

# Environmental Protection and Other Legislation Amendment Bill 2008

## Explanatory Notes

### General Outline

#### Short Title

The short title of the Bill is the Environmental Protection and Other Legislation Amendment Bill 2008.

#### Policy Objectives of the Legislation

The principle objective of the Bill is to amend the *Environmental Protection Act 1994* to provide a system to transition the environmental regulation of mines regulated by special agreement Acts (SAAs) to regulation under the EP Act. The Bill is not intended to affect any other rights granted under an SAA, including the right to mine.

#### Reasons for the Bill

This Bill is necessary to implement the report of the Service Delivery and Performance Commission which recommended appropriate legislation enabling the transition of SAA mines from their current system of environmental regulation to environmental regulation under the *Environmental Protection Act 1994*. The Bill provides for amendments to the following Acts:

- *Environmental Protection Act 1994*;
- *Integrated Planning Act 1997*; and
- *Mineral Resources Act 1989*.

The *Environmental Protection Act 1994* is amended to insert a new subdivision that provides a system to transition environmental regulation of SAA mines to an environmental authority (mining projects) under the *Environment Protection Act 1994*.

The Bill also makes consequential amendments to the *Integrated Planning Act 1997* and the *Mineral Resources Act 1989*.

### **Estimated Cost for Implementation**

Administration of the environmental regulation of the SAA mines under the *Environmental Protection Act 1994* will require 2-3 staff.

### **Consistency with Fundamental Legislative Principles**

Section 4 of the *Legislative Standards Act 1992* requires that legislation have sufficient regard to the rights and liberties of individuals. Whether legislation has sufficient regard to the rights and liberties of individuals depends on whether, for example:

- the legislation makes rights and liberties, or obligations, dependant on administrative power only if the power is sufficiently defined and subject to appropriate review;
- the legislation does not reverse the onus of proof in criminal proceedings without adequate justification; or
- the legislation adversely affects right and liberties, or imposes obligations, retrospectively.

The new section 616I of the *Environmental Protection Act 1994*, 'Financial assurance for transitional authority (SAA)', may raise an issue in relation to the absence of appeal/review rights outside of the *Judicial Review Act 1991*. This is not a breach of a fundamental legislative principle, as under section 616I, the administering authority decides what would have been the amount of security required had the amount been decided on the commencement. The administering authority only has to make this decision where security for a project has to be split into security under the *Mineral Resources Act 1989* and financial assurance under the *Environmental Protection Act 1994* for a specific mining leases within a mining project. The administering authority cannot decide that the amount should be greater than the amount required prior to commencement under the *Mineral Resources Act 1989* or the relevant SAA. Therefore, this provision cannot disadvantage the mining lease holder. Furthermore the holder can initiate a review by submitting a new plan of operations or seeking the amendment of the financial assurance. Objection and appeal rights also exist for a mining company that seeks to have the amount of financial assurance reduced and such appeals are decided at a hearing

before a specialist court (the Land Court) that is competent to hear all complaints and make recommendations to the ultimate decision-maker. This role reduces the need for administrative review at an earlier stage.

The new section 616J in the *Environmental Protection Act 1994*, 'Effect of financial assurance on security', may affect the rights of third parties (e.g. financiers). This is not a breach of fundamental legislative principles as financiers and mortgagees have never had a right to claim the financial assurance beyond the amount that the State agrees to release because it is surplus to the amount needed to cover the cost of rehabilitation or repairing environmental harm. In addition, the financier or other third party is not exposed to any increased risk. The security given under the *Mineral Resources Act 1989* covered environmental and tenure matters. The effect of this section is merely to declare that, although the original guarantee or cash is now available for the same environmental risks (now under the *Environmental Protection Act 1994*), it remains available for the tenure related issues under the *Mineral Resources Act 1989*. There is no change in the total liability and the rights of any third party financiers are not affected in substance.

The new section 616X (Ministerial power to amend) allows the Minister to amend the transitional authority (SAA) to deal with unanticipated problems that may arise with deemed authorities. This is necessary because some older mining projects (particularly those with leases issued prior to the introduction of the *Mineral Resources Act 1989*) have no clear environmental conditions. This provision is only likely to be used when a mining project is possibly causing unlawful environmental harm and there are no grounds for the administering authority to instigate an appropriate amendment. The intent of the provision is to maintain and protect existing rights and privileges, which could otherwise be unintentionally adversely affected by the transitional provisions. Certain decisions on mining projects have always been made at a Ministerial level and are non-appellable except pursuant to the *Judicial Review Act 1991*. This situation continued following the transition of the non-SAA mines to the EP Act in 2001 as reflected in section 606 of the EP Act. The former Minister for Environment and Heritage did not use section 606 for any of the 5,400 mining tenements that transitioned into the EP Act in 2001. Despite that, section 616X provides a safety net for the more complex arrangements for the SAA mines.

No potential breaches of fundamental legislative principles have been identified for the remainder of the amendments in this Bill.

## **Consultation**

The Environmental Protection Agency has consulted with the affected SAA mining companies on the draft Bill. Feedback was considered as part of the drafting of the Bill. In general, the SAA companies support the legislative changes. Relevant government departments were consulted as part of the Cabinet process in developing the Bill.

## **Notes on Provisions**

### **Part 1                      Preliminary**

#### **Clause 1      Short title**

This clause states that the Act may be cited as the *Environmental Protection and Other Legislation Amendment Act 2008*.

### **Part 2                      Amendment of Environmental Protection Act 1994**

#### **Clause 2      Act amended in pt 2**

This clause states that this part amends the *Environment Protection Act 1994*.

#### **Clause 3      Amendment of s 520 (Dissatisfied person)**

This clause expands the definition of *dissatisfied person* in relation to review of original decisions and appeals to include registered operators of Chapter 4 activities. A Chapter 4 activity is an environmentally relevant activity that is not a mining or petroleum activity.

**Clause 4 Amendment of s 584 (Definitions for pt 2)**

This clause inserts a definition of ‘amendment notice’ as a cross-reference.

**Clause 5 Replacement of ch 13, pt 2, div 6 hdg (Miscellaneous provisions)**

This clause changes the heading from ‘Miscellaneous provisions’ to ‘Original provisions about special agreement Acts’ to more accurately reflect the nature of the sections contained in that division.

**Clause 6 Relocation and renumbering of s 613**

This clause relocates section 613 to chapter 13, part 2, division 8 and renumbers it as 616ZD in the Act. This amendment is consequential to the transitioning of the special agreement Act mines to environmental authorities, specifically because a new Division for this purpose has been inserted and the Miscellaneous provisions which apply to the whole of this Part have been moved to later in the Act

**Clause 7 Amendment of s 614 (Existing Act continues to apply for special agreement Acts)**

This clause relocates the definition of ‘special agreement Act’ to section 584 and replaces subsection (2) to provide that the SAAs will cease to apply for environmental conditions at the commencement of division 7 of Chapter 13 Part 2.

**Clause 8 Omission of s 616 (Reference to renumbered provision)**

This clause omits section 616. This section is now obsolete with reference to current drafting practices.

**Clause 9 Insertion of new ch 13, pt 2, div 7 and div 8 hdg**

This clause inserts a new subdivision to transition special agreement Act mines to environmental authorities under the *Environment Protection Act 1994*.

## **Division 7            Provisions about special agreement Acts inserted under Environmental Protection and Other Legislation Amendment Act 2008**

### **Subdivision 1    Preliminary**

#### **Section 615 Definitions for div 7**

This section defines certain terms for the purposes of Chapter 13 Part 2 Division 7.

#### **Section 616 What is a *condition* under a special agreement Act**

This section defines what is meant by a “condition” under a SAA for the purpose of this division. The current environmental specifications for the SAA mines are spread across a number of documents. This section is to ensure that all of these environmental specifications are taken to be conditions for the transitional authority (SAA).

“Condition” includes any condition determined, imposed or prescribed under the *Mineral Resources Act 1989*.

“Condition” also includes any commitments, obligations, requirements or undertakings contained in the most recent version of any planning document for a lease adopted by the Department of Mines and Energy. The section lists the relevant “planning documents” for the purposes of this section.

This section mirrors section 585 that was inserted by the *Environmental Protection and Other Legislation Amendment Act 2000* transitional provisions which transitioned non-special agreement Act mines to environmental authorities.

#### **Section 616A EPA provisions prevail**

This section clarifies that, if there is any inconsistency between a provision in a special agreement Act and the *Environment Protection Act 1994*, then the *Environmental Protection Act 1994* prevails.

## **Subdivision 2 Conversion of SAA environmental authorities (mining)**

### **Section 616B Conversion to transitional authority (SAA)**

This section provides that any environmental authority for a SAA mining activity in force on the commencement day is taken to be an environmental authority (mining lease), and becomes a transitional authority (SAA). Therefore, any mining activities authorised by an existing licence or approval continue to be authorised under the new provisions.

This section mirrors section 586 inserted by the *Environmental Protection and Other Legislation Amendment Act 2000* transitional provisions which transitioned non-SAA mines to environmental authorities.

### **Section 616C Conditions of transitional authority (SAA)**

This section provides that the conditions of a transitional authority (SAA) shall be:

- all conditions (as defined in section 616) under the SAA that, under the new system, would reasonably be expected to be conditions of the environmental authority rather than of the SAA tenure; and
- any financial assurance condition under section 616H.

Accordingly, this section does not affect any existing rights and obligations of SAA mines. This section mirrors section 587 inserted by the *Environmental Protection and Other Legislation Amendment Act 2000* transitional provisions which transitioned non-SAA mines to environmental authorities.

### **Section 616D Changing conditions of transitional authority (SAA)**

This section provides that the current processes that apply to amend conditions of operation of an SAA, as listed in section 616, continue to apply to the transitional authority (SAA). Because the plan of operations mining plan for Mount Isa Mine and environmental management overview strategy form the conditions, this section allows SAA mines to amend those documents using current processes. This will allow mines to operate

normally during the transition period. An amendment under this section does not trigger the amendment process under section 616H.

### **Subdivision 3 Unfinished applications**

#### **Section 616E Procedure for unfinished applications**

This section explains the conditions and procedures for processing an environmental authority (mining) for a mining application applied for, but not yet granted, under a SAA prior to the commencement of the proposed *Environmental Protection Act 1994* amendments.

### **Subdivision 4 Special provisions for transitional authorities (SAA)**

#### **Section 616F Transitional authority (SAA) taken to be non-code compliant**

This section provides that all transitional authorities (SAA) for existing projects are non-code compliant authorities for a Level 1 mining project. This is so that the existing conditions of the project, whatever they are, can continue to be enforced.

This section mirrors section 593 inserted by the *Environmental Protection and Other Legislation Amendment Act 2000* transitional provisions which transitioned non-SAA mines to environmental authorities.

#### **Section 616G Limited application of s 426 for transitional authority (SAA)**

This section provides that the offence of carrying out a mining activity without a valid authority (section 426) does not apply to a person carrying out an existing mining activity that is authorised under an existing SAA, but is not authorised by the SAA mining company's transitional environmental authority.

However, the above only applies if the holder of the transitional authority (SAA) has either:



- applied for an amendment or new application that is not decided; or
- given the authority notice under this section of the activity in the previous 30 days.

This section is intended to deal with certain instances where there is some uncertainty as to the precise nature of the environmentally relevant activities which are authorised by a pre-existing environmental authority. This provision is not intended to allow the conditions applying to any authority to be breached.

This section mirrors section 594 inserted by the *Environmental Protection and Other Legislation Amendment Act 2000* transitional provisions which transitioned non-SAA mines to environmental authorities.

### **Section 616H Requirement to apply for new authority or amend etc. transitional authority (SAA)**

This section requires the holder of a transitional authority (SAA) to make an application that will transition the environmental regulation of the SAA mine under the current *Environmental Protection Act 1994* within 3 years of the commencement of this division. The holder must make one of the following applications within the 2 year period:

- application for a new environmental authority; or
- application to amend the authority; or
- application to surrender the authority; or
- application to transfer the authority.

This section mirrors section 595 inserted by the *Environmental Protection and Other Legislation Amendment Act 2000* transitional provisions which transitioned non-SAA mines to environmental authorities.

### **Section 616I Financial assurance for transitional authority (SAA)**

This section provides that, if under the *Mineral Resources Act 1989* or a SAA, security has been deposited or required in relation to a relevant SAA mine, a condition is taken to have been imposed on the transitional authority (SAA) under section 364 of the *Environmental Protection Act*

1994, that the authority holder must give the administering authority financial assurance for each relevant mining tenement.

The purpose of this section is to allow security, which has been determined or deposited to cover both tenure matters and also environmental matters under the *Mineral Resources Act 1989* or the SAA, to continue to cover environmental matters now managed under the *Environmental Protection Act 1994*. Security was calculated on the basis of the cost of rehabilitation of land, but could be used for other purposes under the *Mineral Resources Act 1989*. Compliance with rehabilitation conditions will remain the primary purpose of the security, so the security must be accessible under the *Environmental Protection Act 1994* for this purpose.

If the full amount of security required under the *Mineral Resources Act 1989* or the SAA has been lodged, the section 364 condition is taken to have been complied with and the security held is taken to be a financial assurance for the matters mentioned in subsections 364(1)(a) and (b). This is despite any provision of the *Mineral Resources Act 1989* or any of the terms of the instrument granting the security.

No additional obligations are being imposed as the change is consequential to the amendments to the Acts.

The form of financial assurance for each relevant mining tenement is taken to have been required in the same form as the security that has been given or required for the tenement.

The amount of financial assurance for each tenement is taken to be the lesser of the amount of security given for the tenement, and any amount the administering authority decides would have been required under subsection 364(3) on the commencement day.

This section mirrors section 598 inserted by the *Environmental Protection and Other Legislation Amendment Act 2000* transitional provisions which transitioned non-SAA mines to environmental authorities.

### **Section 616J Effect of financial assurance on security**

This section provides that, despite section 616H above, any existing security also remains a security under the *Mineral Resources Act 1989* and/or the SAA, and the security is in no way discharged, released or terminated by the passage of these amendments.

It does not affect or change the security under the *Mineral Resources Act 1989* or the SAA, or the matters for which the security was given under that

Act or the enforcement of the security under that Act, as amended by the amending Act. In effect, the obligation for the financial assurance is being transferred from the *Mineral Resources Act 1989* or the SAA to the *Environmental Protection Act 1994*. The rights of any third party financiers are not affected in substance.

This section mirrors section 599 inserted by the *Environmental Protection and Other Legislation Amendment Act 2000* transitional provisions which transitioned non-SAA mines to environmental authorities.

### **Section 616K Plan of operations**

This section provides that any current, valid plan of operations for an existing mining lease continues to apply until the proponent seeks to amend it or it comes to the end of its original term. This section also recognises relevant sections of the mining plan required under the *Mount Isa Mines Limited Agreement Act 1985* as constituting a plan of operations.

This section mirrors section 600 inserted by the *Environmental Protection and Other Legislation Amendment Act 2000* transitional provisions which transitioned non-SAA mines to environmental authorities.

### **Section 616L First anniversary day for transitional authority (SAA)**

This section defines the first anniversary day for transitional authorities. This is relevant to annual reporting and the payment of fees.

### **Section 616M End of transitional authority (SAA)**

This section provides the transitional authority (SAA) ceases to apply if any of the following occur:

- the holder has not applied for an environmental authority (mining activities), or amendment, transfer or surrender of the transitional authority (SAA) within three years of commencement as required by section 616H; or
- the holder has been granted an amended transitional authority (SAA) and the authority has commenced to take effect; or
- the transitional authority (SAA) has been transferred; or
- the transitional authority (SAA) has been surrendered; or

- the holder has been granted an environmental authority (mining activities) and this authority has commenced to take effect.

Upon any of the above applications being made, the transitional authority (SAA) will be reviewed and the conditions clarified and amended as necessary and incorporated into a complete, written environmental authority (mining activities). The holder of the environmental authority has review and appeal rights under Chapter 5 should any conditions be amended.

This section mirrors section 592(2) inserted by the *Environmental Protection and Other Legislation Amendment Act 2000* transitional provisions which transitioned non-SAA mines to environmental authorities.

## **Subdivision 5 Applications for new authorities**

### **Section 616N Application of sdiv 5**

This section states the Subdivision 5 applies when the holder of a transitional authority (SAA) makes an application for a new environmental authority under section 616H.

### **Section 616O Application of current Act to new authority application**

This section provides that Chapter 5 parts 2 and 6 of the *Environmental Protection Act 1994* apply when deciding a new authority application, except as amended by sections 616P (No public notice or EIS requirement for particular new authority applications) and 616Q (Reference to State government agreement includes particular rights). Part 2 contains the general provisions for obtaining an environmental authority (mining activities) and Part 6 contains the provisions for processing a non-code compliant application for an environmental authority (mining lease) for a level 1 mining project. Consequently, this section ensures that applications for SAA mines will be processed in accordance with the usual processes.

### **Section 616P No public notice or EIS requirement for particular new authority application**

This section limits the circumstances when an environmental impact statement (EIS) may be required in making a new authority application under section 616H. The administering authority cannot require an EIS for any activity that is approved under the transitional authority (SAA). An EIS may be required if the new authority application includes activities that are not currently approved and that meet the criteria for requiring an EIS.

### **Section 616Q Reference to State government agreement includes particular rights**

This section clarifies that the special agreement Act and any rights granted under that Act are to be considered as a State government agreement when applying the standard criteria, as defined in Schedule 3 of the *Environmental Protection Act 1994*, to approve or refuse a new authority application.

## **Subdivision 6 Amendment of transitional authorities (SAA) for conversion to new authorities**

### **Section 616R Application of sdiv 6**

This section states that Subdivision 6 applies when an application is made under section 616H to amend a transitional authority (SAA).

### **Section 616S Application of current Act to amendment application**

This section provides that Chapter 5 part 8 (Amendment of authorities by application) applies to applications to amend a transitional authority (SAA) for an existing project, except as amended by sections 616P (No public notice or EIS requirement for particular new authority applications) and 616Q (Reference to State government agreement includes particular rights). Consequently, this section ensures that amendment applications for SAA mines will be processed in accordance with the usual processes.

### **Section 616T No public notice or EIS requirement for particular amendment applications**

This section limits the circumstances when an environmental impact statement (EIS) may be required in making an amendment application under section 616H. The administering authority cannot require an EIS for any activity that is approved under the transitional authority (SAA). This is because the SAA mines are existing operations that have been previously approved. An EIS or public notification period may be required if the amendment application includes activities that are not currently approved and meet the necessary criteria.

### **Section 616U Reference to State government agreement includes particular rights**

This section clarifies that the special agreement Act and any rights granted under that Act are to be considered as a State government agreement when applying the standard criteria, as defined in Schedule 3 of the *Environmental Protection Act 1994*, to a decision to grant or refuse an amendment application.

### **Section 616V Consolidation of conditions for same mining project**

This section allows for the authority holder to apply to have their deemed transitional authority (SAA) amended to incorporate separately deemed environmental authorities for the same project.

This section mirrors section 607 inserted by the *Environmental Protection and Other Legislation Amendment Act 2000* transitional provisions which transitioned non-SAA mines to environmental authorities.

## **Subdivision 7    Amendment of transitional authorities (SAA) other than by application**

### **Section 616W Additional grounds for amendment by administering authority**

This section specifies grounds for the administering authority to initiate amendments to any transitional authority (SAA) for an existing project. These grounds are in addition to those stated in section 292(2).

These provisions allow the authority to deal with situations where the conditions of a deemed authority:

- cannot be accurately and reliably determined;
- are unclear, uncertain, contradictory or otherwise not reasonably enforceable; or
- do not cover an aspect of the project that may cause environmental harm.

This section also allows the administering authority to amend any condition of a transitional authority (SAA) when a new plan of operations is lodged. When a new plan of operations is lodged, all the conditions, which to this point have been taken to exist, may be ascertained, reviewed, clarified and amended as necessary and incorporated into a complete, written environmental authority (mining activities).

This section mirrors section 605 of the *Environmental Protection and Other Legislation Amendment Act 2000* transitional provisions which transitioned non-SAA mines to environmental authorities.

### **Section 616X Ministerial power to amend**

This section applies to any transitional authority (SAA). During the transitional period, the Minister may amend a transitional authority (SAA), or an authority that has been a transitional authority (SAA). This will enable the Minister to deal with unanticipated problems that may arise with deemed authorities. This may be necessary because some older mining projects (particularly those with leases issued prior to the introduction of the *Mineral Resources Act 1989*) have no clear environmental conditions.

The process for the Minister to amend these authorities includes:

- notifying the holder of the proposed amendment and reasons it should be made;
- allowing 10 business days for the holder to make representations;
- considering representations made within the period; and
- notifying the holder of the final decision.

This section mirrors section 606 inserted by the *Environmental Protection and Other Legislation Amendment Act 2000* transitional provisions which transitioned non-SAA mines to environmental authorities.

## **Subdivision 8 Provisions for chapter 4 activities**

### **Section 616Y Application of sdiv 8**

This section states that this subdivision applies to Chapter 4 activities (which are environmentally relevant activities that are not mining or petroleum activities), carried out under an SAA (e.g. they are carried out on land that is outside a mining tenement or they are conducted for purposes other than mining).

### **Section 616Z Continuing effect of environmental authority as a registration certificate and development approval**

This section states that any Chapter 4 activity with an environmental authority under the repealed *Environmental Protection Act 1994* provisions, will be deemed to have a development approval under the *Integrated Planning Act 1997* and the operator will be deemed to have a registration certificate under the *Environmental Protection Act 1994*. Any relevant conditions under the SAA are taken to be development conditions of the development approval and the development conditions are taken to include any conditions that are required by an Environmental Protection Policy made under the *Environmental Protection Act 1994*.

### **Section 616ZA Additional ground for changing or cancelling development conditions**

This section enables the administering authority to amend the conditions of the development approval in certain circumstances. Any changes or



cancellation of a development approval must not affect the interests of the registered operator or change the intent of the condition.

### **Section 616ZB End of environmental authority**

This section provides that an environmental authority for a Chapter 4 activity that has been deemed to be a development approval and deemed to have a registration certificate ends if:

- the operator changes;
- there is a material change of use under the *Integrated Planning Act 1997*;
- the sublease authorising the activity expires; or
- a development approval takes effect.

### **Section 616ZC Administering authority may issue replacement documents**

This section establishes the circumstances under which the administering authority can issue a replacement development approval or registration certificate for Chapter 4 activities.

## **Division 8            Miscellaneous provision**

### **Clause 10    Replacement of ch 13, pt 7, div 1 hdg**

This clause inserts a heading.

### **Clause 11    Amendment of s635 (Definitions for pt 7)**

This clause changes a heading and relevant text.

### **Clause 12    Amendment of ch 13, pt 7, divs 2 and 3 hdgs**

This clause changes headings.

**Clause 13 Amendment of s 636 (Application of div 2)**

This clause changes a heading and relevant text.

**Clause 14 Renumbering of ch 13, pt 7, div 4**

This clause renumbers a division.

**Clause 15 Amendment of s 641A (Definition for div 4)**

This clause changes the heading of division.

**Clause 16 Amendment of sch 1 (Original decisions)**

This clause amends numbering in Schedule 1.

**Part 3 Amendment of *Integrated Planning Act 1997***

**Clause 17 Act amended in pt 3**

This clause states that this part amends the *Integrated Planning Act 1997*.

**Clause 18 Amendment of sch 10 (Dictionary)**

This clause omits from Schedule 10 definitions of *mining activity* and *special agreement Act* and inserts a definition of *mining activity* as a cross reference to the *Environment Protection Act 1994*, section 147. The definition of *special agreement Act* is obsolete with the transition of the SAA mines to the *Environmental Protection Act 1994*. The definition of *mining activity* currently contains two parts: the first part cross references the *Environmental Protection Act 1994*, section 147; the second part refers to the SAAs and is obsolete with the transition of the SAA mines to the *Environmental Protection Act 1994*.

## **Part 4                      Amendment of *Mineral Resources Act 1989***

### **Clause 19    Act amended in pt 4**

This clause states that this part amends the *Mineral Resources Act 1989*.

### **Clause 20    Amendment of s 382 (Definitions for pt 10A)**

This clause amends section 382 to omit the definition of *special agreement Act* which is being moved to the dictionary. This amendment is consequential to the transitioning of the special agreement Act mines to the *Environmental Protection Act 1994*.

### **Clause 21    Amendment of s735 (Existing Act continues to apply for special agreement Acts)**

This clause amends s735 of the *Mineral Resources Act 1989* by stating that the provision which allowed the repealed section of the Act to apply to SAA mines ceases to operate on the commencement of this Act. This will complete the transition of the environmental regulation of these mines to the *Environmental Protection Act 1994*.

### **Clause 22    Amendment of schedule (Dictionary)**

This clause moves the definition of *special agreement Act* to the Dictionary.