

Package 3 – Explanatory Document - Production Tenements

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1. Scoping of proposed projects

Scoping of proposed projects as amended by the Statutes Amendment (Mineral Resources) Act 2019

The *Mining Act 1971*, as amended by the *Statutes Amendment (Mineral Resources) Act 2019* provides any person seeking an opportunity to develop a mining project to have that project subjected to public scrutiny and for that application to be fulsomely and transparently assessed on merit. Under the Act, the onus is on the applicant to develop an application that meets the required standards, to consult with project stakeholders, to respond to stakeholder feedback and ultimately to satisfy the relevant Minister that the application should be approved.

The onus is on the state to maintain fit-for-purpose standards for applications, to conduct formal public consultation on applications, to undertake comprehensive assessment of application, to prepare assessment reports and, ultimately, to make evidence-based decisions in accordance with the law.

In line with the States objective to maintain fit-for-purpose standards for mining projects, Part 10 of the draft Mining Regulations introduces a new scheme to facilitate scoping of the technical works required to prepare an application for a potential mining project prior to assessment by Government.

Scoping projects prior to submitting an application to the Government for assessment supports tenement applications which are commensurate with the level of environmental and social impacts, taking into account project type, scale, duration and sensitivities associated with the location of proposed mining and ancillary operations.

Preparation of an application to develop a major mining project can be a substantial undertaking for applicants, invariably necessitating multiple years of contribution by consulting subject-matter experts to conduct investigations and iterative project design prior to submission for assessment. Part 10 of the draft Mining Regulations is intended to provide applicants with greater certainty with respect to government and community expectations for the scope of works and the level and extent of assessment relating to environmental and social impacts. This is to ensure that projects are assessed within a scheme that promotes efficiencies, transparency and clarity as to approval pathways and technical assessments.

Prior to an applicant applying for a mining lease, retention lease or miscellaneous purpose licence, the Minister may require a proposed applicant to prepare a scoping report. A scoping report will provide an opportunity for the proposed applicant to undertake preliminary investigations of potential environmental and social impacts of the proposed project. Scoping works assist identify and prioritise the issues, and outline the extent of work required to be undertaken for the purposes of preparing an environmental and social impact assessment to provide the appropriate level of detail to be required by the Minister for assessment. This report will clarify for the proposed applicant, the government and the community, the scope of technical works required to prepare the environmental impact assessment that accompanies the tenement application.

A scoping report must be provided in a manner and form determined by the Minister and must be provided within a period, or at a time or stage, determined by the Minister (r. 45(3)). This Minister will not determine the content of a scoping report or the information that must be set out in the report. A scoping report is an opportunity for the proposed applicant to identify the technical scope of works required to prepare an application for their proposed project considering the potential environmental and social impacts (both positive and negative) to the community, environment and economy. While

the proposed applicant must determine the content of the scoping report, the Minister may request further information, if necessary (r 45(4)).

The Minister may determine that a scoping report be subject to consultation (r. 45(3)). This may be intragovernmental consultation or public consultation.

2. Impact Assessment

Impact assessment as amended by the Statutes Amendment (Mineral Resources) Act 2019

As the Mining Act, amended by the *Statutes Amendment (Mineral Resources) Act 2019*, allows the Minister to grant to applicants the right to mine the mineral assets owned by the people of South Australia, it is critically important that the potential impacts (both positive and negative) of mining operations on the environment, community and economy are understood.

Impacts of projects are determined during the scoping stage and assessed through impact assessments. The Mining Act requires applicants to undertake comprehensive environmental impact assessments, which has previously captured elements of social impact assessment; however, this has not previously specifically extended to preparation of social impact assessments.

In furtherance of modern regulation that represents the expectations of community, the draft Mining Regulations introduce, where appropriate, social impact assessment of project impacts in addition to existing requirements to undertake environmental impact assessments. Social impacts are impacts that affect people and their communities (or a part or section of a community), both positive and negative, of operations authorised under the Mining Act.

The requirements under the Mining Act, which encourage and require public participation in a transparent and fair way, enable comprehensive assessment of the likely social and environmental impacts of proposed mining operations, so that adverse outcomes affecting the human and natural environment can be avoided or minimised, and positive outcomes can be maximised. The inclusion of social impact assessments seeks to balance development decisions with social parameters and provide a means for better understanding, monitoring and influencing the social impact of decisions.

The *Statutes Amendment (Mineral Resources) Act 2019* expands the requirement for applicants in respect to an application for a mining lease, retention lease and miscellaneous purpose licence and an application for a change of operations, where determined by the Minister. While an environmental impact assessment will be required in all production tenement decisions, the Minister has discretion to determine when a social impact assessment will apply.

It is intended that, when required, the inclusion of social impact assessment into the rigorous environmental impact assessments already undertaken by applicants, project proposals will identify potential benefits, inform strategies and outcomes to amplify and distribute those benefits, and identify adverse impacts and propose strategies and outcomes to minimise and/or appropriately manage those negative impacts. As with an environmental impact assessment, a social impact assessment must be both anticipatory and precautionary to ensure the Minister, project proponents and the affected communities all understand the impacts (both positive and negative).

An application for a mining lease, retention lease, miscellaneous purpose licence or change or operations must be accompanied by a 'proposal'. A proposal is the document accompanying an application which include an environmental impact assessment and, if required by the Minister, a

social impact assessment. Regulation 46 of the draft Mining Regulations proposes that an environmental impact assessment in respect to proposal must include:

- a) An assessment of environmental impacts of any proposed operations in a proposal may be limited to those aspects of the environment that may reasonably be expected to be affected by the relevant authorised operations.
- b) An assessment of environmental impacts of any proposed operations and an outline of the measures that the applicant proposes to take to manage, limit or remedy those impacts must include a description of the anticipated impacts after the relevant measures have been taken.
- c) A statement of the environmental outcomes that are expected to occur must include a set of mine completion outcomes assessed on a long term basis.
- d) The criteria to be adopted to measure the environmental outcomes that are set out in a proposal must include details about—
 - a. what is to be measured and the form of the measurements that are to be used; and
 - b. the locations where the relevant measurements are to be taken, or how such locations are to be determined; and
 - c. what is proposed to be taken to constitute the achievement of the relevant outcomes (with consideration being given to any inherent errors of measurement); and
 - d. the frequency of any measurement or monitoring; and
 - e. any background or control data that is to be used, or how any such data is to be acquired.

Regulation 48 of the draft Mining Regulations proposes that a social impact assessment in respect to proposal must include:

- a) a description of the social impacts that are reasonably expected to occur as a result of authorised operations that are proposed to be carried out under the tenement; and
- b) an outline of the measures that are to be used to manage, limit or remedy those impacts (in the case of negative impacts), or to facilitate or ensure those impacts (in the case of positive impacts).

Environmental impact assessments and social impact assessments must be:

- a) be balanced, objective and concise; and
- b) state any limitations that apply, or should apply, to the use of information; and
- c) identify any matter in relation to which there is a significant lack of information or a significant degree of uncertainty; and
- d) so far as is relevant, identify the sensitivity to change of any assumption that has been made and any significant risks that may arise if an assumption is later found to be incorrect;
- e) 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; and
- f) any criteria must, insofar as is reasonably practicable and appropriate - expressed in quantitative terms (rather than qualitative terms).

3. Nature of mining leases

Nature of mining leases as amended by the Statutes Amendment (Mineral Resources) Act 2019

A mining lease authorises an exclusive right to undertake mining operations in accordance with the terms and condition of the lease and authorises the holder to sell, use or dispose of mineral recovered

from the lease area (s. 35(1)). 'Disposal' means transferring to the care or possession of another or parting with, alienation or, or giving up of minerals. This would include gifting, bartering, transferring, exchanging, or affixing to another property.

The *Statutes Amendment (Mineral Resources) Act 2019* does not specify a maximum area for a mining lease; however, the area must be the whole or part of the exploration licence, mineral claim or retention lease which the applicant holds at the time of application. While exploration licences may be much larger than a mining lease, the applicant can only apply for an area for which they can demonstrate to the satisfaction of the Minister that can be effectively and efficiently mined.

The *Statutes Amendment (Mineral Resources) Act 2019* does not specify a maximum term for a mining lease. The Minister may grant a mining lease for a term determined by the Minister. In making such a determination, the Minister will consider the mine life of the proposed project and the time necessary to achieve mine closure requirements. If a mining lease is due to expire, the holder can apply to the Minister for a renewal of the lease. An application for renewal must be made in a manner and form determined by the Minister and accompanied by any information required by the Minister. The manner and form of an application determined by the Minister is set out in a Ministerial Determination, which is published in the Government Gazette and on the Department's website. The Minister may renew the lease for a term determined by the Minister.

A mining lease may be of a class prescribed by the regulations. The *Statutes Amendment (Mineral Resources) Act 2019* changes the status quo by removing the requirement to grant mining leases on the basis of classes of minerals. Regulation 29 of the current Regulations prescribe that the classes of mining leases are mineral lease and extractive mineral leases. Irrespective of whether classes of mining leases are prescribed, the *Statutes Amendment (Mineral Resources) Act 2019* defines minerals and extractive minerals separately and provides for distinct regulation in the case of royalty calculation (s.17), financial assurance (s. 63), landowner consent (s. 75) and the tenure required for exploration operations (Parts 4 and 5). Classes of mining leases may be necessary to distinguish fees and rental applicable. Regulation 29 of the current Mining Regulations has not been replicated as fees and rental amounts have been distinguished by reference to minerals not classes.

A mining lease will be subject to terms or conditions. Standard terms or conditions can be prescribed in the Regulations, and the Minister can specify any specific terms or conditions in the lease as the Minister thinks fit (s. 35(3)). The Regulations may also prescribe standard terms and conditions to apply to a class of mining lease, and the Minister may modify standard conditions by a determination. The draft Mining Regulations does not prescribe as standard terms and conditions.

In determining specific terms and conditions to apply to a lease, the Minister must give proper consideration to:

- any aspect of the environment that may be affected by the conduct of mining operations; and
- any other lawful activities that may be affected by those mining operations; and
- any Aboriginal sites or objects within the meaning of the *Aboriginal Heritage Act 1988* that may be affected by those mining operations; and
- such other factors or matters as the Minister considers appropriate in the particular case (s. 56l).

The mining lease terms or conditions are formulated during the assessment stage and after public consultation and referral to other government agencies for consultation or approval.

Regulation 33 of the draft Mining Regulations requires the Minister to notify the applicant of the proposed terms and conditions and give the applicant at least 7 days, or such longer period as the

Minister may allow, to make submissions on those terms and conditions before the Minister finalises them (r. 33). This draft regulation replicates the current process undertaken by the Minister.

Regulation 33 requires that prior to determining to grant a mining lease, the Minister for Energy and Mining must provide the applicant with an opportunity to make submissions on the proposed terms and conditions outlined in the draft tenement document. A period of at least 7 days, which may be extended on written request from the applicant, is provided for the applicant to consider the draft document.

The purpose of this process is not to invite negotiation on the proposed terms and conditions, and the Government will not enter into a negotiation. Rather, the purpose is to ensure that the applicant has the opportunity to review the proposed terms and conditions prior to a decision being made on the application by the Minister.

The review process is important because the terms and conditions of a mining lease are enduring. Further, once a mining lease is granted, the applicant becomes responsible and liable for a range of regulatory obligations and incurs ongoing fees and charges for holding the mining lease. The Regulation 40 process provides an applicant with the opportunity to identify any errors or unintended consequences arising from the terms and conditions, as well as any matters requiring clarity or further explanation.

If the applicant advises that there are no matters requiring a submission, then the Minister proceeds to finalise the decision and grants the mining lease consistent with the draft terms and conditions.

If any matters are identified, and the applicant chooses to make a submission, these undergo a fulsome review, and the Minister will determine whether or not any alterations to the terms and conditions should be made.

If no alterations are made, then the applicant is advised, and the Minister proceeds to finalise the decision.

If alterations are made, these may be forwarded to the applicant to afford them the same review opportunity as was provided in the first instance. The applicant may make a subsequent submission if required; however, this should only be in relation to new matters arising from the alterations. This process concludes once the Minister advises the applicant that no further alterations will be made.

Any alterations that are made are recorded as an addendum to public assessment reports describing the original terms, conditions and requirements, the altered terms, conditions and requirements, and the purpose and effect of each change.

Whether or not alterations are made, should the applicant consider that the form of the final draft terms and conditions are such that the regulatory obligations arising from the tenement should not be assumed, then the applicant should withdraw their application, formally ending the decision-making process.

There is no defined timeframe for resolution of the regulation 33 process – the duration depends entirely on whether any matters are identified by the applicant, the complexity of those matters, and the time taken for the Minister to finalise the decision. In practice, this process has taken as little as a week, and as long as 3 months.

Prior to conducting mining operations on a mining lease, the miner must have an approved program under Part 10A of the Mining Act. These programs are known as Programs for Environment Protection and Rehabilitation (PEPRs). While PEPRs are submitted and approved by the Minister, the Minister may adopt a program that applies to operations of a prescribed class.

4. Application and assessment of a mining lease

Application and assessment of a mining lease as amended by the Statutes Amendment (Mineral Resources) Act 2019

Mining leases are applied for under section 36 and are granted under section 37 of the Act following a thorough environmental impact assessment and, where required by the Minister, a social impact assessment.

An application for a mining lease can be made by the holder of a mineral claim, exploration licence or retention lease or a related body corporate of the holder. The application must relate to whole or part of the land comprised in the claim, lease or licence.

The *Statutes Amendment (Mineral Resources) Act 2019* expands the scope of who can apply for a mining lease to include the holder of an exploration licence or a related body corporate. By including the holder of an exploration licence, this negates the requirement for the explorer to establish a mineral claim prior to applying for a mining lease. While the explorer may still choose to establish a mineral claim, it is no longer a requirement.

Prior to applying for a mining lease, a person must serve on the owners of land to which the application relates, a notice of intention to apply for a lease. The notice must inform the owner of the person's intention to enter the land to carry out authorised operations if the application is granted. The notice is of no effect if the person does not apply for the relevant lease within 12 months of serving the notice. There is no offence for failing to serve a notice of intention to apply for a lease, however, such a notice is a pre-requisite for applying for a mining lease (s. 58A).

An application for a mining lease must be in a manner and form determined by the Minister, must identify the boundaries of the land, must be accompanied by a mining lease proposal, must include any additional information prescribed by the regulations and must be accompanied by the prescribed fee. The manner and form of an application determined by the Minister are set out in a Ministerial Determination which is published in the Government Gazette and on the Department's website. The manner and form of an application, the scope of work, the level and extent of assessment relating to environmental and social impacts will be defined proportionately to the scoping work undertaken by the applicant and demonstrated in their scoping report (part 10 of the draft Mining Regulations).

A mining lease proposal must:

1. specify the authorised operations that are proposed to be carried out under the lease; and
2. set out—
 - a. an assessment of the environmental impacts of the proposed operations; and
 - b. an outline of the measures that the applicant intends to take to manage, limit or remedy those impacts; and
 - c. a statement of the environmental outcomes that are accordingly expected to occur; and
3. incorporate a draft statement of the criteria to be adopted to measure those environmental outcomes, in the form prescribed by the regulations; and
4. set out the results of the consultation undertaken in connection with the proposed operations in accordance with the regulations.

Regulation 48 of the draft Mining Regulations expands the mining lease proposal to include a social impact assessment, where required by the Minister. Therefore, a mining lease proposal is an environmental impact assessment, and will include a social impact assessment if required by the Minister. The requirements of a proposal are discussed above in chapter 2.

Regulation 30 of the draft Mining Regulations proposes that an application for a mining lease must also be accompanied by:

- (a) a statement nominating the principal mineral or minerals that are to be recovered under the mining lease;
- (b) a statement that provides detailed information about the mineral resource or ore reserve, or both;
- (c) a statement declaring that the mineral resource or reserve has been appropriately identified and estimated;
- (d) a statement of the technical, operational and financial capabilities and resources available to the applicant for the purpose of carrying out operations under the mining lease;
- (e) a statement that demonstrates—
 - (i) that there is a reasonable prospect that the land in respect of which the lease is sought could be effectively and efficiently mined; and
 - (ii) that appropriate environmental outcomes will be able to be achieved;
- (f) a statement outlining the applicant's history of any non-compliance in relation to mining operations carried out in other Australian states or territories;
- (g) such other information as may be determined by the Minister for the purposes of this regulation.

Any information accompanying a mining lease application 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.

Regulation 81 of the draft Mining Regulations requires an application to be accompanied by a declaration from the application declaring the accuracy of the information set out in the application.

Under the amendments made by the *Statutes Amendment (Mineral Resources) Act 2019*, exempt land is determined at the time an application for a lease is submitted for assessment (s. 9(2)). This is a change from the current Act, where exempt land is defined at the time of grant of a mining lease.

Assessment

The onus is on the applicant to develop an application that meets the required standards required by the Act, Regulations and Ministerial Determinations. The Minister may refuse an application on the grounds that the application is invalid. An application may be invalid for various reasons; however, commonly, this can occur if the application is grossly inadequate in meeting the minimum requirements set out in the Ministerial Determination. Where an application is inadequate but not to the extent to which it can be refused, the Minister may ask for any additional information as required (s.36(2)).

While the onus is on applicants to prepare applications, in particular the mining lease proposal, the onus is on the Minister to maintain standards for applications, to conduct formal public consultation on applications, to undertake a comprehensive assessment of applications, to prepare assessment reports and ultimately to make evidence-based decisions in accordance with the law. The balance of these obligations on both applicants and the Minister has been designed specifically to deliver a measured approach to assessing mining projects and the ensure the decision to grant or refuse a right to mine is informed and evidence-based.

The assessment process involves a comprehensive review of the application, including the applicants' evidence base, and the methodologies, assumptions, results and consultations upon which the application relies. The assessment is undertaken by the Department of Energy and Mining with involvement from the Department for Environment and Water, Department for Planning, Department for Infrastructure and Transport, Safework SA, and the independent Environment Protection Authority. Where further specialist expertise is required, DEM engages third-party consultants to provide technical input to the assessment.

If an application for mining lease relates to an area within the Murray Darling Basin, the Minister must, in considering the application, take into account the objects of the *River Murray Act 2013* and the *Objectives for a Health River Murry* under that Act (s. 56F).

There are procedural steps the Minister must undertake prior to granting or refusing a mining lease to the applicant.

Firstly, the Minister must undertake public consultation in accordance with under section 56H. Public consultation may not be required in circumstances where the Minister decides to refuse the application early in the assessment process prior to undertaking public consultation.

Secondly, the current Mining Regulations require the Minister to notify the applicant of the proposed terms and conditions and give the applicant at least 7 days, or such longer period as the Minister may allow, to make submissions on those terms and conditions before the Minister finalises them (r. 33).

Thirdly, the location of the mining lease application may require the Minister to undertake further procedural steps prior to grant.

If the application relates to an area within or adjacent to a specially protected area, the Minister must, before making a decision on the application, refer the application to the Minister for Environment and Water and consult that Minister in relation to the application (s. 56G). A specially protected area is the Adelaide Dolphin Sanctuary, a marine park or a River Murray Protections Area (s. 6). If the Minister for Energy and Mining and the Minister for Environment and Water cannot agree on the decision to be made on the application or on any terms of conditions that should be applied if the application is approved, the Minister's must refer the matter to the Governor for decision. In practice, this decision is referred to Cabinet and Cabinet instructs the Governor to make a particular decision.

If the application is within a jointly proclaimed national, conservation or recreation parks (including co-managed parks) the Minister for Energy and Mining must obtain the joint agreement of the Minister for Environment and Water to grant the lease. These parks are defined in the *National Parks and Wildlife Act 1972* and the requirement for joint agreement is set out in the park proclamation.

If the application is within a regional reserve, the Minister for Energy and Mining must, before making a decision on the application, refer the application to the Minister for Environment and Water and consult that Minister in relation to the application(s. 43A(1)(3), *National Parks and Wildlife Act 1972*).

While there is no legislative requirement, the Minister for Energy and Mining refers applications to the Minister for Environment and Water for consultation on applications that are within:

- areas prescribed by section 125 of the *Natural Resources Management Act 2004* (to be replaced by section 101 of *Landscape South Australia Act 2019*) (prescribed well, prescribed watercourses, prescribed lakes);
- State Heritage Areas and State Heritage Places as defined in the *Heritage Places Act 1993*;
- conservation reserves as defined in section 5 of the *Crown Lands Act 1929* or section 18 of the *Crown Land Management Act 2009* or land in relation to which a declaration is in force under section 55 of the *Crown Land Management Act 2009*;
- heritage agreement areas as entered into under section 23 of the *Native Vegetation Act 1991*; and
- Declared RAMSAR wetlands as defined in the *Environment Protection and Biodiversity Conservation Act 1999* of the Commonwealth.

Grant

After assessing the application and undertaking the necessary procedural steps, the Minister must determine whether to grant or refuse the application and if the decision is to grant, the terms and or conditions that should apply to the lease. To grant a mining lease, the Minister must be satisfied that:

1. there is a reasonable prospect that the land in respect of which the lease is sought could be effectively and efficient mined (s. 37(1)(a)(i)); and

2. appropriate environmental outcomes will be able to be achieved (s. 37(1)(a)(ii)); and
3. sufficient investigations have been carried out in order to enable the Minister to determine the terms and conditions on which the lease could be granted (s. 37(1)(b)).

If the Minister is not satisfied that the above three tests have been met, then Minister can either refuse the application or grant the applicant a retention lease. To grant a retention lease under section 45, the Minister must be satisfied that appropriate environmental outcomes will be able to be achieved. Therefore, while not explicit in section 37, for the Minister to grant a retention lease upon assessment of a mining lease application, the Minister must be satisfied that appropriate environmental outcomes will be able to be achieved.

If the Minister decides to grant a mining lease, the lease will be taken to be granted when the lease is registered on the mining register (s. 37(3)). The registration date provides a clearly defined date in which the mining lease is granted.

5. Nature of retention leases

Nature of retention leases as amended by the Statutes Amendment (Mineral Resources) Act 2019

Retention leases were introduced in 1978, and according to the second reading speech of the legislative council, the objective of retention leases was to:

'allow the Minister to grant a retention lease for a register claim where:

1. *the holder is not ready to commence production;*
2. *where the Minister considers it wise to defer the development of a mining lease; or*
3. *where the Minister thinks it necessary to postpone the grant of a lease for the mining of radioactive materials.*

The three subclauses obviously are necessary because of the changing economic climate for the mining of minerals.

In the first instance, a company may have discovered an economic mineral area and may need time to raise sufficient finance to develop it further, or the market price for the mineral may be depressed, as is the copper market at present. The holder of the claim could lose it under the existing Act if he was not able to work it. He will now be able to apply for a retention lease and will not lose his legitimate claim.

In the second instance, the Minister may consider that insufficient investigations have been carried out by the company concerned for the Minister to be able to determine whether terms and conditions should be applied to the particular lease.

In the third case, authority is given to the Minister to defer the mining of radioactive minerals. This authority is considered necessary because at present the Federal Government has not announced its final plans for the mining and export of uranium...' The House of Assembly expanded on this further by stating that the introduction of retention leases was to 'make it [the Mining Act] consistent with the Government's present policy on uranium mining, which is to permit prospecting for uranium but to withhold approval of the mining of any discovery until the Government is fully satisfied that it is safe to provide uranium to a customer country.'

The three-mine policy, introduced in 1984, was a policy of the Federal Government of Australia to limit the number of uranium mines in the country to three. The foundations of the three-mine policy for uranium mining were laid in 1982, when, at a conference of the Australian Labor Party, the party decided to adopt a "no new mines" policy. At the time, two uranium mines were operating, both in the Northern Territory, Ranger and Nabarlek. However, this new policy left a loophole, as it permitted uranium to be mined as a by-product of other mining operations. The latter exception allowed for the

development of the Olympic Dam mine, located in South Australia, as it also contained gold and copper. The Australian Labor Party changed back its policy in the 1990s to a "no new mines" policy to allow uranium mines already approved by the Coalition government to go ahead. With the opening of a fourth uranium mine in Australia in 2001, the Beverley uranium mine, and the approval of a fifth mine, the Honeymoon uranium mine, Labor's stand had essentially become a "five-mine policy", as Nabarlek had since been closed. The Labor Party, however, continued its opposition to increased uranium mining until 2006, when, under the leadership of Kim Beazley, discussions to abandon the "no new mines" policy were initiated. In April 2007, the Labor party, under the new leadership of Kevin Rudd voted at their national conference to abandon the policy.

The original intent in granting a retention lease on the grounds that the holder is not ready to commence production was to allow the holder time to capital raise or wait for the mineral price to recover. This objective is not as relevant, as retention leases are not used for capital raising, rather companies commonly obtain their mining lease tenure, then capital raise prior to obtaining their operations approval under a PEPR. This is due to various reasons, with one such reason being that retention leases indicate to the market that the resource is currently uneconomical. Retention lease may still used to wait for the mineral price to recover, but not commonly in South Australia.

The original intent in granting a retention lease on the grounds that the Minister considers it wise to defer the development of a mining lease was to grant tenure if the Minister considered that insufficient investigations have been carried out for the Minister to be able to determine whether terms and conditions should be applied to the particular mining lease. It is not clear, however, how the Minister can determine that insufficient investigations have been carried out by the company if a mining lease application has not been submitted, but only a retention lease application.

It appears based on the above second reading speech that retention leases were more commonly used to secure the ground for uranium production until the three mine policy was abandoned. Abandonment of the policy lead to the approval of new uranium mines subject to environmental and other obligations. Mining Uranium by In-Situ Recovery (ISR) is normally first tested by undertaking a Field Leach Trial (FLT). This is undertaken to demonstrate that ISR is a viable option to extract uranium. FLTs were used to test the Beverley, Honeymoon, Oban and Beverley North deposits. Only the Oban deposit could not be exploited by current ISR technologies (RL now relinquished). FLT outcomes are used to support future applications for a mining lease, and the activity of an FLT is currently considered outside the scope of exploration activities. Any future copper ISR projects in South Australia are also likely to require FLTs to be undertaken. There is still a likelihood that a mining proponent may wish to undertake test mining for other commodities, although this has not been a common occurrence.

On average, there are 1 or 2 applications for a retention lease each year. When considering the 1 or 2 applications we receive each year and the existing retention leases, retention leases have been used in the past for the following reasons:

- a) The applicant needs to undertake activities which cannot be undertaken on an exploration licence or a mineral claim in order to obtain information for their mining lease application (such as ISL Mining or additional time beyond a year for extractive minerals);
- b) The resource is currently uneconomical, and the applicant wants to secure the land for future mining.

The *Statutes Amendment (Mineral Resources) Act 2019* updates the reason by which a retention lease can be granted to include, where:

- the applicant seeks an authorisation to carry out authorised operations to obtain information required to support an application for a mining lease where those operations are not suitable to be conducted on an exploration licence; or
- the Minister has assessed a mining lease proposal but determines to grant a retention lease; or

- for economic or other reasons the applicant is, in the opinion of the Minister, justified in not proceeding immediately to mine the land under a mining lease.

Under the propose framework, it is anticipate that retention leases will be used for the following reasons:

- progress extractive mineral projects that need more than a year to apply for an extractive mineral lease as a mineral claim only allows for a year of exploring;
- scoping of mining projects where sufficient time was not available under an exploration licence or mineral claim;
- to undertake trail mining operations; and
- to retain ground where it is not economical to proceed to mining.

To facilitate exploration operations on a retention lease, schedule 2 of the draft Mining Regulations has introduced a sliding scale of rental to reduce the initial costs associated with holding a retention lease authoring exploration operations. Further, regulation 32 of the draft Mining Regulations exempts retention leases for exploration operations from being subjected to public consultation prior to the Minister deciding whether to grant or refuse an application for a retention lease, and if grant, the terms and condition for which the grant should be made. This exception reflects the process for assessing and granting exploration authorities such as exploration licences or mineral claims. While the Act does allow for retention leases to be exempted from preparing a proposal, this regulation power has not been used in the draft Mining Regulations. Therefore, a retention lease for exploration operations will still need to prepare an environmental impact assessment, or where required by the Minister, a social impact assessment, the requirements will be commensurate to the environmental and social impacts of the proposed exploration operations.

A retention lease authorises an exclusive right to prospect, the right to undertake other authorised operations as specified in the lease and confers on the exclusive right to apply for a mining lease (s. 43(2)).

The *Statutes Amendment (Mineral Resources) Act 2019* does not specify a maximum area for a retention lease, however, the area must be the whole or part of the exploration licence, mineral claim or mining lease which the applicant holds at the time of application. While exploration licences may be much larger than a retention lease, the applicant can only apply for an area for which they can demonstrate to the satisfaction of the Minister that the area is necessary for the reasons for which the retention lease is to be granted.

The Minister may grant a retention lease for a term not exceeding 5 years. If a retention lease is due to expire, the holder can apply to the Minister for a renewal of the lease. An application for renewal must be made in a manner and form determined by the Minister and accompanied by any information required by the Minister and by the prescribed fee. The manner and form of an application determined by the Minister are set out in a Ministerial Determination which is published in the Government Gazette and on the Department's website. The Minister may renew the lease for a term not exceeding 5 years.

Regulation 34 of the draft Mining Regulations proposes that the following information must accompany an application to renew a retention lease:

- a statement of performance for the previous term which includes such information as the Minister may determine;
- a statement outlining the reasons why the retention lease should be renewed;
- 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 lease;

- d) a statement outlining the applicant's history of any non compliance in relation to operations carried out in other Australian states and territories; and
- e) such other information as may be determined by the Minister.

A retention lease will be subject to terms or conditions. Standard terms or conditions can be prescribed in the Regulations, and the Minister can specify any specific terms or conditions in the lease as the Minister thinks fit (s. 43(3)). The draft Mining Regulations do not propose to prescribe any standard terms and conditions.

In determining specific terms and conditions to apply to a lease, the Minister must give proper consideration to:

- any aspect of the environment that may be affected by the conduct of mining operations; and
- any other lawful activities that may be affected by those mining operations; and
- any Aboriginal sites or objects within the meaning of the Aboriginal Heritage Act 1988 that may be affected by those mining operations; and
- such other factors or matters as the Minister considers appropriate in the particular case (s. 56).

The retention lease terms or conditions are formulated during the assessment stage and after public consultation and referral to other government agencies for consultation or approval.

Regulation 33 of the draft Mining Regulations require the Minister to notify the applicant of the proposed terms and conditions and give the applicant at least 7 days, or such longer period as the Minister may allow, to make submissions on those terms and conditions before the Minister finalises them (r. 33). Regulation 33 applies to both mining leases and retention leases, therefore, discussion on whether we retain this regulation is discussed in chapter 3.

Prior to conducting operations on a retention lease, the holder must have an approved program under Part 10A of the Mining Act.

6. Application and assessment of a retention lease

Application and assessment of a retention lease as amended by the Statutes Amendment (Mineral Resources) Act 2019

Retention leases are applied for under section 44 and are granted under section 45 of the Act following a thorough environmental impact assessment and, where required by the Minister, a social impact assessment.

An application for a retention lease can be made by the holder of a mineral claim, exploration licence or mining lease or a related body corporate of the holder. The application must relate to whole or part of the land comprised in the claim, lease or licence.

The *Statutes Amendment (Mineral Resources) Act 2019* expands the scope of who can apply for a retention lease to include the holder of an exploration licence, mining lease or a related body corporate. By including the holder of an exploration licence, this negates the requirement for the explorer to establish a mineral claim prior to applying for a retention lease. While the explorer may still choose to establish a mineral claim, it is no longer a requirement. By including the holder of a mining lease, this allows a mining lease to convert their lease into a retention lease. Mining operation may go into 'care and maintenance' where the operations cease, but there is a potential to recommence operations at a later date. Under the current Act, the Minister authorises care and

maintenance by reviewing a PEPR to authorise the cease of operations and to ensure all environmental impacts are stabilised for the duration of care and maintenance.

Prior to applying for a retention lease, a person must serve on the owners of land to which the application relates, a notice of intention to apply for a lease. The notice must inform the owner of the person's intention to enter the land to carry out the relevant operations if the application is granted. The notice is of no effect if the person does not apply for the relevant lease within 12 months of serving the notice. There is no offence for failing to serve a notice of intention to apply for a lease, however, such a notice is a pre-requisite for applying for a mining lease (s. 58A). If the holder of a mining lease is applying for a retention lease, and that holder has served a notice of intent to apply previously in relation to an earlier tenement, then they do not need to serve a further notice.

An application for a retention lease must be in a manner and form determined by the Minister, must identify the boundaries of the land, must include any additional information prescribed by the regulations and must be accompanied by the prescribed fee. The manner and form of an application determined by the Minister are set out in a Ministerial Determination which is published in the Government Gazette and on the Department's website. An application must also be accompanied by a retention lease proposal unless prescribed by the regulations.

A retention lease proposal must:

1. specifying the operations or steps that are proposed to be carried out in order for the applicant to be in a position to make an application for a mining lease; and
2. setting out—
 - a. an assessment of the environmental impacts of the proposed operations; and
 - b. an outline of the measures that the applicant intends to take to manage, limit or remedy those impacts; and
 - c. a statement of the environmental outcomes that are accordingly expected to occur; and
3. incorporating a draft statement of the criteria to be adopted to measure those environmental outcomes, in the form prescribed by the regulations; and
4. setting out the results of the consultation undertaken in connection with the proposed operations in accordance with the regulations.

Regulation 48 of the draft Mining Regulations expands the retention lease propose to include a social impact assessment. Therefore, a retention lease proposal is an environmental impact assessment and may include a social impact assessment if required by the Minister. The requirements of a proposal are discussed above in chapter 2.

Regulation 31 of the draft Mining Regulations proposes the level of information that must accompany an application for a retention lease. Where an application for a retention lease is made on the grounds that the application seeks to undertake operations to support a mining lease application, the application must be accompanied by:

- (a) a statement outlining the operations to be carried out to support an application for a mining lease; and
- (b) a statement that provides detailed information about the mineral resource or ore reserve, or both; and
- (c) a statement declaring that the mineral resource or ore reserve, or both, has been appropriately identified and estimated.

Where an application for a retention lease is made on the grounds that the applicant believes there are economic or other reasons justifying them to not proceedings to mine immediately, the application must be accompanied by:

- (a) a statement nominating the principal mineral or minerals that are proposed to be recovered under a mining lease; and

- (b) a statement that provides detailed information about the mineral resource or ore reserve, or both; and
- (c) a statement declaring that the mineral resource or ore reserve, or both, has been appropriately identified and estimated; and
- (d) a statement setting out the grounds for proposing that there are economic or other reasons which justify not proceeding immediately to mine the land under a mining lease; and
- (e) a statement setting out the reasons why the applicant considers that mining the relevant land will become commercially viable within the next 5 years;
- (f) a statement of the technical, operational and financial capabilities and resources available to the applicant for the purpose of carrying out operations under the retention lease;
- (g) a statement outlining the applicant's history of any non-compliance in relation to authorised operations carried in other Australian states or territories; and
- (h) such other information as may be determined by the Minister for the purposes of this regulation.

Any information accompanying a retention lease application 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.

The Minister may ask for any additional information as required (s.44(2)).

Under the amendments made by the *Statutes Amendment (Mineral Resources) Act 2019*, land is determined at the time an application for a lease is submitted for assessment (s. 9(2)). This is a change from the current Act, where exempt land is defined at the time of grant of a retention lease.

Regulation 81 of the draft Mining Regulations requires an application to be accompanied by a declaration from the application declaring the accuracy of the information set out in the application.

Assessment

If an application for retention lease relates to an area within the Murray Darling Basin, the Minister must, in considering the application, take into account the objects of the *River Murray Act 2013* and the *Objectives for a Health River Murry* under that Act (s. 56F).

There are procedural steps the Minister must undertake prior to granting or refusing a retention lease to the applicant.

Firstly, the Minister must undertake public consultation in accordance with under section 56H. Public consultation may not be required in circumstances where the Minister decides to refuse the application early in the assessment process prior to undertaking public consultation. Regulation 32 exempts public consultation on retention leases that authorise exploration operations. This aligns with the assessment of other exploration authorities like exploration licences and mineral claims.

Secondly, the regulation 33 of the draft Mining Regulations require the Minister to notify the applicant of the proposed terms and conditions and give the applicant at least 7 days, or such longer period as the Minister may allow, to make submissions on those terms and conditions before the Minister finalises them (r. 33).

Thirdly, the location of the retention lease application may require the Minister to undertake further procedural steps prior to grant.

If the application relates to an area within or adjacent to a specially protected area, the Minister must, before making a decision on the application, refer the application to the Minister for Environment and Water and consult that Minister in relation to the application (s. 56G). A specially protected area is the Adelaide Dolphin Sanctuary, a marine park or a River Murray Protections Area (s. 6). If the Minister for Energy and Mining and the Minister for Environment and Water cannot agree on the decision to be made on the application or on any terms of conditions that should be applied if the application is

approved, the Minister's must refer the matter to the Governor for decision. In practice, this decision is referred to Cabinet and Cabinet instructions the Governor to make a particular decision.

If the application is within a jointly proclaimed national, conservation or recreation parks (including co-managed parks) the Minister for Energy and Mining must obtain the joint agreement of the Minister for Environment and Water to grant the lease.

These parks are defined in the *National Parks and Wildlife Act 1972* and the requirement for joint agreement is set out in the park proclamation.

If the application is within a regional reserve, the Minister for Energy and Mining must, before making a decision on the application, refer the application to the Minister for Environment and Water and consult that Minister in relation to the application(s. 43A(1)(3), *National Parks and Wildlife Act 1972*).

While there is no legislative requirement, the Minister for Energy and Mining refers applications to the Minister for Environment and Water for consultation on applications that are within:

- areas prescribed by section 125 of the *Natural Resources Management Act 2004* (to be replaced by section 101 of *Landscape South Australia Act 2019*) (prescribed well, prescribed watercourses, prescribed lakes);
- State Heritage Areas and State Heritage Places as defined in the *Heritage Places Act 1993*;
- conservation reserves as defined in section 5 of the *Crown Lands Act 1929* or section 18 of the *Crown Land Management Act 2009* or land in relation to which a declaration is in force under section 55 of the *Crown Land Management Act 2009*;
- heritage agreement areas as entered into under section 23 of the *Native Vegetation Act 1991*; and
- Declared RAMSAR wetlands as defined in the *Environment Protection and Biodiversity Conservation Act 1999* of the Commonwealth.

Grant

After assessing the application and undertaking the necessary procedural steps, the Minister must determine whether to grant or refuse the application and if the decision is to grant, the terms and or conditions that should apply to the lease. To grant a retention lease the Minister must be satisfied that appropriate environmental outcomes will be able to be achieved. The Minister must also be satisfied that the applicant meets the threshold for making an application. For example, the applicant may need to demonstrate to the satisfaction of the Minister that economic or other reasons justify the applicant to retain the area but not proceed to mining.

If the Minister decides to grant a retention lease, the lease will be taken to be granted when the lease is registered on the mining register (s. 37(3)). The registration date provides a clearly defined date in which the retention lease is granted.

7. Nature of miscellaneous purpose licences

Nature of miscellaneous purpose licences as amended by the Statutes Amendment (Mineral Resources) Act 2019

A miscellaneous purpose licence is a mineral tenement that is granted for ancillary operations (s. 48). Ancillary operations are defined in the *Statutes Amendment (Mineral Resources) Act 2019* to mean:

- operations for the carrying on of any business that may be conducive to the effective conduct of mining operations; or
- operations associated with providing amenities for persons engaged in the conduct of mining operations; or

- operations which are brought within the ambit of this definition by a determination of the Minister or by the regulations.

Certain operations may also be excluded from the ambit of the definition of ancillary operations by a determination of the Minister or by the regulations (s. 6).

The terms under the miscellaneous purpose licence, or the conditions attached to a miscellaneous purposes licence may limit, or define the scope of authorised operations that can be undertaken.

A miscellaneous purpose licence can be grant to any person and must not be larger than the maximum area prescribed by the regulations. Regulation 36 of the draft Mining regulations prescribe that the maximum permissible area of a miscellaneous purposes licence is 250 hectares or an amount (greater than 250 hectares) determined by the Minister in a particular case.

The *Statutes Amendment (Mineral Resources) Act 2019* does not specify a maximum term for a miscellaneous purpose licence. The Minister may grant a miscellaneous purpose licence for a term determined by the Minister. In making such a determination, the Minister will consider the nature of the proposed operations and the mine life of the associated project and the time necessary to achieve mine closure requirements. If a miscellaneous purpose licence is due to expire, the holder can apply to the Minister for a renewal of the licence. An application for renewal must be made in a manner and form determined by the Minister and accompanied by any information required by the Minister. The manner and form of an application determined by the Minister are set out in a Ministerial Determination which is published in the Government Gazette and on the Department's website. The Minister may renew the licence for a term determined by the Minister.

Regulation 40 of the draft Mining Regulations prescribe that an application for renewal of a miscellaneous purpose licences must be accompanied by:

- a statement of performance for the previous term which includes such information as the Minister may determine;
- a statement outlining the reasons why the miscellaneous purposes licence should be renewed;
- 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;
- a statement outlining the applicant's history of any non compliance in relation to authorised operations carried out in other Australian states or territories;
- such other information as may be determined by the Minister for the purposes of this regulation.

A miscellaneous purpose licence will be subject to terms or conditions. Standard terms or conditions can be prescribed in the Regulations, and the Minister can specify any specific terms or conditions in the lease as the Minister thinks fit (s. 48(3)). The draft Mining Regulations do not propose to prescribe draft regulations.

In determining specific terms and conditions to apply to a lease, the Minister must give proper consideration to:

- any aspect of the environment that mane be affected by the conduct of mining operations; and
- any other lawful activities that may be affected by those mining operations; and
- any Aboriginal sites or objects within the meaning of the Aboriginal Heritage Act 1988 that may be affected by those mining operations; and
- such other factors or matters as the Minister considers appropriate in the particular case (s. 56l).

Regulation 39 of the draft Mining Regulations requires the Minister to notify the applicant of the proposed terms and conditions and give the applicant at least 7 days, or such longer period as the Minister may allow, to make submissions on those terms and conditions before the Minister finalises them.

Prior to conducting ancillary operations on a miscellaneous purpose licence, the person must have an approved program under Part 10A of the Mining Act. These programs are known as Programs for Environment Protection and Rehabilitation (PEPRs). While PEPRs are submitted and approved by the Minister, the Minister may adopt a program that applies to operations of a prescribed class.

8. Application and assessment of a miscellaneous purposes licence

Applicant and grant of a miscellaneous purpose licence as amended by the Statutes Amendment (Mineral Resources) Act 2019

Miscellaneous Purpose Licences are applied for under section 49 and are granted under section 50 of the Act.

An application for a miscellaneous purpose licence can be made by any person.

Prior to applying for a miscellaneous purpose licence, a person must serve on the owners of land to which the application relates, a notice of intention to apply for a licence. The notice must inform the owner of the person's intention to enter the land to carry out ancillary operations if the application is granted. The notice is of no effect if the person does not apply for the relevant licence within 12 months of serving the notice. There is no offence for failing to serve a notice of intention to apply for a licence, however, such a notice is a pre-requisite for applying for a miscellaneous purpose licence (s. 58A).

An application for a miscellaneous purpose licence must be in a manner and form determined by the Minister, must identify the boundaries of the land, must be accompanied by a miscellaneous purpose licence proposal, must include any additional information prescribed by the regulations and must be accompanied by the prescribed fee. The manner and form of an application determined by the Minister are set out in a Ministerial Determination which is published in the Government Gazette and on the Department's website. A miscellaneous purpose licence proposal must:

1. specifying the ancillary operations that are proposed to be carried out under the licence; and
2. setting out—
 - a. an assessment of the environmental impacts of the proposed operations; and
 - b. an outline of the measures that the applicant intends to take to manage, limit or remedy those impacts; and
 - c. a statement of the environmental outcomes that are accordingly expected to occur; and
3. incorporating a draft statement of the criteria to be adopted to measure those environmental outcomes, in the form prescribed by the regulations; and
4. setting out the results of the consultation undertaken in connection with the proposed operations in accordance with the regulations.

Regulation 48 of the draft Mining Regulations expands the miscellaneous purpose licence propose to include a social impact assessment, where required by the Minister. Therefore, a miscellaneous purpose licence proposal is an environmental impact assessment and may include a social impact assessment if required by the Minister. The requirements of a proposal are discussed above in chapter 2.

Regulation 37 of the draft Mining Regulations proposes the level of information that must accompany an application for a miscellaneous purpose licence. An application for a miscellaneous purpose licence application must be accompanied by:

- a) a statement of the technical, operational and financial capabilities and resources available to the applicant for the purpose of carrying out operations under the miscellaneous purposes licence;
- b) a statement outlining the applicant's history of any non compliance in relation to authorised operations carried out in other Australian states and territories;
- c) such other information as may be determined by the Minister for the purposes of this regulation.

Where an application for a miscellaneous purpose licence proposes the construction of infrastructure to support operations for the carrying on of any business that may be conducive to the effective conduct of mining operations and that infrastructure is capable of being shared, regulation 38 of the draft Mining Regulations also requires the applicant must provide:

- a) a statement of similar infrastructure in the region; and
- b) where other infrastructure is in the region - a statement as to why this additional infrastructure is necessary; and
- c) where other infrastructure is not in the region or the additional infrastructure is necessary – a statement demonstrating the benefit of the infrastructure to the region and a proposal to share the infrastructure, where available.

Any information accompanying a miscellaneous purpose licence application 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.

The Minister may ask for any additional information as required (s.49(2)).

Regulation 81 of the draft Mining Regulations requires an application to be accompanied by a declaration from the applicant declaring the accuracy of the information set out in the application.

Assessment

The onus is on the applicant to develop an application that meets the required standards required by the Act, Regulations and Ministerial Determinations. The Minister may refuse an application on the grounds that the application is invalid. An application may be invalid for various reasons; however, commonly, this can occur if the application is grossly inadequate in meeting the minimum requirements set out in the Ministerial Determination. Where an application is inadequate but not to the extent to which it can be refused, the Minister may ask for any additional information as required (s.36(2)).

If an application for miscellaneous purpose licence relates to an area within the Murray Darling Basin, the Minister must, in considering the application, take into account the objects of the *River Murray Act 2013* and the *Objectives for a Health River Murray* under that Act (s. 56F).

There are procedural steps the Minister must undertake prior to granting or refusing a miscellaneous purpose licence to the applicant.

Firstly, the Minister must undertake public consultation in accordance with under section 56H. Public consultation may not be required in circumstances where the Minister decides to refuse the application early in the assessment process prior to undertaking public consultation.

Secondly, the current Mining Regulations require the Minister to notify the applicant of the proposed terms and conditions and give the applicant at least 7 days, or such longer period as the Minister may allow, to make submissions on those terms and conditions before the Minister finalises them (r. 50). The terms and conditions applicable to a miscellaneous purpose licence and whether we retain this regulation is discussed in chapter 5.

Thirdly, the location of the miscellaneous purpose licence application may require the Minister to undertake further procedural steps prior to grant.

If the application relates to an area within or adjacent to a specially protected area, the Minister must, before making a decision on the application, refer the application to the Minister for Environment and Water and consult that Minister in relation to the application (s. 56G). A specially protected area is the Adelaide Dolphin Sanctuary, a marine park or a River Murray Protections Area (s. 6).

If the Minister for Energy and Mining and the Minister for Environment and Water cannot agree on the decision to be made on the application or on any terms of conditions that should be applied if the application is approved, the Minister's must refer the matter to the Governor for decision. In practice, this decision is referred to Cabinet and Cabinet instructions the Governor to make a particular decision.

If the application is within a jointly proclaimed national, conservation or recreation parks (including co-managed parks) the Minister for Energy and Mining must obtain the joint agreement of the Minister for Environment and Water to grant the miscellaneous purpose licence. These parks are defined in the *National Parks and Wildlife Act 1972* and the requirement for joint agreement is set out in the park proclamation.

If the application is within a regional reserve, the Minister for Energy and Mining must, before making a decision on the application, refer the application to the Minister for Environment and Water and consult that Minister in relation to the application(s. 43A(1)(3), *National Parks and Wildlife Act 1972*).

Grant

After assessing the application and undertaking the necessary procedural steps, the Minister must determine whether to grant or refuse the application and if the decision is to grant, the terms and or conditions that should apply to the miscellaneous purpose licence. To grant a miscellaneous purpose licence, the Minister must be satisfied that appropriate environmental outcomes will be able to be achieved (s. 50(1))

If the Minister decides to grant a miscellaneous purpose licence, the licence will be taken to be granted when the licence is registered on the mining register (s. 37(3)). The registration date provides a clearly defined date in which the miscellaneous purpose licence is granted.

9. Application and assessment of change of operations

Application and assessment of change of operations as amended by the Statutes Amendment (Mineral Resources) Act 2019

The terms and conditions of a mining lease, retention lease and miscellaneous purpose licence are enduring.

Further, once a lease or licence is granted, the applicant becomes responsible and liable for a range of regulatory obligations and incurs ongoing fees and charges for holding the lease or licence. To add, vary or revoke lease or licence terms or conditions, there are three avenues available to facilitate change under the *Statutes Amendment (Mineral Resources) Act 2019*:

- The holder of a mining lease, retention lease and miscellaneous purpose licence may apply to the Minister to have terms and conditions of their lease or licence changed, and other changes as set out in this chapter; or
- The Minister may initiate change to the terms or conditions of a mining lease, retention lease and miscellaneous purpose licence where that change is necessary to offset, stabilise, prevent, reduce, minimise or eliminate any potential, perceived or actual undue damage to the environment as set out in chapter 10.

Part 8B, division 7 set out a new process whereby a tenement hold can apply to the Minister for a change in operation.

An application to change in operations applies to mining leases, retention leases and miscellaneous purpose licences. An application in relation to a change in operations include a proposal to make a:

- (a) change to the authorised operations to be carried out under a mineral tenement; or
- (b) change in the mineral that is intended to be recovered; or
- (c) change that may reduce the ability of the tenement holder to achieve a particular outcome, including an environmental outcome, or that is a change to the criteria to be adopted to measure a particular outcome; or
- (d) change to the terms and conditions of the tenement; or
- (e) change of any prescribed kind.

The regulations may prescribe that an application for a change cannot be made in prescribed circumstances. The draft Mining Regulations do not propose to prescribe any circumstances.

An application for a change in operations must be in a manner and form determined by the Minister, must be accompanied by a change proposal, must include any additional information prescribed by the regulations and must be accompanied by the prescribed fee. The manner and form of an application determined by the Minister are set out in a Ministerial Determination which is published in the Government Gazette and on the Department's website. A change proposal must comply with any requirements prescribed by the regulations. The Minister may require the applicant to furnish additional information after the application has been submitted.

Regulation 53 of the draft Mining Regulations prescribes that a change proposal must:

- (a) specify the change that is being proposed taking into account the changes referred to in section 56Q(3) of the Act; and
- (b) set out any changes that would apply (if the application for the change were to be approved) in relation to—
 - i. the environmental impacts of the authorised operations carried out under the relevant tenement; and
 - ii. the measures that are used, or to be used, to manage, limit or remedy those impacts; and
 - iii. the environmental outcomes that are expected to occur; and
 - iv. the criteria that have been adopted to measure the environmental outcomes associated with the relevant tenement; and
 - v. the social impacts of the authorised operations carried out under the relevant tenement; and
- (c) be accompanied by a statement that demonstrates—
 - i. in the case of a mining lease—that the change will not adversely affect the ability of the tenement holder to ensure that land comprised in the tenement can be effectively and efficiently mined; and
 - ii. that appropriate environmental outcomes will be able to be achieved; and
 - iii. that the change will not adversely affect the ability of the tenement holder to comply with the other requirements of the Act.

If an application for change in operations relates to an area within the Murray Darling Basin, the Minister must, in considering the application, take into account the objects of the *River Murray Act 2013* and the *Objectives for a Health River Murry* under that Act (s. 56F).

There are procedural steps the Minister must undertake prior to granting or refusing a change in operations.

Firstly, the Minister may undertake public consultation in accordance with under section 56H. The Minister may undertake consultation on the application as the Minsiter thinks fit, but the Minister must undertake consultation where prescribed by the regulations. Public consultation may not be

required in circumstances where the Minister decides to refuse the application early in the assessment process prior to undertaking public consultation.

Regulation 55 of the draft Mining Regulations prescribes that the Minister is required to undertake consultation on an application for a change of operations 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.

Secondly, if the application relates to an area within or adjacent to a specially protected area, the Minister must, before making a decision on the application, refer the application to the Minister for Environment and Water and consult that Minister in relation to the application (s. 56G). A specially protected area is the Adelaide Dolphin Sanctuary, a marine park or a River Murray Protections Area (s. 6).

If the Minister for Energy and Mining and the Minister for Environment and Water cannot agree on the decision to be made on the application or on any terms of conditions that should be applied if the application is approved, the Minister's must refer the matter to the Governor for decision. In practice, this decision is referred to Cabinet and Cabinet instructions the Governor to make a particular decision.

Thirdly, if the application proposes to expand the minerals that the tenement is authorised to recover to include extractive minerals, the Minister must not approve the change except with the written consent of the freehold owner of the land (s. 56T). This requirement does not apply where the purpose of the change is to vary the terms or conditions of the tenement so as to make provision for the management and use of extractive minerals produced during the course of carrying out authorised operations under the tenement.

Decision

After assessing the application and undertaking the necessary procedural steps, the Minister must determine whether to approve or refuse the application and if the decision is to approve, the revised terms and or conditions that should apply to the lease. To approve a change in operations, the Minister must be satisfied that:

- in the case of a mining lease—that the change will not adversely affect the ability of the tenement holder to ensure that land comprised in the tenement can be effectively and efficiently mined; and
- that appropriate environmental outcomes will be able to be achieved; and
- that the change will not adversely affect the ability of the tenement holder to comply with the other requirements of this Act.

If the Minister decides to approve a change in operation, the change will be taken to be approved when the change is registered on the mining register (s. 56V(2)). The registration date provides a clearly defined date in which the lease or licence has changed.

The Minister may, at the time of granting an approval for a change in operations, add, vary or revoke a term or condition of the relevant mineral tenement (to the extent that the Minister considers that the addition, variation or revocation is directly or indirectly relevant to the granting of the approval).

In determining specific addition, variation or revocation of terms and conditions to apply to the tenement, the Minister must give proper consideration to:

- any aspect of the environment that may be affected by the conduct of mining operations; and
- any other lawful activities that may be affected by those mining operations; and
- any Aboriginal sites or objects within the meaning of the *Aboriginal Heritage Act 1988* that may be affected by those mining operations; and

- such other factors or matters as the Minister considers appropriate in the particular case (s. 56U).

Regulation 56 of the draft Mining Regulations require the Minister to notify the applicant of the proposed change in terms and conditions and give the applicant at least 7 days, or such longer period as the Minister may allow, to make submissions on those terms and conditions before the Minister finalises them.

The Minister must give notice of granting of an approval of a change in operations in a manner prescribed by the regulations.

10. Change of terms and condition initiated by the Minister

Change of terms and conditions initiated by the Minister as amended by the Statutes Amendment (Mineral Resources) Act 2019

The Minister may at any time add, vary or revoke a term or condition of a mining lease, retention lease or miscellaneous purpose licence, if the Minister considers that the addition, variation or revocation is necessary—

- (a) to offset, stabilise, prevent, reduce, minimise or eliminate any potential, perceived or actual undue damage to the environment associated with authorised operations carried out under the tenement; or
- (b) to ensure consistency with the conditions attached to the Commonwealth Minister's approval (if any) under the *Environment Protection and Biodiversity Conservation Act 1999* of the Commonwealth; or
- (c) taking into account any other matters prescribed by the regulations.

Regulation 49 of the draft Mining Regulations prescribes that the Minister may considers the following matters necessary to add, vary or revoke a term of condition of a tenement:

- a) where a term or condition of a mineral tenement to which the section applies is inconsistent with, limits or derogates from a provision of the Act;
- b) where a change will prevent or avoid a reoccurrence of a breach of the Act;
- c) where a change will address a term or condition of a mineral tenement to which the section applies that is incapable of being met;
- d) where a change will ensure that a term or condition of a mineral tenement to which the section applies is consistent with an amendment that has been made to the Act or any other Act.

The Minister must take reasonable steps to consult with the holder of the relevant mineral tenement before making a change. The holder of the relevant tenement holder has merits review appeal rights in the ERD Court, the regulations prescribe circumstances in which merits review does not apply. Regulations 49 prescribes that the Minister does not need to consult and the tenement holder does not have merits review rights where the Minister determines that the change is required as a matter of urgency.