

MINING MANAGEMENT AMENDMENT BILL 2013

SERIAL NO. 30

LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY

MINISTER FOR MINES AND ENERGY

AMENDED EXPLANATORY STATEMENT

Tabled 27 June 2013

GENERAL OUTLINE

This Bill amends the *Mining Management Act* (MMA) in the following ways:

1. Introduces a non-refundable annual levy of 1% on the total calculated rehabilitation security applied to each mining operation Authorised under the MMA.
2. Establishes a statutory Mining Remediation Fund to hold monies in trust to undertake activities to reduce the level of impact legacy mining sites have on the environment.
3. Allows for the setting of a minimum rehabilitation security for an Authorisation granted under the Act.
4. Removes the current mandatory requirement for all operators of a mining site to make available an annual Environmental Mining Report (EMR), in favour of providing discretion as to which sites or class of sites an EMR requirement should be applied to (e.g. those of higher environmental risk).
5. Increases the time period from 12 months to three-years for the commencement of criminal proceedings for offences against the Act.
6. Allows the regulatory agency to recover costs incurred by it following a successful prosecution for an environmental offence.

7. Allows the regulatory agency to recoup expenses incurred by it arising from investigations into environmental incidents on or originating from mining tenements.
8. Excludes the Darwin Port Corporation sites, involved in the transportation, handling and storage of minerals, substances, contaminants and waste, from capture under the MMA to avoid duplication with regulatory controls under other statutes.
9. Allows for the imposition of future fees and charges to be prescribed by Regulation for specific matters under the Act (e.g. fees for the assessment of lodged Mining Management Plans and other potential cost-recovery measures).

NOTES ON CLAUSES

Clause 1. Short Title

This is a formal clause which provides for the citation of the Bill. When passed the Bill will be cited as the *Mining Management Amendment Act 2013*.

Clause 2. Commencement

Clause 2 states that the Act commences on the date fixed by the Administrator.

Clause 3. Act amended

Clause 3 amends the *Mining Management Act*.

Clause 4. Section 3 amended

Clause 4 inserts an additional object under section 3 (Objects). This object is to require payment of a levy to provide funds for a Mining Remediation Fund, and for the effective administration of the Act to minimise or rectify environmental harm caused by mining activities.

Clause 5. Section 4 amended

The purpose of Clause 5 is to insert five new definitions into the Act for the terms '*levy*', '*Fund*', '*Ranger Project Area*', '*security*' and '*unsecured mining activities*'. Definitions for these terms are as follows:

'Fund' means the Mining Remediation Fund established by section 46A(1).

'levy' as cited in section 44A(3), is a tax in relation to mining activities that is levied for the purpose of providing revenue.

'Ranger Project Area', see section 4 of the *Uranium Royalty (Northern Territory) Act 2009* (Cth).

'security' means a security required by section 43(1), and which forms a condition of an Authorisation as detailed in section 37(2)(b).

'unsecured mining activities' as cited in section 46B(2), are mining activities in relation to which no security has been given, or the security given has been expended.

Clause 6. Section 5 amended

Under this Clause a new Section 5(4) is inserted into the Act to exclude the Darwin Port Corporation (DPC) sites - involved in the transportation, handling and storage of minerals, substances, contaminants and waste - from capture under the MMA to avoid duplication with regulatory controls under other statutes, and to ensure clarity of responsibility. Activities being conducted on DPC sites are already captured by the *Waste Management and Pollution Control Act*.

Clause 7. Section 30 amended

Section 30 of the current MMA pertains to investigations undertaken by mining officers who are appointed under the Act.

Section 30(1)(b) has been broadened so any investigation into an incident will now also examine the *impact* of the incident, in addition to the existing *nature* and *cause* of the incident.

Clause 7 also introduces a new subsection 30(2) which allows the Chief Executive Officer to recover costs incurred by the regulatory agency - arising from its investigation of an environmental incident or serious environmental incident – from the operator responsible for the incident.

Clause 8. Section 37 amended

Existing section 37 of the MMA pertains to the duration and conditions associated with the granting of a mining authorisation.

Clause 8 in the Bill omits existing sections 37(2) to 37(5) from the Act which is replaced with new sections.

New Section 37(2) sets out the standard conditions which apply to an Authorisation granted under section 36.

As per the current MMA, Section 37(2)(a) requires - as a condition of Authorisation – the operator of a mining site to comply with the Mining Management Plan in force for that site.

Section 37(2)(b) states that ‘...*the operators must give a security of an amount, in the form and on the terms, specified in the condition;*’ This section excludes the Ranger Project Area, because the security for that operation is set and held by the Commonwealth.

New section 37(2)(c) mirrors the requirement under the current Act [section 37(2)(c)] which allows the Minister to apply any other conditions he/she considers to be appropriate for the mining activities specified in the Mining Management Plan.

New section 37(3) lists a range of conditions that the Minister may impose on an Authorisation which are similar to those under section 37(5) of the existing Act.

New section 37(3)(e) details the requirement for an operator – where this condition is imposed by the Minister – to make available an Environmental Mining Report (EMR) to the public at specific intervals. This differs from the current Act where it is a mandatory requirement under section 37(2)(b) for all operators who mine minerals to make available to the public an EMR.

New section 37(3)(f) details the requirement for an operator – where this condition is imposed by the Minister – to make other reports, or parts of reports, available to the public.

Specific details about what information needs to be contained in an EMR are detailed in a new section 37(4) of the amending Bill which mirrors that detailed in the current section 37(3) which has been replaced.

New section 37(5) in the amending Bill states what form the required information needs to be in and mirrors that detailed in current section 37(4) of the Act.

Clause 9. Part 4, Division 4 heading amended

Clause 9 alters the heading of Part 4, Division 4, which under the amending Bill is now to read **Security and levy**.

Clause 10. Section 43 replaced

Clause 10 repeals existing section 43 (Purpose of security).

New section **42A Application of Division** is inserted to clarify that the Division does not apply to the Ranger Project Area.

Section 43 - Requirement for and purpose of security is inserted and is similar to the previous section 43 in the current Act.

Section 43(1) requires operators, who carry out mining activities under an Authorisation, to provide a security to the Minister in relation to their activities.

Section 43(2) specifies the purpose of the security. Section 43(2)(a) specifies the security may be used to secure the operator's obligation to comply with the Act and the Authorisation. Section 43(2)(b) specifies the security may be used to pay for costs and expenses incurred by the Minister in taking action to prevent, minimise or rectify environmental harm caused by mining activities either on the mining site, or outside the mining site if the damage results from a mining activity. Section 43(2)(c) specifies the security may be used to pay for costs and expenses incurred by the Minister in taking action to complete rehabilitation of a mining site.

Clause 10 also serves to insert a new section **43A – Calculation of security**. Under section 43A(1), a security required under a condition of Authorisation must be calculated by reference to the anticipated level of disturbance of the mining site in question.

Section 43A(2) provides a power by regulation which may prescribe matters relevant to the calculation of a security, and the minimum level of security that an operator needs to provide to the regulatory agency.

Section 43A(3) states that any part of a security not required for a purpose mentioned in section 43(3) – that is for the rehabilitation of a mining site - is refundable.

Clause 11. Section 44A and 44B inserted

Clause 11 inserts a new section **44A – Requirement for and purpose of levy** - after existing section 44 in the current Act.

New Section 44A(1) requires that an operator, undertaking mining activities under an Authorisation, must pay an annual levy in accordance with a condition of the Authorisation.

Section 44A(3) defines what a levy is, i.e. a tax in relation to mining activities that is levied for the purpose of providing revenue for: (a) the Mining Remediation Fund; and (b) the effective administration of the Act in minimising or rectifying environmental harm caused by mining activities.

Clause 11 also inserts a new section **44B – Amount of levy** - into the existing Act. New Sections 44B(1) and 44B(3) sets out the amount of the levy to be paid by an operator (1% of the security given under a condition of an Authorisation), and that the levy paid is non-refundable.

Section 44B(3) states that the levy is non-refundable.

Clause 12. Part 4A inserted

Clause 12 inserts a new **Part 4A – Mining Remediation Fund** - after existing section 46 in the current Act.

Under Part 4A, a new section **46A – Establishment of Fund** – has been created. Sections 46A(1) and 46A(2) establish a Mining Remediation Fund (the Fund) and requires that the Fund must be established under the *Financial Management Act*. Section 46A(3) provides the power by regulation to prescribe matters relevant to the operation of the Fund.

Section **46B – Purpose of Fund** – has also been created under Part 4. Section 46B(1) sets out the purpose of the Fund, that being to hold money in trust to be used by the Agency in connection with minimising or rectifying environmental harm caused by unsecured mining activities.

Section 46B(2) then defines the term *unsecured mining activities* cited in the Section 46B(1) as mining activities in relation to which no security has been given or the security given has been expended.

Section 46B(3) allows for money held in the Fund to also be used on historical unsecured mining sites, even where current mining activities are being carried out by a different operator, and where this operator has given a security in relation to its current activities. Such an example would be the Mount Todd site located in the Katherine region which has a current Authorised operator, but which was not responsible for remediating historical mining legacies on the site.

New Section **46C – Payments into Fund** – has also been created. Section 46C(1) sets out the proportion of funds (33%) to be generated from each levy paid on mining securities that will go into the Fund. Section 46C(2) provides a power by regulation to allow for an increase in the minimum percentage of the levy required to be paid into the fund.

New Section **46D – Payments from Fund** – outlines a range of activities that monies in the Fund can be used for to minimise or rectify environmental harm caused by unsecured mining activities.

Clause 13. Section 78 amended

Clause 13 in the Bill amends existing section 78 pertaining to the commencement of criminal proceedings for offences against the Act.

Under an amended section 78(1)(b), the time period allowable for the commencement of criminal proceedings for offences against the Act has been increased from 12 months to three-years.

Clause 14. Section 80A inserted

Clause 14 inserts a new section **80A – Court may order reimbursement of investigation costs** - after existing section 80 in the current Act.

Under section 80A, if a person is found guilty of an offence against the Act, the Court may, in addition to any other order, make an order requiring the offender to reimburse the costs and expenses incurred by the regulatory agency in investigating the offence.

Clause 15. Section 92 amended

Clause 15 seeks to amend section 92 – which deals with Regulations made under the Act – to allow for charges to be imposed for an activity carried out in the administration of the Act. For example, this would allow for the imposition of future fees and charges to be prescribed for specific matters under the Act.

Clause 16. Part 12 inserted

Clause 16 inserts a new **Part 12 – Transitional matters for Mining Management Amendment Act 2013** - after existing section 99 in the current Act.

Under Part 12, a new section **100 – Definition** - has been created. This defines '*commencement day*' as the day on which this part of the Act commences.

Also created under Part 12 is section **101 – Payment of levy**. Section 101(1) makes it clear that provisions under this section – regarding payment of the levy - captures operators Authorised before commencement of this part of the Act, as well as operators who are required by a condition of their Authorisation to provide a security.

Section 101(2) places an onus on the Minister to vary Authorisations granted to existing operators, which are now to include as a condition of each Authorisation the requirement to pay an annual levy.

Section 101(3) ensures that the requirement to pay a levy is not retrospective to earlier than the commencement day for Part 12.

Section 101(4) provides a power by regulation to deal with matters relevant to the variation of a regulation, and section 101(5) also provides a power by regulation, but in this instance to prescribe matters relevant to payment arrangements for the levy.

Also created under Part 12 is new section **102 – Starting proceeding**. This provision allows for section 78(1)(b) – which requires that criminal proceedings for an offence under the Act must

commence within three years of the day the Chief Executive Officer (CEO) first became aware of the alleged offence – to be in force from the commencement day - regardless of whether the CEO became aware of the alleged offence before the commencement day. In other words, this provision applies to offences which pre-date commencement of the new provision.

Lastly, new section **103 – Court order for reimbursement of investigation costs** – ensures that Section 80A, whereby a Court may order reimbursement of investigation costs from an operator, applies regardless of whether: (a) the offence was committed before the commencement day; or (b) the costs and expenses were incurred before this day.

Clause 17. Act further amended

Clause 17 provides for the amendment Schedule to have effect.

A Schedule provides for more minor amendments necessary as a consequence of more substantive amendments made by the Bill, and other minor amendments to make the language of the Act more consistent with current drafting styles.

Under the Bill existing Section 38(2) of the Act, which allows the Minister to vary or revoke an Authorisation, is to be amended by Clause 18 to make it clearer that the Minister can cause an action on his or her own initiative. This is to ensure that the Minister is able to vary Authorisations granted to existing operators - to now include as a condition of each Authorisation a requirement to pay the annual levy - as the Minister is now required to do so under the new Section 101(2) – see Clause 16 above.

Also under the Bill, existing Section 45A of the Act, pertaining to the publishing of reports, is to be updated to capture those reports specified in Sections 37(3)(e) or (f).