

Environmental Protection and Other Legislation Amendment Bill 2008

Explanatory Notes for Amendments to be moved during consideration in detail by the Honourable Andrew McNamara MP

Title of the Bill

Environmental Protection and Other Legislation Amendment Bill 2008

Objectives of the Amendments

The proposed amendments are necessary to ensure that the transitional system created by the Environmental Protection and Other Legislation Amendment Bill 2008 operates effectively and does not create any unintended impediments to smooth operation of the mines during the transitional period.

Achievement of the Objectives

Three amendments are needed to ensure the effective operation of the transitional system. Two amendments are needed to ensure that all non-mining approvals on a special agreement Act lease transition effectively to the current system of regulation under the *Environmental Protection Act 1994*. A further amendment is necessary to ensure that the Land Court must consider the provisions relating to the standard criteria if there is an appeal. The current drafting of the bill only applies those provisions to the consideration of an application by the administering authority.

Two amendments are needed to ensure the smooth operation of the special agreement Act mines during the transitional period. These amendments ensure that a plan of operations or mining plan (the document which states where mining will occur over the next planning period) can be amended using the current legislative scheme until the mine transitions fully into the *Environmental Protection Act 1994*.

Alternative Ways of Achieving Policy Objectives

Legislative amendments are the only means of achieving the policy objectives.

Estimated Cost for Government Implementation

As the amendments are technical in nature, there will be no change in the estimated costs.

Consistency with Fundamental Legislative Principles

The proposed section 616ZCA (Continuing effect of particular environmental authorities) may raise an issue due to its retrospective operation. This provision operates retrospectively in that it declares that the transitional provisions sections 619 to 621 applied to all environmental authorities at the time of commencement, including those operating on a special agreement Act lease. The provision is necessary as it is unclear whether those environmental authorities effectively transitioned to development approvals and registration certificates because of the complicated interaction with the exceptions in the Act for special agreement Acts. The intention was that all non-mining environmental authorities transition to development approvals and registration certificates, irrespective of their location.

This provision will not have an adverse impact on the rights of individuals as sections 619 to 621 merely change the name of environmental authorities without affecting the content. Accordingly, the rights and liabilities of an affected holder of an environmental authority remain the same.

Section 616ZCB (Validation of particular development approvals and registration certificates) also has retrospective operation. Similarly to section 616ZCA, the intent of this section is to declare that any development approval or registration certificate issued for a non-mining activity on a special agreement Act lease is valid. This provision will ensure that the rights of bona fide holder of a development approval or registration certificate are protected and no question of validity can arise due to the unclear operation of the provisions about special agreement Acts.

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

Consultation

The affected mines were consulted in the preparation of the amendments.

NOTES ON PROVISIONS

Clause 1 Clause 7 (Amendment of s 614 (Existing Act continues to apply for special agreement Acts))

This clause inserts in section 614 of the *Environmental Protection Act 1994* a reference to section 616K(2B) which is inserted in these amendments. This will ensure that special agreement Act mines may make amendments to their plan of operations or mining plan under the current legislative arrangements in the *Mineral Resources Act 1989* or the relevant special agreement Act until the mine transitions to full operation under the *Environmental Protection Act 1994*. This amendment is necessary as there may be a need for a mine to make changes to their plan of operations or mining plan during the transitional period.

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

This clause amends section 616K to ensure that special agreement Act mines may make amendments to their plan of operations or mining plan under the current legislative arrangements in the *Mineral Resources Act 1989* or the relevant special agreement Act until the mine transitions to full operation under the *Environmental Protection Act 1994*. This amendment is necessary as there may be a need for a mine to make changes to their plan of operations or mining plan during the transitional period.

Clause 3 Clause 9 (Insertion of new ch 13, pt 2, div 7 and div 8 hdg)

This clause amends section 616Q from a reference to 'this section' to 'subsection (2)'. This amendment is needed for clarity of interpretation due to the effect of the amendment in Clause 4.

Clause 4 Clause 9 (Insertion of new ch 13, pt 2, div 7 and div 8 hdg)

This clause inserts a new subsection (1A) into section 616Q. If an objection is made in relation to a new application for an environmental authority and it is being considered by the Land Court, the Court must consider the matters outlined in section 616Q. This amendment is

necessary as section 616K currently only applies to a decision by the administering authority and does not extend to a decision by the Land Court.

Clause 5 Clause 9 (Insertion of new ch 13, pt 2, div 7 and div 8 hdg)

This clause inserts a new Subdivision 9 (Other matters) containing the new section 616ZCA (Continuing effect of particular environmental authorities) and the new section 616ZCB (Validation of particular development approvals and registration certificates). The purpose of these sections is to ensure that all Chapter 4 environmentally relevant activities operating on the special agreement Act lease (i.e. non-mining activities) will operate in the future under the current *Environmental Protection Act 1994*. Subdivision 8 of the Bill relates to environmental authorities issued prior to the commencement of the *Environmental Protection and Other Legislation Amendment Act 2000*. The new Subdivision 9 clarifies that an environmental authority issued after that date has transitioned to become a development approval and registration certificate. Subdivision 9 also clarifies that a development approval and registration certificate issued after that date was properly issued.

Clause 6 Clause 21 (Amendment of s 735 (Existing Act continues to apply for special agreement Acts))

This clause amends section 735 of the *Mineral Resources Act 1989* to ensure that special agreement Act mines may make amendments to their plan of operations or mining plan under the current legislative arrangements in the *Mineral Resources Act 1989* or the relevant special agreement Act until the mine transitions to full operation under the *Environmental Protection Act 1994*. This amendment is necessary as there may be a need for a mine to make changes to their plan of operations or mining plan during the transitional period.

Clause 7 Clause 21 (Amendment of s 735 (Existing Act continues to apply for special agreement Acts))

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