Statutes Amendment (Mineral Resources) Act 2019

Consultation on draft mining regulations

GUIDANCE MATERIALS

Package three: operating approvals

- *Private Mines*
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- *Miscellaneous*

Government of South Australia

Department for Energy and Mining

Contents

Introduction

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

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

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

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

- **Package one –** focusses on land access, including access to land, exploration licences, and mineral claims. Package was released on **Monday 3 August**
- **Package two –** focusses on compliance and enforcement matters, including compliance and enforcement, opal mining, Warden's Court, Mining Register, royalties and finance and competency of mining managers. Package was released on **Monday 10 August**
- **Package three –** focusses on mining approvals, incorporating production tenements, operating approvals, private mines and certain miscellaneous provisions. Package will be released on **Monday 17 August**.

DEM will carefully consider submissions when finalising the regulations.

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

Private Mines

Introduction

When the *Mining Act 1971* (Mining Act) commenced, ownership of South Australia's minerals became vested in the Crown. In recognition of this significant change, the Mining Act introduced a process for people who had lost their mineral rights to apply to retain them, under certain circumstances. If the application was successful, the governor proclaimed the area to be a private mine. These applications were only allowed for a limited time after the commencement of the Mining Act.

Private mines are still distinct from other mining tenements and regulated under the framework set out in Part 11B of the Mining Act. All other mines are regulated under the remainder of the Mining Act.

The amendments introduced by the revised Act have not changed the underlying tenure of private mines but encourage contemporary mining practices at private mines by:

- introducing a more modern definition of the environment
- updating and expanding private mining compliance tools
- aligning the penalties and offences for private mines with other mining tenements
- simplifying surrender and revocation provisions for private mines to streamline the process for both private mine proprietors and the Minister for Energy and Mining
- automatically transitioning a Mine Operations Plan (MOP) to a Program for Environment Protection and Rehabilitation (PEPR) 15 years after the commencement of the revised Act.

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

Application of the Mining Act

Section 73D of the Mining Act lists all the sections applying to private mines, including specific provisions contemplated by the regulations. In line with this authority, the draft regulations prescribe that the following sections will also apply to private mines:

- section 62, which relates to bonds and security and applies to private mines that recover minerals, apart from extractive minerals
- section 79A, which states that a person is guilty of a consolidated offence if they provide false or misleading information to any person involved in the administration of the Act.

Content of a MOP

The Mining Act continues to provide that a MOP must include:

- a set of objectives the operator is prepared to achieve to manage potential impacts on the environment
- the criteria for measuring achievement of the objectives

- any other requirements prescribed by the regulations.

To reflect contemporary community standards for environmental management and rehabilitation, the draft regulations update MOP content requirements. The framework for MOP content has been broadly aligned with the requirements for PEPRs, and requires:

- a statement outlining the operations to be carried out at the private mine
- a description of the environmental impacts that may reasonably be expected to occur and the measures and strategies that will be used to manage, limit or remedy those impacts
- the expected environmental objectives to be achieved in relation to the mining operations and the criteria to measure those objectives to be set out
- a statement of the capabilities of the person's ability to achieve the environmental objectives
- information on the engagement undertaken in connection with the preparation of a MOP
- a declaration of accuracy signed by the private mine operator
- any other information required by the Director of Mines (the Director).

If determined by the Director, a MOP may also need to contain a description of the social impacts that are reasonably expected to occur as a result of the proposed operations and an outline of the measures that will be used to manage, limit, remedy, facilitate and/or ensure those impacts.

Social impact means the impacts of an authorised operation, that affect people and their communities (or a part or section of the community), both positively and negatively.

Under the draft regulations a MOP can be submitted electronically, with no need to provide written copies.

Publication

The department intends to publish MOPs online, in accordance with section 73G of the Mining Act. The draft regulations also provide that a MOP can appear on the Mining Register. This is consistent with the approach used for PEPRs and will improve transparency for the community and industry. To enable the transition to this provision, MOPs submitted or reviewed from 1 January 2021 will be public available while MOPs submitted for assessment or approved prior to 1 January 2021 will not be publicly available.

Public consultation on new operations

The Mining Act provides that the objectives and criteria of new operations planned for a private mine, as detailed in a draft MOP, must be released for public consultation.

The draft regulations align this public consultation process for new operations with those prescribed under section 56H to ensure consistency. This means the Director must seek public comment on the new operations before making a decision by issuing a notice that:

- identifies the location of the mine
- states that a MOP has been prepared for the mine, and where the relevant objectives and criteria may be inspected
- invites written submissions on the draft objectives and criteria within a specified period.

The Director is also specifically required to invite written submissions from the landowner and the relevant council. Any submissions will be given to the applicant who must prepare

a response document and report on the response to any public consultation relating to the proposed new operations.

MOP review

A MOP must be reviewed within seven years after the commencement of the plan or after it was last reviewed, or at the direction of the Director, and must be undertaken in accordance with the regulations.

To promote modern mining practices at private mines and better align with the processes for other mining tenements, the MOP review process has been updated and now consists of:

- consultation, which at a minimum must include engagement about the environmental objectives that have been achieved when measured against the criteria that have been adopted under the MOP
- the preparation of a report
- where required by the Director, submission of a revised MOP which is subject to approval under section 73G of the Mining Act.

A MOP review is required to be completed and furnished to the Director within 3 months, if the review has been requested at the direction of the Director, or by the end of the relevant 7 year period in all other cases.

What other changes were finalised in the revised Act?

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

Private mine reforms in the revised Act

Schedule 1, Clause 15: Transitional provision – All private mine MOPs will automatically transition to PEPRs after 15 years.

Section 73C: Definition of environment – A modern definition of environment will 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*'.

Section 73D: Offences and penalties – All offences and penalties under the Act will apply to private mines in the same way that they apply to other tenements, except for continuing offences.

Sections 73H and 73KA: Compliance and enforcement tools – The modern compliance and enforcements 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:

- 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 holder's obligation to avoid damage to the environment.

Section 56X: Surrender – New streamlined process whereby a private mine proprietor can surrender a private mine.

Section 73N: Revocation – New streamlined process to revoke unworkable private mines via notice.

Production tenements

Introduction

Mining applications and proposals need to be effectively assessed to enable informed decision making, which considers both benefits and impacts of any proposed mining project. Assessment processes must therefore be proportionate to deliver effective identification of any potential impacts of the project, in alignment with stakeholder expectations.

Applicants are expected to prepare applications, such as mining lease proposals, thoroughly. The Government is responsible for maintaining fit-for-purpose standards for applications, conducting statutory public consultation on applications, undertaking a comprehensive assessment of applications, preparing assessment reports and, ultimately, making evidence-based decisions in accordance with the law.

This balance of obligations on the Minister and applicants has been specifically designed to ensure there is a measured approach to assessing mining projects, and the decision to grant or refuse a right to mine is informed and evidence-based.

The revised Act reflects leading practice processes for predicting and assessing the potential impacts of a proposed project, evaluating alternatives and designing appropriate mitigation, management and monitoring measures.

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

Scoping

The draft regulations reflect leading practice processes for predicting and assessing the potential impacts of a proposed project, evaluating alternatives and designing appropriate mitigation, management and monitoring measures.

It is proposed scoping requirements may apply to an intended application for a mining lease, a retention lease or a miscellaneous purposes licence. This is expected to provide an opportunity for applicants to engage early with stakeholders, understand key interest areas and develop fit-for-purpose technical scopes of work commensurate to their project to determine the appropriate information required for the project's environmental impact assessment.

The intention of this process is to:

- ensure project assessments are commensurate with the level of environmental and social impacts after taking into account the project type, scale, duration and sensitivity of the location of the proposed mining and ancillary operations
- provide applicants with greater certainty with respect to government and community expectations as to the technical scope of works related to the potential environmental and social impacts and create the basis of the environmental

impact assessment required to support a tenement application

- ensure that proposed projects are assessed within a scheme that promotes efficiencies, transparency and clarity as to approval pathways and technical assessments.

The draft regulations provide that a designated person, being the holder of a mineral tenement that may lead to a relevant tenement, or an applicant for a relevant tenement (mining lease, retention lease or miscellaneous purposes licence), may be required to provide a scoping report, prior to development of a tenement application - i.e. the environmental impact assessment.

The purpose of a scoping report is for the proponent identify the technical scopes of work required to prepare their tenement application - i.e. the environmental impact assessment - and should:

- describe the proposed project and setting,
- provide a preliminary consideration of the potential for environmental and social impacts arising from the project,
- describe the technical works required to complete a tenement application - i.e. the environmental impact assessment.

Where the scoping process highlights the potential for social impacts, the regulations have provided for the preparation of a social impact assessment. The draft regulations define social impact as both the positive and negative impacts of authorised operations, on a relevant part or section of the community, that affect people and their communities.

Defined Impact Applications for quarries would continue to follow the template-based approach and not require a scoping report.

Please see page 14 of the guidance materials for a diagram of the proposed scoping process.

More detail will be provided through guidance materials and by early engagement with the department.

Retention leases

A retention lease is a distinct tenement that grants the tenement holder certain exclusive rights in relation to the land comprised in the lease, for a term of up to five years, which is eligible for renewal. The tenement is granted on the specific basis that the tenement holder requires this time in order to proceed to an application for a mining lease.

Accordingly, the grant of a retention lease, and consideration of its renewal, is subject to rigour based on the demonstration of appropriate justification for the holding of such tenure.

A retention lease must be accompanied by a retention proposal specifying the proposed steps or operations required to qualify to apply for a mining lease. It must include:

- an assessment of the environmental impacts of the proposed operations or activities
- an outline of the measures the applicant intends to take to address those impacts
- a statement of the expected environmental outcomes, incorporating criteria for measuring those environmental outcomes and the results of the consultation carried out in connection with the proposed operations or activities.

The draft regulations prescribe the:

- form of the draft statement of criteria to be adopted to measure the environmental outcomes set out in the retention proposal

- consultation by the proponent that must be undertaken in connection with the proposed operations or activities
- requirement that an application for a retention lease must be accompanied by (as applicable):
  - a statement detailing the appropriate identification and estimation of the nominated mineral resource or ore reserve
  - a statement outlining the operations or activities to be carried out to support an application for a mining lease
  - a statement setting out the justification for not proceeding immediately to a mining lease
  - a statement detailing why this will change during the term of the retention lease, such that mining the relevant land will become commercially viable in that time
  - a statement of the applicant's available technical, operational and financial capabilities and resources to carry out any proposed operations or activities
  - description of the environmental and social impacts (if any) that are reasonably expected to occur as a result of the proposed operations or activities and an outline of the measures that are to be used to manage, limit, remedy, facilitate and/or ensure those impacts
  - a statement outlining the applicant's history of compliance or non-compliance (if any) in relation to authorised operations carried out under a corresponding law.
- provisions to enable a scoping step to be applied to a pre-lodgement impact assessment process
- requirement that an application for the renewal of a retention lease 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 retention lease should be retained
  - a statement of the applicant's available technical, operational and financial capabilities and resources to carry out any proposed operations or activities under the renewed lease.

If granted, the retention lease will commence from when it is registered on the Mining Register and the term of the lease will start from the date of registration.

Mining leases

The revised Act improved clarity and efficiency and introduced a new 'appropriate environmental outcomes' test. A lease will not be granted unless it is considered that:

- the area of the proposed lease can be effectively and efficiently mined
- appropriate environmental outcomes are achievable
- sufficient environmental and social investigation has been done to enable terms and conditions to be determined for the lease.

An application for a mining lease must be accompanied by a mining proposal that includes:

- an assessment of the environmental impacts of the proposed operations
- an outline of the measures that the applicant intends to take to address those impacts
- a statement of the expected environmental outcomes, including the criteria for measuring those environmental outcomes
- the results of consultation about the proposed operations and environmental outcomes.

The draft regulations prescribe:

- the criteria to be adopted to measure the environmental outcomes set out in the mining proposal
- the consultation that must be carried out by the proponent in connection with the proposed operations
- that an application for a mining lease must be accompanied by a:
  - statement detailing the appropriate identification and estimation of the nominated mineral resource or ore reserve or both
  - statement of the applicant's available technical, operational and financial capabilities and resources to carry out the proposed operations
  - statement demonstrating that there is a reasonable prospect that the relevant land can be effectively and efficiently mined and that appropriate environmental outcomes would be able to be achieved
  - description of the environmental and social impacts that are reasonably expected to occur as a result of the proposed operations and an outline of the measures that are to be used to manage, limit, remedy, facilitate and/or ensure those impacts
  - statement outlining the applicant's history of non-compliance (if any) in relation to authorised operations carried out under a corresponding law
- provisions to enable a scoping step to be applied to a pre-lodgement impact assessment process.

More detail will be provided in Ministerial Determinations and guidance materials.

If a mining lease is unable to be granted, a retention lease can be granted with the applicant's permission. The term of the retention lease will begin on the day it is registered on the Mining Register.

Miscellaneous purposes licences

A miscellaneous purposes licence (MPL) is a mineral tenement granted for ancillary operations, with terms and conditions prescribed by the regulations. Under the revised Act, an MPL cannot be granted unless the regulator is satisfied the appropriate environmental outcomes can be met. The Act stipulates an application for an MPL must be accompanied by:

- a proposal specifying the nature and extent of the proposed ancillary operations to be carried out under the licence, and providing an assessment of the environmental impacts of the proposed operations
- an outline of the measures the applicant intends to take to address those impacts
- a statement of the expected environmental outcomes, incorporating

the criteria for measuring those environmental outcomes and the results of the consultation about the proposed operations.

The draft regulations prescribe:

- the form of the draft statement of criteria for measuring the environmental outcomes
- consultation that must be undertaken in connection with the proposed operations
- an application for an MPL must be accompanied by:
  - a statement of the applicant's available technical, operational and financial capabilities and resources to carry out the proposed operations
  - a description of the social impacts that are reasonably expected to occur as a result of the proposed operations and an outline of the measures that are to be used to manage, limit, remedy, facilitate and/or ensure those impacts
  - a statement outlining the applicant's history of compliance or non-compliance (if any) in relation to authorised operations carried out under a corresponding law
- if an application for an MPL proposes that infrastructure, of a kind that is capable of being shared, be constructed or installed, then it must be accompanied by:
  - a description of any similar infrastructure that exists in the relevant region
  - a statement as to why such infrastructure cannot be shared or, if no such existent infrastructure is identified, a statement of the benefit to the relevant region of the proposed infrastructure and outlining any proposal to share the infrastructure
- provisions to enable a scoping step to be applied to a pre-lodgement impact assessment process.

More detail will be provided in Ministerial Determinations and guidance materials.

The reforms align MPLs with the registration processes of a mining lease to reduce confusion about when a licence is issued and when it ceases.

Change in operations

Under the revised Act, the holder of a mining lease, retention lease or miscellaneous purposes licence may apply to make a change to:

- the operations authorised under a mineral tenement
- the intended mineral to be recovered
- the ability to achieve a particular outcome
- the criteria to be adopted to measure a particular outcome
- the terms and conditions of the tenement.

The application for a change in operations must be made in a manner and form determined and accompanied by a proposal detailing the proposed changes that complies with any requirements in the regulations.

A draft regulation requires the proposal must:

- specify the change being proposed, such as a change to the authorised operations, in the mineral that is intended to be recovered, the reduction of an ability to achieve an outcome or a change in criteria to measure an outcome, or to the terms and conditions of a tenement

- set out any changes that would apply, if the change application was approved, to the environmental and social impacts of the authorised operations and the associated location/s, measures, outcomes and criteria.

More detail will be provided in Ministerial Determinations and guidance materials.

The date the application for a change in operations is approved will be the date it's registered on the Mining Register. This reform mirrors the registration process for the grant of tenements under the Act. A draft regulation prescribes that the standard form of notice will apply to the granting of an approval for a change in operations.

Alteration of terms and conditions

Before a mineral tenement is granted, terms and conditions of the tenement must be determined and proper consideration given to any lawful activities, aspects of the environment and Aboriginal sites or objects that may be affected by the authorised operations.

The revised Act expanded the power to amend the terms and conditions of a tenement as concerns undue damage to the environment, or in order to ensure consistency with the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) or taking into account any other matters prescribed by the regulations. The draft regulations prescribe the following matters:

- where a relevant term or condition is inconsistent with, limits or detracts from a provision of the Act
- where a change will prevent or avoid a reoccurrence of a breach of the Act
- where a change will address a relevant term or condition that is incapable of being met
- where a change will ensure that a relevant term or condition is consistent with an amendment to applicable legislation.

Reasonable steps to consult with the holder of the relevant tenement must be taken and, if the Government acts without the agreement of the tenement holder, then an appeal may be heard by the Environment, Resources and Development Court (ERD Court) unless prescribed by the regulations. Draft regulations propose that the consultation and appeal rights will not apply if the change is required as a matter of urgency.

What other changes were finalised in the revised Act?

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

Production tenement reforms in the revised Act

Mining Lease

Section 36: Explorers can apply for a mining lease without a mineral claim.

Section 35(2): 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.

Section 37(1): New grant test – A mining lease will not be granted if the environmental outcomes cannot be met.

Section 37(2): New power to grant a retention lease instead of a mining lease – Rather than rejecting an application for a mining lease, if it is considered that sufficient investigations have not been carried out, a retention lease can be granted.

Section 38: New term to align with mine life – A mining licence granted for any term determined.

Retention lease

Section 44: Application process aligned with other production tenements – A requirement for a retention lease proposal is included in the Act.

Section 46: Strengthen renewal process – Renewal granted only if reasons for the original grant are still valid. Details to be included in regulations and in a Ministerial Determination.

Miscellaneous Purpose Licence

Section 49: Application process aligned with other production tenements – A requirement for a miscellaneous purpose licence proposal is included in the Act.

Part 8: Broaden the scope of use of miscellaneous purpose licences – Broad and flexible definition of ancillary operations expands use for miscellaneous purpose licences.

Section 51: New term to align with miscellaneous purpose licence use – A miscellaneous purpose licence can be granted for any term determined.

Common provisions

Section 9(2): Exempt land – Exempt land is determined at the time an application for a lease is submitted for assessment.

Section 56J: Expanded powers to amend terms and conditions of a tenement – Allows an amendment to manage environmental risk or to achieve consistency with the EPBC Act.

Section 56K: 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.

Sections 56Q-S, 56V: New transparent process for applications for a change in operations – Outcome-based approach for tenement holder to apply to make certain changes.

SCOPING PROCESS FOR APPLICATION

IDENTIFICATION OF MINERAL RESOURCE

CONCEPTUAL DEVELOPMENT OF PROJECT

PROJECT DEFINITION

Investigate all relevant project considerations

Ensure early awareness of regulatory requirements

PROJECT SCOPING

- Describe the proposed project and setting.
- Provide a preliminary consideration of the potential for environmental and social impacts arising from the project.
- Describe the technical works required to complete a tenement application - eg the environmental impact assessment.

PROPONENT PREPARES SCOPING REPORT WITH PROPOSED TERMS OF REFERENCE *

SUBMIT SCOPING REPORT TO DEM IN APPROPRIATE MANNER AND FORM

GOVERNMENT ASSESSES SCOPING REPORT AND PROPOSED TERMS OF REFERENCE

DEM endorses the scoping report and sets the terms of reference
DEM can request further information if needed

PROPONENT UNDERTAKES SCOPING WORKS IN ACCORDANCE WITH TERMS OF REFERENCE

TENEMENT GRANTED OR REFUSED

DEM ASSESSES APPLICATION

SUBMIT APPLICATION AND PROPOSAL TO DEM

PREPARE APPLICATION AND REQUIRED PROPOSAL

17/08/2020-204182

* Defined Impact Applications for quarries would continue to follow the template-based approach and not require a scoping report or terms of reference.

Operating approvals - Programs for environment protection and rehabilitation

Introduction

Under the *Mining Act 1971* (Mining Act), an explorer or miner cannot begin exploring for or producing a mineral or extractive mineral unless they have an operational approval to authorise the specific exploration or production activities, such as a program for environment protection and rehabilitation (PEPR) or a mine operations plan (MOP). An explanation of the changes to MOPs is outlined above in the Private Mines section.

Part 10A of the Mining Act sets out the legislative framework for PEPRs. Authorised operations with potential adverse environmental impact must be adequately managed to eliminate or minimise the risk of significant long-term environmental harm, as far as reasonably possible.

A tenement holder must prepare a PEPR to show:

- how they can achieve the goals for environmental management outlined in the approved lease or licence
- the strategies, monitoring plans and criteria they will use to do it.

The revised Act has amended Part 10 to improve and clarify the regulatory intent of the legislation, streamline approvals for matters that trigger the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act), and maintain community expectations about environmental and social standards.

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

Preparation of a PEPR

PEPR content requirements under the Mining Act have not changed. However, there are some changes to the regulations, which ensure consistency with the revised Act and encourage mining activity so mining tenements do not lie idle. In particular, the draft regulations:

- require the tenement holder to sign a declaration of accuracy accompanying a PEPR, or a PEPR review, as the tenement holder is now deemed to be responsible for any contraventions of the Mining Act
- combine sub-regulations 65(1) and 65(2) of the current regulations to remove the distinction between PEPR requirements for operations carried out under an

exploration licence and those carried out under a mining tenement, shifting the focus from the tenement type to the activities that will be undertaken

- remove the current exception under sub-regulation 65(3) so that all PEPR requirements also apply to extractive mineral leases
- move the current requirement for a tenement holder to retain compliance, data or other information collected for measuring environmental outcomes for a period determined to section 15AJ of the Mining Act.

Generic PEPRs

Section 70B(8) of the Mining Act enables the regulations to set out programs, called generic PEPRs, that can be adopted for a prescribed class of operations. They allow the tenement holder, subject to any requirements in the regulations, to use that PEPR rather than prepare an original program.

Currently, the regulations prescribe two classes of operations: exploration operations and mining operations for extractive minerals – although a generic PEPR only applies to low impact mineral exploration. The draft regulations have been updated to list all tenement types as prescribed classes to allow generic PEPRs to apply more broadly.

PEPR reviews

PEPRs can be reviewed:

- at the request of the tenement holder
- at the direction of the Minister
- if an application for a change of operation is made, resulting in an inconsistency with the PEPR.

Under the revised Act a review must comply with the requirements of section 70B(2) and any requirements and timeframes prescribed by the regulations. To reflect this the draft regulations now provide:

- Regard must be had to any submissions received about the revised PEPR, and any changes to the terms and conditions, in determining whether to approve it if the authorised operations constitute a controlled action under the EPBC Act and the controlled action is being assessed under a bilateral agreement
- PEPR reviews will need to be completed and provided within three months of being directed to undertake a review
- a revised PEPR may be submitted electronically.

The draft regulations also provide if a revised PEPR is submitted merely because of minor administrative revisions it may be determined that a lower prescribed fee may be payable.

What other changes were finalised in the revised Act?

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

Operating approval reforms in the revised Act

Section 70B: Lodgement – PEPRs can be lodged by the related body corporate of a tenement holder. This change accommodates commercial structures.

Section 70B(7a): PEPR conditions – New discretionary power to propose conditions on a PEPR, in addition to PEPR requirements.

Section 70B(5): PEPR submission – Clarification a PEPR submission can be rejected on the basis it does not comply with the Act (not just require alterations).

Section 70B(11): Exempt land – Clarification that a PEPR can be approved over exempt land on the basis the tenement holder will comply with exempt land requirements.

Section 70D: Consultation – The Minister can consult on PEPRs that trigger the EPBC Act and bilateral agreement. This is required to ensure compliance with the EPBC Act and bilateral agreement.

Section 70DA: Audit power – New power to require the tenement holder to demonstrate through various means (e.g. specified test, environmental monitoring or other investigations) the tenement holder's ability to achieve the outcomes of the PEPR.

Section 70DB: Publication – A PEPR (or part of a PEPR) may be published and made publicly available.

Section 70DC: Penalties and offences – Penalty provisions have been reviewed to ensure that the penalties are proportionate to the risk associated with non-compliance. Maximum penalties for breaches under this section have been increased from $120,000 to $250,000. A new section also makes it an offence for a person connected with an authorised operation to contravene or fail to comply with a program or condition of a program relating to the relevant authorised operation.

Miscellaneous

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

Special Mining Enterprises – concept phase and application phase

Under the revised *Statutes Amendment (Mineral Resources) Act 2019*, Special Mining Enterprise (SME) provisions allow the government to regulate unique operations of major significance to the economy of the State.

The reforms outline a new process for an individual or company to notify the Director of Mines of an intention to apply for a SME. A scoping process will enable the proponent to outline the technical scopes of work and terms of reference to develop a fit-for-purpose application considering all the relevant environmental, social and economic matters.

A draft regulation prescribes the fee and the information that the concept phase of the application must include:

- information demonstrating that the proposed enterprise is of major significance to the economy of the state
- a statement outlining the mineral/s that the proponent is seeking to recover and a general description of the proposed operations
- an outline of the expected environmental and social maps and plans relating to the proposed location of the enterprise
- a statement identifying any requested exemptions from, or modifications of, requirements under the Mining Act.

Under the revised Act, the applicant may need to provide additional information and undertake consultation with the public, as required by guidelines or as specified by the Director on a case-by-case basis.

When consultation has closed the applicant will either proceed to the formal SME application process, which is assessed by the Minister, or be advised the matter is not suitable for further consideration.

The draft regulation prescribes the fee and additional information required to accompany the application at the application stage:

- a statement outlining the results of consultation undertaken in connection with the application
- statement of any other information, requirement or action specified during the concept phase
- a draft program as concerns the expected environmental and social outcomes, relevant ability of the proponent to achieve such outcomes and applicable measurement criteria.

Surrender on application

The revised Act introduces a streamlined process to surrender all or part of a mineral tenement, including a private mine, by applying for an approval to surrender.

A draft regulation prescribes an application for surrender must include:

- a statement, accompanied by supporting evidence, that all mine completion objectives have been achieved and that all

rehabilitation required to be undertaken has been completed or is in place

- a map and description of the relevant area/s, showing the proposed surrendered area and the remaining area (if a partial surrender)
- a final compliance, royalty and, if relevant, technical exploration report
- outline of the consultation undertaken with the owner of the land in relation to the proposed surrender, including any issues raised by the owner and how they have been, or will be, addressed
- a statutory declaration that:
  - authorised operations have ceased
  - there are no outstanding liabilities under the Act or regulations
  - all fees, royalties, rents or penalties under the Act or regulations have been paid
  - outlines any legal proceedings in respect of the tenement
  - the tenement holder has an acceptable management plan for the management or transfer of any outstanding matters or liabilities

A Ministerial Determination will provide more details of the required information.

If approved, the tenement will be surrendered when an instrument is registered on the Mining Register.

Deemed consent or agreement

A new provision in the revised Act provides if the tenement holder and the landowner are the same people, they are deemed to have complied with any required agreements or consent, and subsequent owners of the land will be bound by those agreements or consents.

A draft regulation prescribes an instrument must be published on the Mining Register as evidence of a deemed consent or deemed agreement.

What other changes were finalised in the revised Act?

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

Special Mining Enterprises reforms in the revised Act

Section 56B: Improved rigour of assessment – Similar rigour as a mining lease application and must include public consultation, relevant referrals and consideration of Aboriginal heritage and the environment.

Section 56C: Clearer purpose of SMEs – Rather than listing what in the Act can be exempted or modified by granting an SME, the Act lists the sections of the Act that cannot be exempted.

Part 8A: 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.

Miscellaneous reforms in the revised Act

Section 56ZA: 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.

Section 56P: New power to amalgamate tenement areas – Tenement holder can apply for areas of tenements to be transformed into one tenement.

Section 75: Clearer use of extractive minerals – This section has been amended to clarify 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 an individual's use of extractive minerals can be determined to be beyond the scope of personal use due to the nature or scope of the operations and that a tenement is required under the Act.

Section 56X: New streamlined process to surrender all or part of a mineral tenement, including a private mine.

Section 82: Deemed consent or agreement – In the event that the tenement holder and the landowner are the same person or entity, any agreements or consent required under the Act are deemed to be complied with and will bind subsequent owners.

Have your say

The draft regulations in *Package three: operating approvals* will be open for input until **11 September 2020**. For further information please:

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

To provide a submission:

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

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

  Email: DEM.MiningRegs@sa.gov.au

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