

House of Assembly—No 44

As laid on the table and read a first time, 16 November 2022

South Australia

**Mining (Land Access Inquiry Recommendations)
Amendment Bill 2022**

A BILL FOR

An Act to amend the *Mining Act 1971*.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

- 5 This Act may be cited as the *Mining (Land Access Inquiry Recommendations) Amendment Act 2022*.

2—Commencement

This Act comes into operation 3 months after the day on which it is assented to by the Governor.

Part 2—Amendment of *Mining Act 1971*

10 3—Amendment of section 6—Interpretation

Section 6(1)—after the definition of *business day* insert:

Commissioner means the Mining Land Commissioner appointed under section 56ZC;

4—Amendment of section 9AA—Waiver of exemption (including cooling-off)

- (1) Section 9AA(2)—delete "or approved by the Minister" and substitute:
by the Minister with the approval of the Commissioner
- (2) Section 9AA(14)—delete "legal assistance relating to the operation of this section up to \$2 500" and substitute:
professional assistance relating to the operation of this section up to \$10 000
- (3) Section 9AA(15)—after the definition of *relevant consultation period* insert:
professional assistance means—
- (a) legal advice; or
 - (b) land valuation services; or
 - (c) accounting services; or
 - (d) agronomic services.

5—Insertion of section 56FA

After section 56F insert:

56FA—Aquifer interference approval

- (1) This section applies in relation to—
- (a) an application seeking to establish a mineral claim; and
 - (b) an application for an exploration licence or for the renewal of an exploration licence; and
 - (c) an application for a mining lease or for the renewal of a mining lease; and
 - (d) an application for a retention lease or for the renewal of a retention lease; and
 - (e) an application for a miscellaneous purposes licence or for the renewal of a miscellaneous purposes licence; and
 - (f) an application for a change of operations under Division 7; and
 - (g) in the case of an exploration licence after it has been granted—an application for approval of a program that applies in relation to the licence under Part 10A so as to authorise the use of declared equipment.
- (2) If an application to which this section applies relates to an area of land within the Mount Lofty Ranges Watershed, the Minister must not grant the application unless the applicant has an approval (an *aquifer interference approval*).
- (3) An application for an aquifer interference approval must—
- (a) be made in a manner and form determined by the Minister; and

(b) be accompanied by the prescribed fee; and

(c) be accompanied by a proposal—

(i) setting out strategies to prevent adverse impacts on aquifers, their dependent ecosystems and nearby water users; and

(ii) outlining measures that the applicant intends to undertake to manage, limit or remedy those impacts; and

(d) be accompanied by such information as may be prescribed by the regulations.

(4) The Minister may require the applicant to furnish the Minister with any additional information specified by the Minister (and that information must be furnished within any period specified by the Minister).

(5) The Minister must not grant an aquifer interference approval if—

(a) there is an appreciable risk that any proposed activity to be undertaken by the applicant would adversely impact an aquifer; or

(b) there will be an adverse economic impact on persons in the Mt Lofty Ranges Watershed area.

(6) The Minister must, in considering whether there is an appreciable risk that any proposed activity would adversely impact an aquifer, consider the following:

(a) potential interference with groundwater in the aquifer;

(b) potential obstruction of the flow of groundwater in the aquifer;

(c) the extent to which water will be taken from an aquifer in the course of proposed operations;

(d) potential impacts on the aquifer such as—

(i) water level or pressure draw down impacts on nearby water users; and

(ii) water level draw down and related impacts on surface water and groundwater dependent ecosystems; and

(iii) acidity issues; and

(iv) waterlogging or water table rise; and

(v) significant levels of aquifer compaction; and

(vi) deterioration of the ambient water quality of the water resources; and

(vii) significant river bank instability; and

(viii) significant soil erosion.

- (7) The Minister must not grant an aquifer interference approval unless—
- (a) the Minister has consulted with the Minister responsible for the administration of the *Landscape South Australia Act 2019*; and
 - (b) the Minister responsible for the administration of that Act has consented to the granting of the approval.
- (8) The holder of an aquifer interference approval does not require a permit or authorisation under Part 8 Division 2 Subdivision 3 of the *Landscape South Australia Act 2019* (but the person may require a water management authorisation under that Act).
- (9) In this section—
- aquifer* means a geological structure or formation, or an artificial landfill, that is permeated with water or is capable of being permeated with water;
- ecosystem* and *Mount Lofty Ranges Watershed* have the same respective meanings as in the *Landscape South Australia Act 2019*.

6—Insertion of Part 8B Division 11

Part 8B—after Division 10 insert:

Division 11—Mining Land Commissioner

56ZB—Interpretation

In this Division—

mining land means any land on which authorised operations are, are proposed to be, or have been, carried out.

56ZC—Appointment of Commissioner

- (1) The Governor may, by notice in the Gazette, appoint a person to be the Mining Land Commissioner on conditions, and for a term (not exceeding 5 years), determined by the Governor and specified in the instrument of appointment.
- (2) A person is only eligible for appointment as the Commissioner if the person is not, and has never been, employed by the administrative unit of the Public Service that is, under a Minister, responsible for the administration of this Act.
- (3) The Commissioner is, at the end of a term of appointment, eligible for reappointment but cannot hold office for terms (including any term as acting Commissioner) that exceed 10 years in total.
- (4) The office of the Commissioner becomes vacant if the holder—
 - (a) dies; or
 - (b) completes a term of office and is not reappointed; or
 - (c) resigns by written notice to the Governor; or

(d) is sentenced to imprisonment for an offence (whether against a law of this State or another jurisdiction); or

(e) is removed from office by the Governor under this section.

5 (5) The Governor may terminate the appointment of the Commissioner (with, or without, pay) for—

(a) contravention of a condition of appointment; or

(b) misconduct or conduct that may bring the office of the Commissioner into disrepute; or

(c) failure or incapacity to carry out official duties satisfactorily.

10 (6) The Commissioner is independent of direction or control by the Crown or any Minister or officer of the Crown.

(7) The Commissioner is a senior official for the purposes of the *Public Sector (Honesty and Accountability) Act 1995*.

56ZD—Appointment of acting Commissioner

15 (1) The Governor may appoint a person to act as the Commissioner during any period for which—

(a) no person is for the time being appointed as the Commissioner; or

20 (b) the Commissioner is absent from, or unable to discharge, official duties.

(2) The terms and conditions of appointment of the person appointed to act as the Commissioner will be determined by the Governor.

25 (3) A person appointed to act as the Commissioner is a senior official for the purposes of the *Public Sector (Honesty and Accountability) Act 1995*.

56ZE—Staff and resources

(1) The Minister must provide the Commissioner with the staff and other resources that the Commissioner reasonably requires for carrying out their functions.

30 (2) The Commissioner may engage employees on terms and conditions determined by the Commissioner.

35 (3) The Commissioner may, by agreement with the Minister responsible for an administrative unit of the Public Service, make use of the services of the staff, equipment or facilities of that administrative unit.

56ZF—Functions

The Commissioner has the following functions:

- (a) to receive and investigate complaints by or on behalf of owners of mining land regarding their dealings with tenement holders and to facilitate resolution of such complaints through measures considered appropriate by the Commissioner such as mediation or making representations on behalf of owners of mining land;
- (b) to assist owners of mining land on request in their dealings with tenement holders or the Minister;
- (c) to monitor, investigate and advise the Minister about matters affecting mining land;
- (d) to report to the Minister on matters affecting owners of mining land;
- (e) to report to the Minister on any aspect of the Commissioner's functions at the request of the Minister or on the Commissioner's own initiative;
- (f) any other functions assigned to the Commissioner under this or any other Act.

56ZG—Delegation

- (1) Subject to this section, the Commissioner may delegate a function or power under this Act (other than a prescribed function or power) to any person or body that is, in the Commissioner's opinion, competent to perform or exercise the relevant function or power.
- (2) A delegation under this section—
 - (a) must be in writing; and
 - (b) may be conditional or unconditional; and
 - (c) is revocable at will; and
 - (d) does not prevent the delegator from acting in any matter.
- (3) A function or power delegated under this section may, if the instrument of delegation so provides, be further delegated.

56ZH—Power to require information

- (1) The Commissioner may, by written notice, require a person to give the Commissioner, within a reasonable time specified in the notice, information in the person's possession that the Commissioner requires for the performance of the Commissioner's functions under this or any other Act.
- (2) A person required to give information under this section must provide the information within the time stated in the notice.
Maximum penalty: \$20 000.

56ZI—Review of decisions by Commissioner

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- (1) An owner of land who is aggrieved by a decision of the Minister to grant an exploration licence or renew an exploration licence may apply to the Commissioner for a review of the decision.
- (2) An application under this section—
- (a) must be made in a manner and form determined by the Commissioner; and
- (b) must be made within 30 days after the day on which notice of the decision was given to the holder of the exploration licence.
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- (3) The Commissioner may—
- (a) confirm the decision; or
- (b) vary or revoke the decision.
- (4) The Commissioner—
- (a) must give notice in writing of their decision to the Minister and the parties to the review; and
- (b) may require the Minister to report to the Commissioner, within a specified period, what action has been taken in relation to a decision the subject of a review under this section.
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- (5) The regulations may make further provisions in respect of a review under this section.

56ZJ—Dispute resolution

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- (1) An owner of mining land who has a dispute with a tenement holder may apply to the Commissioner for resolution of the dispute.
- (2) If a dispute between an owner of mining land and a tenement holder is the subject of proceedings before a court, the court may refer the dispute to the Commissioner for resolution under this section and the court may stay the proceedings while an attempt is made to settle the dispute.
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- (3) Evidence of admissions or statements made in the course of resolution of a dispute under this section is not admissible in evidence before a court.

56ZK—Exploration code of practice

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- (1) The Commissioner may, by notice in the Gazette, prescribe a code of practice (the *exploration code of practice*) that regulates the conduct of tenement holders and owners of land relating to access to, and rehabilitation of, mining land.
- (2) The provisions of the exploration code of practice may be of general, limited or varied application according to—
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- (a) the classes of person, authorised operations or equipment; or

- (b) the area of the State; or
- (c) the circumstances; or
- (d) any other specified factor,

to which the provision is expressed to apply.

- 5 (3) Before the Commissioner publishes a notice in the Gazette under this section, the Commissioner must—
- (a) give notice in a manner determined by the Commissioner of the proposed notice to any relevant tenement holders and owners of land; and
 - 10 (b) consider any representations made under paragraph (a) about the proposed notice within 28 days after the notice is given, or a longer period allowed in the notice.
- (4) The Commissioner must ensure that the exploration code of practice is made publicly available on a website maintained by the Commissioner.
- 15 (5) Sections 10 (other than subsection (1)) and 10A of the *Legislative Instruments Act 1978* apply to a notice published in the Gazette under this section as if it were a regulation within the meaning of that Act.
- 20 (6) A tenement holder or an owner of land must not contravene a provision of the exploration code of practice.
Maximum penalty: \$30 000.
Expiation fee: \$2 500.
- 25 (7) Proceedings for an offence against subsection (6) may only be initiated by the Commissioner or the Director of Public Prosecutions.

56ZL—Reporting obligations

- (1) The Commissioner must, on or before 31 October in each year, report to the Minister on the performance of their functions during the preceding financial year.
- 30 (2) The Minister must, within 6 sitting days after receiving a report under subsection (1), have copies of the report laid before both Houses of Parliament.

7—Amendment of section 58A—Notice requirements

- (1) Section 58A(1)—delete "42 days" and substitute:
35 90 days or such longer time as may be prescribed by the regulations
- (2) Section 58A(2)—delete "42 days" and substitute:
90 days or such longer time as may be prescribed by the regulations

8—Amendment of section 70F—Power to direct rehabilitation of land

Section 70F(1)—after "Minister" insert:
or the Commissioner

9—Amendment of section 70FA—Compliance directions

- 5 (1) Section 70FA(1)—after "Minister" insert:
or the Commissioner
- (2) Section 70FA(2)(c)(i)—after "Minister" insert:
or the Commissioner (as the case may be)
- (3) Section 70FA(3)—after "Minister" insert:
10 or the Commissioner

10—Amendment of section 70FB—Emergency directions

Section 70FB—after subsection (6) insert:

- (7) In this section—
authorised officer includes the Commissioner.