

MINING MANAGEMENT AMENDMENT BILL 2011

SERIAL NO. 162

LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY

MINISTER FOR PRIMARY INDUSTRY, FISHERIES AND RESOURCES

EXPLANATORY STATEMENT

GENERAL OUTLINE

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

- A tightening up of the compliance requirements of the Act, with the introduction of compulsory reporting of environmental incidents and the ability to direct investigations of incidents at any level.
- The broadening of offence provisions with the introduction of a new offence that captures incidents that previously escaped the environmental offences in the Act.
- A requirement for those undertaking mining operations on a mining lease to publicly report their level of environmental performance on an annual basis.
- A tightening up of the definition of “substantial disturbance” to clarify the activities that would need approval under this Act prior to their commencement (including coverage of seismic surveys in Territory waters).
- The introduction of a provision that allows the government to require the delivery of a Community Benefits Plan as part of the approval of a mining project.
- Clarification of the circumstances under which an Authorisation may be amended.

NOTES ON CLAUSES

PART 1 Preliminary matters

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 Legislation Amendment Act 2011*.

Clause 2. Commencement

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

PART 2 Amendment of mining management Act

Clause 3. Act amended

Clause 3 amends the *Mining Management Act*.

Clause 4. Long title amended

The purpose of Clause 4 is to insert into the long title of the Act new wording to now include for the provision of economic and social benefits to communities affected by mining activities.

This is achieved by omitting the words "... sites and..." and inserting the words "... sites and the provision of economic and social benefits to communities affected by mining activities, and..."

Thus the amended long title of the Act will now read as follows:

An Act to provide for the authorisation of mining activities, the management of mining sites, the protection of the environment on mining sites, the provision of economic and social benefits to communities affected by mining activities and for related purposes.

Clause 5. Section 3 amended

Subclause (1) amends section 3(b)(iii) of the objects of the Act by omitting the section and replacing it with a new section 3(b)(iii) to clarify that the operator – and not the regulator - is responsible for facilitating consultation and cooperation between itself, contractors and workers as part of its implementation of a management system for the mining site.

Subclause (2) inserts a new section 3(ca) into the Act "... to promote the development of relationships between the mining industry and communities affected by mining activities to facilitate the provision of economic and social benefits to those communities; and..."

“representative” of a person means an employee or agent of the person. Note this definition is contained in section 71, Division 1, Part 9 of the *Mining Management Act*.

“serious environmental incident” is defined as an incident on a mining site that causes material environment harm.

Subclause (3) inserts a new section 4(ea) which ties to the definition of “mining activity” those operations and works in connection with exploration or mining generally. Also inserted is another new section 4(eb) which also ties to the definition of “mining activity” the construction, maintenance and use of infrastructure in an access area as defined under the *Mineral Titles Act*. This has the effect of now allowing for the imposition of a rehabilitation security over mining activities not located on mining tenure (e.g. transportation corridors between sites).

Subclause (4) omits current sections 4(a), 4(b), 4(c) and 4(d) referred to within paragraph (f) and inserts another paragraph of this definition with the exception of paragraph (e).

Clause 7. Section 8A inserted

Clause 7 inserts into the Act a new section 8A - Application of Criminal Code - which states that Part IIAA of the Criminal Code applies to an offence against the *Mining Management Act*. Part IIAA of the Criminal Code sets out the general principles of criminal responsibility, establishes general defences, and deals with burden of proof. It also defines, or elaborates on, certain concepts commonly used in the creation of offences.

Clause 8. Section 10 amended

Clause 8 deals with section 10 of the Act whereby the owner of a mining site may be the operator or may appoint an operator.

Subclause (1) amends section 10(2) by clarifying that an owner of a site that is not the operator of the site must appoint an operator for the site.

Previously the requirement stated that this needed to take place before the commencement of mining activities on the site. The new change means that the

requirement needs to take place regardless.

Subclause (2) removes existing sections 10(3) to 10(8) and replaces these with updated wording to allow for increased clarification. The new section (8) also defines the term “relevant date” to be the date on which the termination of appointment, or the resignation or appointment of an operator takes effect.

Clause 9. Section 16A inserted

Clause 9 inserts a new section 16A – Consultation and cooperation for taking care of the environment – into the Act. In line with section 3(b)(iii) under the objects of the Act, this amendment requires the operator of mining site to facilitate activities to initiate, develop and implement environment protection measures for a site’s management system, and what measures may be included.

Clause 10. Part 3, Divisions 3, 4 and 5 replaced

Clause 10 repeals Part 3 (The Environment), Divisions 3, 4 and 5 and replaces these with new provisions in line with updated terminology detailed in amendments to section 4 of the Act, and in the form required for the proving of offences under Part IIAA of the Criminal Code.

Under the new wording for section 29(1) operators, who as soon as practicable become aware of the occurrence of an environmental incident or a serious environmental incident, must notify the Chief Executive Officer of the occurrence of such incidents. The effect of this new provision is that all incidents of an environmental nature now need to be reported to the regulatory agency.

Under the new wording for section 31(2)(a), the Chief Executive Officer will now have the power to require an operator to carry out an investigation into an environmental incident that occurs on a mining site, which differs from the repealed provision where the requirement was only for serious accidents. Further, under a new section 31(2)(b) the operator must within a relevant timeframe provide the Chief Executive Officer with a written investigation report.

Under new section 31A, if the Chief Executive Officer considers it to be in the public interest, then he/she may publish all or part of the reports given under section 30 (Investigation by mining officer) and 31 (Investigation by operator).

The existing Division 5 of the Act is to be repealed and replaced with a new

Division 5 – General Offences. Under the new Division, new section 33 stipulates that there is to be no unauthorised release of a *waste* or *contaminant* from a mining site.

These terms are defined by reference to section 4(1) of the *Waste Management and Pollution Control Act*. Under section 33(1) an offence occurs when the release is from a mining site and that the release is not authorised by the mining management plan for the site. Under section 33(4), the offence detailed earlier under section 33(1) will apply regardless of whether the release occurs on or outside the mining site; or causes, or has the potential to cause, environmental harm. The maximum penalty for an offence is 200 penalty units, and a defence is provided under section 33(3) if the defendant establishes a reasonable excuse.

A reasonable excuse would include for example where the operator of the mining site holds a licence or permit to discharge, release or emit waste or contaminants, where the discharge, release or emission was of a waste or contaminant specified in the licence or permit and was of a quantity not exceeding the permitted amounts of discharge, release or emission specified in the licence if permit.

Clause 11. Sections 35 to 39 replaced

Clause 11 repeals existing sections 35 (Application for Authorisation), 36 (Determination of Authorisation), 37 (Conditions of Authorisation), 38 (Variation or revocation of Authorisation) and 39 (Compliance with Authorisation) and replaces these with similar as well as updated provisions.

New Section 35 – Requirement for an Authorisation

In line with the repealed section 35, under the new section 35(1) it stipulates that the operator of a mining site may carry out mining activities on that site if the Minister has granted the operator an Authorisation to do so. Similarly, the new section 35(2) states that 35(1) only applies if such activities will involve substantial disturbance of the mining site.

Section 35(3) details the range of activities that are considered to result in substantial disturbance and which therefore require an operator to seek an Authorisation from the Minister before commencing any mining activities. The stated list also includes activities over water and now captures any activity that is likely to have a significant impact on flora or fauna.

Under an amended section 35(4) the maximum penalty for undertaking unauthorised mining activities has been significantly increased to 5,000 penalty units to reflect the seriousness of such an offence. The new monetary penalty is in line with a similar type offence under section 148 of the *Mineral Titles Act* of conducting mining and/or related activities without a granted mineral title.

New Section 36 – Approval of mining management plan and grant of Authorisation

The newly re-drafted section 36 covers the approving of mining management plans and the granting of Authorisations. There is now a requirement under section 36(2)(a) that an application for an Authorisation needs to be accompanied by the mining management plan for the mining site. This new provision now specifically ties the granting of an Authorisation to an operator's mining management plan, as opposed to the repealed provision 36(2)(a) which required the Minister being satisfied that the management system to be implemented on the mining site will promote the protection of the environment.

Under the new section 36(2)(b) there is an additional requirement to ensure that an operator for the mining site has been appointed.

New Section 37 – Duration and conditions of Authorisation

New section 37(2)(a) links mining activities to the Authorisation. This is to ensure that the mining management plan, rather than the Authorisation, is the key document for specifying the mining activities to which the granted Authorisation relates.

New section 37(2)(b) requires that an operator, who is engaged in the mining of minerals, must make available to the public an annual "environmental mining report" which is defined under section 37(3). For this purpose it is a report about an operator's environmental performance in carrying out activities for the mining of minerals. Under new section 37(3)(a) and 37(3)(b) the report is to take into account any commitments given by, or imposed on, the operator during an assessment under the *Environmental Assessment Act*, and any obligations imposed on the operator under the management system for the mining site. The obligation to prepare and make publicly available an annual environmental mining report does not apply to those authorised under the Act to undertake exploration activities or extractive operations.

Section 37(6) specifically states that the term “*minerals*” for the purposes of section 37 does not include extractive minerals.

Section 37(5) lists the type of conditions the Minister may impose on an Authorisation. Section 37(5)(d) allows for a condition to be added to the Authorisation by the Minister allowing for; “...*the provision of social and economic benefits to communities outside the mining site that will be directly affected by the mining activities to be carried out on the site;*”

Under section 37(5)(f) the Minister may also include a condition in the Authorisation requiring the operator to make particular reports, or parts of reports, available to the public.

New Section 38 – Variation or revocation of Authorisation

New section 38(1) removes the previous reference to the inclusion of a mining management plan with an application seeking a variation of an Authorisation as this is now captured in the revised section 38(3).

Under section 38(1) a note is inserted stating that if the mining management plan is being amended in connection with the variation, then sections 41(2) to (4) apply.

New section 38(3) states that the Minister must not vary an Authorisation unless satisfied the management system included in the current or amended mining management plan: (a) is appropriate for the mining activities described in the plan; and (b) as far as practicable will operate effectively in protecting the environment. This will assist in determining how the operator intends to ensure that the variation sought will not be of a detrimental nature.

In the changes to section 38, one of the benefits to operators will be that smaller operators under appropriate conditions operators will be able to seek an amendment to their Authorisations, rather than being required to apply for a new authorisations to be issued. This will potentially reduce the financial burden to smaller operators experienced under the current Act of being required to provide a new security bond prior to the issue of the new authorisation while the existing security bond is retained by the department until the existing authorisation ends.

New Section 39 – Contravention of an Authorisation

The purpose of this new replacement section is to provide greater clarity with

respect to the nature and penalty of an offence for the contravention of an Authorisation granted under the Act.

Clause 12. Section 40 and 41 replaced

The purpose of Clause 12 is to amend by replacing the existing sections 40 and 41 of the Act which specifies the type of information to be included in a mining management plan and the review and amendment of such plans.

New section 40(1) removes the current wording and replaces it with a definition of what forms a mining management plan e.g. “a mining management plan is a plan for the management of a mining site for which the operator requires an Authorisation to carry out mining activities.”

Section 40(2) lists the information to be contained in the submitted plan. A new addition to this list is the inclusion of 40(2)(b) which requires that a mining management plan include the ownership of the mining interest.

As mentioned above section 41 of the Act deals with the lodgement of and review of subsequent mining management plans. In the Bill there is a re-worded section 41 to assist with clarity around the review and amendment of such plans.

A new section 41(4) has been added whereby the Minister may, by written notice to the operator, approve an amended plan or refuse to do so. This is not explicitly provided for under the section 41 of existing Act.

Clause 13. Section 45A inserted

Clause 13 inserts a new section 45A to allow the Minister to publish all or part of an operator’s report (if required under section 37) – if the operator fails to do so.

Clause 14. Section 62 amended

The purpose of Clause 14 is to include under the existing section 62 – Powers of mining officer – a similar but more explicit offence to that which was under the existing section 64 (which is to be repealed) of not complying with a requirement, instruction or direction of a mining officer.

Subclause (1) simply provides for the amending of section 62 to 62(1). Subclauses

(2) introduces the new offence provision of 62(2) which has a maximum penalty of 100 penalty units. Section 62(3) states that the offence is one of strict liability and 62(4) provides a defence if the defendant establishes a reasonable excuse.

Clause 15. Section 64 replaced

One component of Clause 15 is to repeal the existing section 64 dealing with offences against mining officers, and replace it with a more specific offence targeting the obstruction of a mining officer or an assistant attempting to enter and inspect a site as provided for under section 62(1)(a). The maximum penalty for this offence is 200 penalty units or imprisonment for 12 months. Under a new section 64(2) the term *obstruct* includes *resist* and *hinder*.

A second part of Clause 15 is the introduction of a new section 64A which specifically captures the offence of falsely representing to be a mining officer - which existed in the now to be repealed section 64. The maximum penalty for this offence is 100 penalty units. Section 64A(2) states that this offence is one of strict liability.

Clause 16. Section 65 amended

The purpose of Clause 16 is to allow for an operator to seek a broader review of decisions made under the Act.

Subclause (1) amends existing section 65(1)(a) and now allows for an operator to seek a review of a decision made under section 36(6) were there a refusal to approve a mining management plan and grant an Authorisation.

Subclause (2) allows for the addition of the word “or” at the end of section 65(1)(b) so it is in line with sections (a), (c) and the new (ca).

Subclause (3) introduces a new section 65(1)(ca) to allow for an operator to seek a review of a decision made under section 41(4) were there a refusal to approve an amended mining management plan.

Clause 17. Part 9 replaced

Clause 17 serves the purpose of revising the wording contained in Part 9 of the current Act - which specifies offences, liability and criminal proceedings - in order

to ensure that Part IIAA of the Criminal Code applies to offences against the *Mining Management Act*. Part IIAA of the Criminal Code states the general principles of criminal responsibility, establishes general defences, and deals with burden of proof. It also defines or elaborates on certain concepts commonly used in the creation of offences.

Clause 18. Section 82A inserted

Clause 18 allows for the insertion of a new section 82A into the Act regarding social and economic benefits for affected communities.

Under the new provision, the Minister or Chief Executive officer, in exercising a power or performing a function under the Act, must have regard to the desirability of the operator for the site providing social and economic benefit to communities outside of the mining site that are directly affected by the mining activities carried out on site.

The new section 82A is aligned with the earlier Clause 5/Subclause (2) which inserted a new object into the Act "... to promote the development of relationships between the mining industry and communities affected by mining activities to facilitate the provision of economic and social benefits to those communities; and..." See section 3(ca).

Clause 19. Section 85 amended

Clause 19 amends section 85 of the current Act which makes it an offence to dismiss a worker for making a complaint to a mining officer or an employer, in particular with respect to an issue related to environmental protection.

Subclause (1) allows for the addition of the word "*or*" at the end of section 85(1)(a).

Subclause (2) amends the maximum penalty for an offence against section 85(1) by leaving the level of monetary penalty at 200 penalty units, but removing the potential penalty of imprisonment for 12 months.

This amendment brings the current provision more in accordance with the penalties imposed for similar offences in other Northern Territory statutes.

Clause 20. Section 91 repealed

Clause 20 repeals existing section 91 of the Act regarding the serving of documents, which is no longer considered necessary as it is now covered under the *Interpretation Act*.

Clause 21. Part 11 replaced

Clause 21 repeals existing Part 11 which deals with repeals, savings and transitional matters in place when the Act came into effect in 2002, and which are now no longer required for its operation.

Clause 21 also provides for the insertion of new transitional provisions in accordance with the requirements of the Mining Management Amendment Act 2011.

Section 96 provides definitions for the *amendment Act*, the *commencement day* for the amendment Act, and the *former Act*.

Section 97 states that the offences in the (newly amended) Act only apply if it is alleged that they have been committed on or after the commencement day. Further that offences committed under provisions of the former Act are to be dealt with as if the amendment Act had not come into force.

Section 98 states that sections 29 to 31A of the (newly amended) Act only apply to environmental incidents that occur on or after the commencement day. Further, that sections 29 to 31 of the former Act continue to apply in relation to a critical incident or serious accident that occurred before the commencement day.

Section 99 states that if an application made under the former Act was not decided before the commencement day, then the former Act continues to apply to the application or decision as if the amendment Act had not come into force.

Clause 22. Act further amended

Clause 22 provides for the amendment Schedule to have effect.

The Schedule provides for a number of 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.

It should be noted that the amendment to section 90 (Confidentiality) listed in the Schedule is made to allow for the release of information under the Act if directed by the Minister or Chief Executive Officer.

This amendment is related to Clause 11 of the amending Bill where the new section 37(5)(f) allows for a condition to be imposed requiring that all or part of an operator's report(s) be made public. Further, it also supports the intent of Clause 13 which introduces section 45A which will allow the Minister to publish all or part of an operator's annual performance report – again specified under section 37 – if the operator fails to do so.