70



## MISCELLANEOUS

Act Ref

**Alternative penalties via enforceable voluntary undertakings** whereby, rather than being prosecuted, the Minister may accept a specific undertaking from a tenement holder.

S. 74AA

**Clearer use of extractive minerals** – this section has been clarified that a further tenement is not required to authorise the use of extractive minerals recovered as a result of existing mineral operations. Personal use has been expanded to ensure landowners can use their extractives without attracting regulation of the Mining Act. Any consent of a landowner to allow a tenement holder to mine for extractive minerals will be binding on subsequent owners. This section also includes a discretionary power whereby the Minister can determine that an individual's use of extractive minerals is beyond the scope of personal use due to the nature or scope of the operations and that a tenement is required under the Act.

S. 75

**New offence for providing false and misleading information.**

S. 79A

**Clearer and enforceable accountability and liability** – joint and several liability and vicarious liability.

S. 81

**Tenement holder assumed liable** – unless there is evidence to the contrary the tenement holder is assumed liable.

S. 70HK

**Priority Charge** – new statutory interest in favour of Crown for debts to be recognised on the Personal Property Securities Register held by the Commonwealth.

S. 85