

NEW SOUTH WALES

DRAFT NON-GOVERNMENT BILL

To be introduced by: Mr Jeremy Buckingham, MLC

Mining Amendment (Climate Protection— Phasing-out of Coal Mining) Bill 2017

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Mining Act 1992*:

- (a) to prohibit the grant of new mining leases to prospect for or mine thermal coal, and
- (b) to phase-out mining for thermal coal over a 10-year period so as to reduce greenhouse gas emissions and take action to address climate change.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.

Schedule 1 Amendment of Mining Act 1992 No 29

Schedule 1 [1] prohibits the grant of new mining leases to prospect for or mine thermal coal and provides that compensation is not payable by or on behalf of the State because of that prohibition. The prohibition requires the refusal of an application or tender for a mining lease made but not finally determined before the commencement of the proposed Act.

Schedule 1 [2] establishes a scheme for phasing-out thermal coal mining with the following features:

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Mining Amendment (Climate Protection—Phasing-out of Coal Mining) Bill 2017 [NSW]
Explanatory note

- (a) All existing mining leases in respect of thermal coal (or any minerals that include thermal coal) are cancelled (proposed section 246ZB). The cancellation will take effect 3 months after the date of assent to the proposed Act.
- (b) The cancellation of those mining leases does not affect any liability incurred before their cancellation by or on behalf of a holder of a lease or a director or person involved in the management of a holder of a lease (proposed section 246ZB (3) and clause 3 of proposed Schedule 6B).
- (c) Some of the conditions of the cancelled mining leases continue to have effect despite the cancellation of the lease, which means that any obligation imposed on the holder of a cancelled mining lease under those conditions will continue to have effect (proposed section 246ZC and clause 12 of proposed Schedule 6B).
- (d) Compensation is not payable by or on behalf of the State because of the cancellation of the relevant mining leases (clauses 6 and 7 of proposed Schedule 6B).
- (e) Total thermal coal recovery capacity under the proposed scheme is established as 181 million tonnes for Year 1 (the first calendar year after the cancellation of mining leases) and is reduced by roughly 10% a year until it reaches zero for Year 11 and subsequent years (proposed section 246ZA).
- (f) A competitive selection process is established for the grant of thermal coal recovery entitlements in a specified area (proposed sections 246ZD–246ZI).
- (g) Only the former holder of a mining lease cancelled by the proposed Act is eligible to participate in the competitive selection process (proposed section 246ZD).
- (h) The Minister will publish an invitation for competitive selection applications, which may include a requirement for applications to include an undertaking that the applicant will pay an amount specified in the application or an amount determined through a competitive selection process as consideration (proposed section 246ZH).
- (i) The Minister may grant a thermal coal recovery entitlement for one or more years to a former holder of a cancelled mining lease after following the competitive selection process. However, the Minister must not grant a former holder a thermal coal recovery entitlement if the grant:
 - (i) would entitle the holder to prospect for or recover an amount of thermal coal for each year to which it relates that exceeds the amount of thermal coal recovery for which the former holder held planning approval, or
 - (ii) that would cause the total coal recovery capacity for any such year to be exceeded (proposed section 246ZJ).
- (j) The holder of a thermal coal recovery entitlement is eligible for a rebate of royalty paid or payable by the holder in respect of thermal coal recovered by that holder if consideration was given for the grant of the entitlement as part of the competitive selection process (proposed section 246ZL).
- (k) The holder of thermal coal recovery entitlement is authorised to prospect for thermal coal, or mine thermal coal, on the land specified in the entitlement, carry out primary treatment operations and undertake any mining purpose (the same activities that are authorised by existing mining leases) (proposed section 246ZQ). That holder is limited to recovering the amount of thermal coal specified in the entitlement.
- (l) The holder of a thermal coal recovery entitlement is not authorised by that entitlement to prospect for or mine thermal coal after the end of Year 10 (proposed section 246ZR).

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**Mining Amendment (Climate Protection—
Phasing-out of Coal Mining) Bill 2017**

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DRAFT NON-GOVERNMENT BILL

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**Mining Amendment (Climate Protection—
Phasing-out of Coal Mining) Bill 2017**

No. , 2017

A Bill for

An Act to amend the *Mining Act 1992* to phase-out mining for thermal coal over a 10-year period so as to reduce greenhouse gas emissions and take action to address climate change.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Mining Amendment (Climate Protection—Phasing-out of Coal Mining) Act 2017*.

2 Commencement

This Act commences on the date of assent to this Act.

Schedule 1 Amendment of Mining Act 1992 No 29

[1] Section 56A

Insert before section 57:

56A Prohibition on grant of mining leases with respect to coal

- (1) A mining lease may not be granted after the commencement of this section in respect of coal or any minerals that include coal.
- (2) Compensation is not payable by or on behalf of the State:
 - (a) because of the enactment or operation of this section, or
 - (b) because of any direct or indirect consequence of any such enactment or operation (including any conduct under the authority of any such enactment), or
 - (c) because of any conduct relating to any such enactment or operation.
- (3) For the avoidance of doubt, this section requires the refusal of an application or tender for a mining lease made but not finally determined before the commencement of this section.
- (4) In this section:

compensation includes damages or any other form of compensation.
conduct includes any statement, or any act or omission:

 - (a) whether unconscionable, negligent, false, misleading, deceptive or otherwise, and
 - (b) whether constituting an offence, tort, breach of contract, breach of statute or otherwise.

statement includes a representation of any kind, whether made orally or in writing.
the State means the Crown within the meaning of the *Crown Proceedings Act 1988* or an officer, employee or agent of the Crown.

[2] Part 11A

Insert after Part 11:

Part 11A Phasing-out of coal recovery

Division 1 Preliminary

246Y Application

This Part has effect despite any other provision of this Act or the *Environmental Planning and Assessment Act 1979*.

246Z Interpretation

- (1) In this Part:

cancellation date means the date that is 3 calendar months after the date of assent to the *Mining Amendment (Climate Protection—Phasing-out of Coal Mining) Act 2017*.

cancelled mining lease means a mining lease cancelled by section 246ZB.

coke coal means coal:

- (a) of a quality that allows the production of a coke suitable to support a blast furnace charge, and
- (b) the gross calorific value of which is greater than 23,865kJ/kg (5,700 kcal/kg) on an ash-free but moist basis.

former holder mean the person who, immediately before the cancellation date, held a mining lease of the type cancelled by section 246ZB.

thermal coal means coal that is not coke coal.

thermal coal recovery entitlement means an entitlement granted under section 246ZJ.

- (2) In this Part, a reference to “Year 1” is a reference to the calendar year beginning on the cancellation date, a reference to “Year 2” is a reference to the following calendar year and so on.

246ZA Total thermal coal recovery capacity

The total recovery of thermal coal in relation to which thermal coal recovery entitlements may be held under this Act (the **total thermal coal recovery capacity**) is as follows:

- (a) for Year 1—180 million tonnes,
- (b) for Year 2—163 million tonnes,
- (c) for Year 3—145 million tonnes,
- (d) for Year 4—127 million tonnes,
- (e) for Year 5—109 million tonnes,
- (f) for Year 6—91 million tonnes,
- (g) for Year 7—73 million tonnes,
- (h) for Year 8—55 million tonnes,
- (i) for Year 9—37 million tonnes,
- (j) for Year 10—20 million tonnes,
- (k) for Year 11 and each subsequent year—zero tonnes.

Division 2 Cancellation of mining leases

246ZB Cancellation of certain mining leases

- (1) All mining leases in respect of thermal coal or any minerals that include thermal coal are cancelled by this section.
- (2) The cancellation takes effect on the date that is 3 months after the date of assent to the *Mining Amendment (Climate Protection—Phasing-out of Coal Mining) Act 2017*.
- (3) The cancellation of a mining lease by this section does not affect any liability incurred before the cancellation date by or on behalf of a holder of a mining lease in respect of thermal coal or any minerals that include thermal coal or by or on behalf of a director or person involved in the management of a holder of a mining lease in respect of thermal coal or any minerals that include thermal coal.

246ZC Further provisions about cancelled mining leases

Schedule 6B has effect in relation to the cancellation of mining leases in respect of thermal coal or any minerals that include thermal coal under this Division.

Division 3 Competitive selection process to establish thermal coal recovery entitlement

246ZD Only former holders of cancelled mining leases can apply

Only the former holder of a mining lease cancelled by this Part is eligible to participate in the competitive selection process established by this Division.

246ZE Invitations for competitive selection applications

- (1) The Minister may by notice published in the Gazette invite applications (*competitive selection applications*) for the grant of a thermal coal recovery entitlement in a specified area on the basis of competitive selection for the grant of the entitlement.
- (2) An invitation for competitive selection applications can stipulate information that is to accompany the application.
- (3) An invitation for competitive selection applications can relate to:
 - (a) one or more areas of land, or
 - (b) one or more years.
- (4) The Minister may by notice published in the Gazette vary or withdraw an invitation for competitive selection applications, and the regulations may make provision for or with respect to the consequences of the variation or withdrawal of an invitation.
- (5) Section 136 does not apply to an invitation for competitive selection applications or to a competitive selection application.

246ZF Competitive selection process

- (1) The Minister is to determine the process for competitive selection for the grant of a thermal coal recovery entitlement.
- (2) The process for competitive selection can be different for different areas of land or different years.
- (3) An invitation for competitive selection applications is to include such information as to the process for competitive selection as the Minister considers appropriate.

246ZG Matters to be taken into account in competitive selection process

- (1) Without limiting any other provision of this Act, the Minister must take into account in the competitive selection process:
 - (a) any matter that the Minister is required under this Act to take into account in considering an application for the grant of a mining lease, and
 - (b) any matter prescribed by the regulations.
- (2) The Minister may determine any other matters that are to be considered in the competitive selection process and the weight or emphasis to be given to those matters.

246ZH Consideration for grant of thermal coal recovery entitlement

- (1) An invitation for competitive selection applications can include a requirement for applications to include an undertaking that the applicant will pay an amount specified in the application or an amount determined through a

competitive selection process as consideration offered for the grant of the thermal coal recovery entitlement.

- (2) The process for competitive selection can include the public release of information as to the consideration offered by applicants for the grant of a thermal coal recovery entitlement.
- (3) The amount of consideration undertaken to be paid by an applicant for the grant of a thermal coal recovery entitlement is a factor that can be a relevant consideration in the competitive selection process.
- (4) The grant of a thermal coal recovery entitlement can be delayed until the amount of any consideration payable for the grant of the entitlement is paid or arrangements for payment or security for payment that are satisfactory to the Minister have been entered into.
- (5) Any amount paid as consideration for the grant of a thermal coal recovery entitlement is not refundable in the event of the entitlement being cancelled.

246ZI Determination of applications

- (1) After a competitive selection application has been considered in accordance with this Division, the application is to be dealt with and determined in accordance with the provisions of this Act as they relate to an application for a mining lease. Accordingly, a power of the Minister under this Act to refuse an application for a mining lease applies to a competitive selection application.
Note. A competitive selection process does not guarantee that a thermal coal recovery entitlement will be issued (because all competing applications may be refused).
- (2) If a competitive selection application fails to meet the requirements of the invitation in relation to which it is made, the application can be refused at any time during the competitive selection process without waiting for the process to be finalised.

Division 4 Grant of thermal coal recovery entitlement

246ZJ Thermal coal recovery entitlement—grant

- (1) The Minister may grant a former holder a thermal coal recovery entitlement for one or more years after following the procedure in Division 3.
- (2) However, the Minister must not grant a former holder a thermal coal recovery entitlement if the grant would entitle the holder to prospect for or recover an amount of thermal coal for each year to which it relates:
 - (a) that exceeds the amount of thermal coal recovery for which the former holder holds a consent or an approval under the *Environmental Planning and Assessment Act 1979*, or
 - (b) that would cause the total thermal coal recovery capacity for any such year (determined in accordance with section 246ZA) to be exceeded.
- (3) In granting a thermal coal recovery entitlement, the Minister must have regard to the following:
 - (a) probity and ethical behaviour,
 - (b) management of risk to the State,
 - (c) the object of reducing greenhouse gas emissions and taking action to address climate change,
 - (d) whether the entitlement was granted by a competitive process involving open and effective competition.

- (4) The grant of a thermal coal recovery entitlement must state the following:
 - (a) the name of the holder of the entitlement,
 - (b) the year or years to which the entitlement relates,
 - (c) when the term of the entitlement starts,
 - (d) the amount of the entitlement for each year to which it relates.
- (5) The grant of a thermal coal recovery entitlement must be notified in the Gazette.

246ZK Thermal coal recovery entitlement—conditions

- (1) A thermal coal recovery entitlement is subject to any condition imposed by the Minister that the Minister considers appropriate:
 - (a) to protect the interests of the State, or
 - (b) to promote the object of reducing greenhouse gas emissions and taking action to address climate change.
- (2) The Minister may require the holder of a thermal coal recovery entitlement to enter into a written agreement (however described) with the State, on terms approved by the Minister, in relation to the entitlement.

246ZL Rebates against royalty payable

- (1) The holder of a thermal coal recovery entitlement is eligible for a rebate of royalty paid or payable by the holder in respect of thermal coal recovered by that holder if:
 - (a) consideration was given for the grant of the thermal coal recovery entitlement as part of the competitive selection process under this Part by that holder of that entitlement, and
 - (b) a rebate has not previously been paid or claimed in respect of the total amount of the contribution in the year.
- (2) A rebate under this section:
 - (a) first becomes payable at the end of the first full financial year (1 July to 30 June) in which the holder of the entitlement recovers thermal coal in relation to which royalty is payable under the authority of the thermal coal recovery entitlement (*the first full recovery year*), and
 - (b) is to be offset against the amount of royalties owing by the holder of the entitlement in the relevant financial year.
- (3) To avoid doubt, in the case where the holder of an entitlement gave consideration that relates to the grant of the entitlement, the rebate is carried over and credited against royalty payable in the first full recovery year.

Division 5 Dealing with thermal coal recovery entitlements

246ZM Thermal coal recovery entitlement—cancellation

- (1) The Minister may, by written notice (a cancellation notice) given to the holder of a thermal coal recovery entitlement, cancel the entitlement if the Minister believes on reasonable grounds that a condition of the entitlement has been breached, whether by the holder or otherwise.
- (2) However, the Minister must not cancel a thermal coal recovery entitlement unless the Minister:

- (a) gives the holder of the entitlement written notice (an *intended cancellation notice*) of the Minister's intention to cancel the entitlement, and
 - (b) takes into consideration any response received from the holder in accordance with the notice.
- (3) An intended cancellation notice must
- (a) state that the Minister intends to cancel the thermal coal recovery entitlement, and
 - (b) explain why the Minister intends to cancel the thermal coal recovery entitlement, and
 - (c) state that the holder of the entitlement may, within 28 days after the day the holder is given the notice, give a written response to the Minister about the matters in the notice.
- (4) Cancellation of a thermal coal recovery entitlement under this section takes effect on the day and at the time stated in the cancellation notice.

246ZN Thermal coal recovery entitlement—surrender

- (1) The holder of a thermal coal recovery entitlement may surrender the entitlement by giving written notice of the surrender to the Minister.
- (2) On receipt of such a notice, the Minister must confirm the surrender, by written notice (a *surrender notice*) given to the holder of the thermal coal recovery entitlement.
- (3) Surrender of a thermal coal recovery entitlement under this section takes effect on the day and at the time stated in the surrender notice.

246ZO Thermal coal recovery entitlement—transfer

- (1) The holder of a thermal coal recovery entitlement (the *transferor*) may apply, in writing, to the Minister to transfer the entitlement to another person (the *transferee*).
- (2) The Minister may, by written notice to the transferor and transferee (a *transfer notice*), transfer the thermal coal recovery entitlement to the transferee.
- (3) In considering whether to transfer the thermal coal recovery entitlement to the transferee, the Minister must have regard to
 - (a) the matters mentioned in section 246ZJ (3) (a)–(c) (thermal coal recovery entitlement—grant), and
 - (b) whether the transferee can comply with the conditions of the thermal coal recovery entitlement.
- (4) The Minister may impose additional conditions on a thermal coal recovery entitlement transferred under this section.
- (5) The transfer of a thermal coal recovery entitlement takes effect on the day and at the time stated in the transfer notice.

246ZP Public notice of thermal coal recovery entitlement matters

- (1) The Minister must prepare a notice of each of the following after it occurs:
 - (a) the cancellation of a thermal coal recovery entitlement under section 246ZM,
 - (b) the surrender of a thermal coal recovery entitlement under section 246ZN,

- (c) the transfer of a thermal coal recovery entitlement under section 246ZO.
- (2) The notice must state:
 - (a) for a cancellation or surrender of a thermal coal recovery entitlement—the name of the holder of the thermal coal recovery entitlement, and
 - (b) for a transfer of a thermal coal recovery entitlement—the names of the person transferring the entitlement and the person to whom the entitlement is transferred, and
 - (c) a description and the location of the land to which the entitlement relates, and
 - (d) when the cancellation, surrender or transfer took effect.

Division 6 Rights of holder of thermal coal recovery entitlements

246ZQ Rights of holder of thermal coal recovery entitlements

- (1) The holder of thermal coal recovery entitlement may, in accordance with the conditions of the entitlement:
 - (a) prospect on the land specified in the entitlement for, and mine on that land, thermal coal and any other mineral or minerals specified in the entitlement, and
 - (b) carry out on that land such primary treatment operations (such as crushing, sizing, grading, washing and leaching) as are necessary to separate the thermal coal and any other mineral or minerals from the material from which they are recovered, and
 - (c) carry out on that land any mining purpose.
- (2) The maximum amount of thermal coal for which such a holder has the right to prospect or recover in a particular year is the amount of the thermal coal recovery entitlement for that year.
- (3) For the purposes of Parts 1 and 2, Divisions 3, 3A and 4 of Part 8, Part 11 and Parts 12–18, such a thermal coal recovery entitlement is taken to be a mining lease for thermal coal, where the maximum amount of thermal coal for which such a holder may prospect or may recover in a particular year is the amount of the thermal coal recovery entitlement for that year.

246ZR No coal mining 10 years after cancellation date

The holder of a thermal coal recovery entitlement is not authorised by that entitlement to prospect for or recover thermal coal after the end of Year 10.

[3] Schedule 6B

Insert after Schedule 6A:

Schedule 6B Cancellation of mining leases for thermal coal—phasing-out of thermal coal mining

Part 1 Preliminary

1 Application

This Schedule has effect despite any other provision of this Act or the Planning Act.

2 Definitions

In this Schedule:

cancellation date means the date that is 3 calendar months after the date of assent to the *Mining Amendment (Climate Protection—Phasing-out of Coal Mining) Act 2017*.

cancelled mining lease means a mining lease cancelled by section 246ZB.

conduct includes any statement, or any act or omission:

- (a) whether unconscionable, negligent, false, misleading, deceptive or otherwise, and
- (b) whether constituting an offence, tort, breach of contract, breach of statute or otherwise.

Planning Act means the *Environmental Planning and Assessment Act 1979*.

relevant land means the exploration area of a cancelled mining lease or any part of the exploration area of a cancelled mining lease.

statement includes a representation of any kind, whether made orally or in writing.

Part 2 Cancellation of mining leases—related matters

3 Cancellation does not affect certain liability

The cancellation of a mining lease by this section does not affect any liability incurred before the cancellation date by or on behalf of a holder of a cancelled mining lease or by or on behalf of a director or person involved in the management of a holder of a cancelled mining lease.

4 Associated applications and actions expunged

- (1) Any associated application lodged or made under this Act or the Planning Act before the cancellation date that was not finally disposed of before the cancellation date is, on the cancellation date, void and of no effect.
- (2) Accordingly, any such associated application is not to be dealt with any further under this Act or the Planning Act.
- (3) In this clause, **associated application** means:
 - (a) any application under this Act for the grant of an authorisation, or for the renewal or transfer of an authorisation, made:
 - (i) in connection with a cancelled mining lease, or
 - (ii) in respect of relevant land by any person other than an excluded person, or
 - (b) a Part 3A project or concept plan application (within the meaning of Schedule 6A to the Planning Act), or
 - (c) any application under the Planning Act for consent or approval to carry out development on relevant land for any of the following purposes made by any person other than an excluded person:
 - (i) mining,
 - (ii) prospecting.
- (4) Any application for environmental assessment requirements made by the holder of a cancelled mining lease before the cancellation date is, on the cancellation date, void and of no effect.

- (5) Any environmental assessment requirements that have been notified by the Secretary (within the meaning of the Planning Act) as a consequence of an application made void by this clause are, on the cancellation date, void and of no effect.
- (6) On the cancellation date, any project involving development for the purposes of prospecting for or recovering thermal coal on the relevant land that was, before the cancellation date, a transitional Part 3A project, ceases to be a transitional Part 3A project.
- (7) To avoid doubt, *mining* and *prospecting* have the meanings given by this Act.
- (8) In this clause:
environmental assessment requirements has the meaning given by Schedule 2 to the *Environmental Planning and Assessment Regulation 2000*.
excluded person means a person who is the holder of an authorisation in relation to relevant land that is in force (other than a cancelled mining lease).
transitional Part 3A project has the same meaning as in Schedule 6A to the Planning Act.

5 Refund of fees paid in connection with cancelled mining leases and associated applications

- (1) The following fees are refundable:
 - (a) any application fee under section 13 (4) (c) paid for an application for a cancelled mining lease,
 - (b) any application fee under section 33 (4) (c) for an application for an assessment lease, being an application fee paid for an application made void by this Schedule,
 - (c) any application fee paid under this Act for an application for a permit under section 252, being an application fee paid for an application made void by this Schedule,
 - (d) any fee paid in accordance with any condition of a cancelled mining lease,
 - (e) any annual rental fee or administrative levy payable under Part 14A of this Act for the privilege of being the holder of a cancelled mining lease, being a fee that has been paid or, but for this clause, would be payable,
 - (f) any amount the Minister required an applicant for a cancelled mining lease to pay under section 67, where that requirement was made in connection with an application for a cancelled mining lease,
 - (g) any fee an applicant for a mining lease was required to pay to the Department in the expression of interest process for that mining lease, being a fee described as an assessment fee or a contribution to the Department's coal development fund,
 - (h) any other fee paid or payable to a public authority that is declared by the regulations to be refundable under this clause.
- (2) A fee that is refundable under this clause:
 - (a) ceases to be payable, and
 - (b) if already paid—is to be refunded to the former holder of the cancelled mining lease in connection with which it was paid, subject to subclause (3).
- (3) A refund is to be paid from money to be appropriated by Parliament or otherwise legally available for that purpose.

- (4) In this clause:
fee includes a charge or other amount.

6 Compensation not payable

- (1) Compensation is not payable by or on behalf of the State:
- (a) because of the enactment or operation of section 246ZB, this Schedule, the *Mining Amendment (Climate Protection—Phasing-out of Coal Mining) Act 2017* or any Act that amends Part 11A or this Schedule, or
 - (b) because of any direct or indirect consequence of any such enactment or operation (including any conduct under the authority of any such enactment), or
 - (c) because of any conduct relating to any such enactment or operation.
- (2) This clause extends to conduct and any other matter occurring before the commencement of this clause.
- (3) This clause does not exclude or limit any personal liability of a person for conduct occurring before the grant of a cancelled mining lease.
Note. However, clause 7 absolves the State and certain employees of the State from liability for such conduct.
- (4) In this clause:
compensation includes damages or any other form of compensation.
the State means the Crown within the meaning of the *Crown Proceedings Act 1988* or an officer, employee or agent of the Crown.

7 State not liable for certain conduct

- (1) The State is not liable, and is taken never to have been liable, whether vicariously or otherwise, for any conduct (*relevant conduct*) before the cancellation date in relation to a cancelled mining lease or mining on relevant land (whether occurring before or after the grant of a cancelled mining lease).
- (2) In addition, the State is not liable, and is taken never to have been liable, whether under any contract, policy or other arrangement for self-insurance or otherwise, to indemnify any person against any personal liability of the person for relevant conduct.
- (3) To remove doubt, this clause extends to the following conduct as relevant conduct:
- (a) conduct that facilitated the grant of an authority in respect of relevant land or that facilitated mining on relevant land,
 - (b) conduct relating to the provision of assistance, advice or information (including mining information) in relation to relevant land or an authority for relevant land,
 - (c) conduct relating to the licensing process in connection with relevant land,
 - (d) any conduct occurring in the course of events that culminated in the grant of a cancelled mining lease.
- (4) This clause extends to all types of civil liability, whether at law or in equity, and whether arising in tort or contract, or under an enactment or otherwise.
- (5) An employee (or former employee) of the State acting honestly and in good faith in the performance or purported performance of his or her functions as an

employee of the State has the same protections and immunities as the State under this clause.

- (6) This clause does not apply in respect of any liability arising solely in respect of an authority granted before the cancellation date that is not a cancelled mining lease.
- (7) This clause applies despite the *Law Reform (Vicarious Liability) Act 1983* and the *Civil Liability Act 2002*.
- (8) In this clause:

employee of the State means a person employed under the *Government Sector Employment Act 2013*.

licensing process means any practice, process or procedure relating to the obtaining of or grant of an authority, including in relation to expressions of interest, tenders, applications, investigations, inquiries or consents, and whether or not provided for by this Act.

mining includes prospecting.

mining information includes information about:

- (a) the mineral bearing capacity of land, or
- (b) the licensing process.

the State means the Crown in right of New South Wales and includes a statutory body representing the Crown.

Part 3 Information gathering, disclosure and use

8 Continuing obligation to provide reports

- (1) The obligation of the holder of a cancelled mining lease to provide a report under section 163C continues despite the cancellation of the mining lease under section 246ZB.
- (2) A reference in section 163C:
 - (a) to an authorisation includes a reference to a mining lease cancelled by section 246ZB, or
 - (b) to the holder of an authorisation includes a reference to a former holder of such a cancelled mining lease.

9 Obtaining exploration information

- (1) For the purposes of Part 12 (Powers of entry and inspection) of this Act, the obtaining of exploration information or any record of exploration information is considered to be for purposes connected with the administration of this Act.
- (2) Accordingly, section 248B (Requirement to provide information and records) extends to authorise an inspector to require a person to furnish exploration information or any record of exploration information.
- (3) Any core or sample that is exploration information furnished under section 248B becomes the property of the State.
- (4) In this clause, ***exploration information*** means information obtained from, used for the purposes of or in connection with, or comprising the results of, any test, study, survey, analysis or research conducted by or on behalf of the holder of a cancelled mining lease in respect of relevant land or a cancelled mining lease and includes any core or sample taken on or from relevant land under a cancelled mining lease.

10 Disclosure and use of information for future mining purposes

- (1) The appropriate official may use or disclose any information obtained in connection with the administration or execution of this Act or the Planning Act in respect of a cancelled mining lease or relevant land if the use or disclosure is in connection with any application or tender (or proposed application or tender) under this Act or any application under the Planning Act (whether or not in respect of relevant land) or is for any other purpose approved by the Minister.
- (2) The *appropriate official* is:
 - (a) the Secretary under this Act in the case of information obtained in connection with the administration or execution of this Act, or
 - (b) the Secretary under the Planning Act in the case of information obtained in connection with the administration or execution of the Planning Act.
- (3) No intellectual property right or duty of confidentiality (whether arising by agreement, under a cancelled mining lease or otherwise) prevents the use or disclosure of information by the appropriate official as authorised by this clause or the use or disclosure of that information by or on behalf of a person to whom it has been disclosed as authorised by this clause.
- (4) No liability attaches to the State or any other person in connection with the use or disclosure of information as authorised by this clause.
- (5) Clause 64 (Confidentiality of reports) of the *Mining Regulation 2016* does not prevent the disclosure of information under this clause even if the information is contained in a report lodged with the Secretary before the commencement of this clause.
- (6) The disclosure of information under this clause is taken to be in connection with the administration or execution of this Act and the Planning Act.
- (7) In this clause:
disclose includes publish or communicate.
use includes reproduce.

Part 4 Miscellaneous provisions about cancellation

11 Clearing away of mining plant

To avoid doubt, a reference in section 245 to the holder of an authority includes a reference to a former holder of a cancelled mining lease.

12 Continuation of certain conditions of cancelled mining leases

- (1) The preserved conditions of a cancelled mining lease continue to have effect despite the cancellation of the mining lease by section 246ZB. Accordingly, any obligation imposed on the holder of a cancelled mining lease under the preserved conditions continues to have effect.
- (2) The *preserved conditions* are conditions prescribed by the regulations, as in force immediately before the cancellation date.
- (3) A reference in a provision of this Act or the regulations to the conditions of an authority includes a reference to a preserved condition of a cancelled mining lease.

- (4) For the purposes of the application of a provision of this Act to and in respect of a preserved condition of a cancelled mining lease, a reference in the provision:
- (a) to an authorisation—includes a reference to a cancelled mining lease cancelled by section 246ZB, or
 - (b) to the holder of an authorisation—includes a reference to a former holder of such a cancelled mining lease.

13 Security requirements

- (1) The requirement to give and maintain security under condition 29 of a cancelled mining lease lapses when the Minister determines that the requirements of any directions under section 240 or obligations under the cancelled mining lease (non-compliance with which would authorise a claim on or realisation of the deposit) have been fulfilled to a satisfactory extent and in a satisfactory manner.
- (2) The Minister is not required to make a determination under subclause (1) until the Minister is satisfied that no directions or further directions under section 240 are required.
- (3) The Minister must, if practicable, give written notice of a determination under subclause (1) to the former holder of the cancelled mining lease.

14 Access arrangements

- (1) The cancellation of a mining lease by section 246ZB does not affect any liabilities of a holder or former holder of the cancelled mining lease under an access arrangement.
- (2) The cancellation of a mining lease by section 246ZB operates, for the purposes of any access arrangement relating to the cancelled mining lease:
 - (a) as an occasion of the holder of the cancelled mining lease ceasing to hold an authority over the exploration area, and
 - (b) as a cancellation of the cancelled mining lease for the purpose of any provision of the access arrangement that deals with the cancellation of an authority (including any provision that refers to cancellation under Division 3 of Part 7 of this Act).
- (3) The regulations may make provision for the termination of any access arrangements relating to a cancelled mining lease.

15 Further Planning Act applications prohibited

- (1) An application under the Planning Act for consent or approval to carry out development on relevant land for any of the following purposes cannot be made except by a person who is the holder of an authority that is in force in relation to that land:
 - (a) mining,
 - (b) prospecting.
- (2) To avoid doubt, *mining* and *prospecting* have the meanings given by this Act.