

Department for Energy and Mining

Petroleum and Geothermal Energy (Energy Resources) Bill 2021

A draft Bill for an Act to amend the
Petroleum and Geothermal Energy Act 2000

June 2021



**Government
of South Australia**

Department for
Energy and Mining

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South Australia

Petroleum and Geothermal Energy (Energy Resources) Bill 2021

A BILL FOR

An Act to amend the *Petroleum and Geothermal Energy Act 2000*.

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6—Substitution of section 3

Section 3—delete the section and substitute:

3—Objects

The objects of this Act are:

- 5 (a) to establish an effective, efficient and flexible regulatory scheme to enable the exploration for, and the recovery, production, generation, transmission, storage and management of, energy resources regulated under this Act that—
- 10 (i) encourages and maintains an appropriate level of competition; and
- (ii) ensures, so far as reasonably practicable, security of supply for users of natural gas; and
- 15 (b) to ensure that energy rights and resources are managed for the benefit of the State; and
- (c) to ensure that the exploration for, and the recovery, production, generation, transmission, storage and management of, energy resources to which this Act applies is carried out safely and is ecologically sustainable; and
- 20 (d) to ensure that regulated activities carried out under this Act that may have adverse effects on the environment—
- (i) are properly managed to reduce environmental damage; and
- 25 (ii) are carried out in a way that eliminates or limits the risk of significant long term environmental damage; and
- (e) to ensure that land adversely affected by regulated activities is properly rehabilitated; and
- 30 (f) to establish a system of compensation for owners of land affected by regulated activities under this Act.

7—Amendment of section 4—Interpretation

- (1) Section 4(1), definition of *authorised officer*—delete the definition and substitute:

authorised officer means an authorised officer appointed under section 8;

- (2) Section 4(1), definition of *environment*—delete the definition and substitute:

environment includes—

- 35 (a) land, air, water (including both surface and underground water and sea water), organisms, ecosystems, flora and fauna; and
- (b) buildings, structures and other forms of infrastructure and cultural artefacts; and
- 40 (c) existing and potential land use; and

- (d) public health, safety or amenity; and
- (e) the heritage, aesthetic or cultural values of an area; and
- (f) the economic or social impact on an area;

(3) Section 4(1)—after the definition of *ERD Court* insert:

facility means—

- (a) a pipeline or flowline; or
- (b) a road or access track; or
- (c) a borrow pit for construction purposes; or
- (d) any equipment to be used in undertaking a regulated activity (including production testing equipment); or
- (e) a water disposal pond; or
- (f) a well; or
- (g) an airstrip; or
- (h) a power line; or
- (i) telecommunications infrastructure, other than mobile telecommunications equipment; or
- (j) permanent fencing; or
- (k) drilling and well intervention equipment; or
- (l) a camp; or
- (m) any other equipment, structure or site brought within the ambit of this definition by the regulations,

but does not include equipment, a structure or site excluded from the ambit of this definition by the regulations;

(4) Section 4(1), definition of *geothermal energy*—delete "which is extracted or released by a means other than as part of the production of a naturally occurring underground accumulation of a substance"

(5) Section 4(1)—after the definition of *land* insert:

leading performance criteria means criteria used to give an early warning that a control or other strategy necessary for compliance with a statement of environmental objectives—

- (a) is absent; or
- (b) may fail or be failing;

(6) Section 4(1), definition of *licence*—after paragraph (h) insert:

or

- (i) a hydrogen energy licence (in either of its 2 categories—see section 59G);

- (7) Section 4(1), definition of *natural reservoir*—delete "petroleum or some other regulated substance" wherever occurring and substitute in each case:

a regulated substance

- (8) Section 4(1), definition of *pipeline*—delete the definition and substitute:

pipeline means a pipe or system of pipes for conveying a regulated substance from place to place and includes—

- (a) tanks, machinery and equipment necessary for, or associated with, its operation; and
- (b) a part of a pipeline;

- (9) Section 4(1), definition of *produce*—delete the definition and substitute:

produce—

- (a) a person produces a regulated substance—
 - (i) in the case of hydrogen—if the hydrogen is produced by a process involving the use of a regulated resource or another regulated substance; and
 - (ii) in any other case—if the regulated substance is recovered or released from a natural reservoir in which it has been contained in the course, or as a result, of operations carried out by that person (and production is taken to occur when it reaches ground level); and
- (b) a person produces a regulated resource (other than a regulated substance)—
 - (i) in the case of geothermal energy—by releasing the energy for an industrial or commercial purpose; and
 - (ii) in the case of a natural reservoir—by using it for the storage of a substance regulated under this Act;

- (10) Section 4(1), definition of *prospectivity*—delete "petroleum or other"

- (11) Section 4(1), definition of *regulated resource*—after paragraph (c) insert:

or

- (d) any other energy resource brought within the ambit of this definition by the regulations;

- (12) Section 4(1), definition of *regulated substance*—after paragraph (b) insert:

- (ba) hydrogen, including a hydrogen compound or other substance that is a by-product of the production of hydrogen;

- (13) Section 4(1), definition of *transmission pipeline*—delete the definition and substitute:

transmission pipeline means a pipeline for conveying a regulated substance from 1 place to another place, but does not include—

- (a) a pipeline located within the site of an industrial plant; or
- (b) a pipeline that forms part of a gas distribution system within a city, town or other centre of population or industry; or

- (c) if a pipeline extends beyond State boundaries—the parts of the pipeline located outside the State; or
- (d) a pipeline of a kind excluded from the ambit of this definition by the regulations;

5 (14) Section 4(2)—delete "petroleum or another" and substitute:

a

(15) Section 4(2)—delete "petroleum or the other relevant substance" and substitute:
the regulated substance

(16) Section 4—after subsection (3) insert:

- 10 (4) For the purposes of this Act, a person generates hydrogen for a *prescribed commercial purpose* if hydrogen is generated—
- (a) for the purposes of export; or
 - (b) for use in the manufacturing of chemicals; or
 - (c) for wholesale distribution; or

15 (d) as part of a process of generating electricity for sale or supply to customers; or

 - (e) for any other purpose prescribed by the regulations.

8—Substitution of section 8

Section 8—delete the section and substitute:

20 **8—Authorised officers**

- (1) The Minister may, by instrument in writing, appoint a person to be an authorised officer under this Act.
- (2) An appointment under this section may be subject to conditions set out in the instrument of appointment.

25 (3) Without limiting this section, a person appointed as an inspector under the *Work Health and Safety Act 2012* will be taken to have been appointed as an authorised officer under this section.

9—Insertion of section 9A

After section 9 insert:

30 **9A—Power to conduct geological investigations etc**

- (1) For the purpose of making any geological, geophysical or geochemical investigation or survey, the Minister, or any person authorised by the Minister by written notice, may—

35 (a) enter and remain on any land with such assistants, vehicles and equipment as may be necessary or expedient for the purposes of the investigation or survey; and

- (b) conduct such an investigation or survey on the land; and

- (c) take, and remove from the land, any geological specimens or samples.
- (2) A person exercising a power under this section—
- 5 (a) must not recover from any land more material than is reasonably necessary for the purpose of making the relevant investigation or survey; and
- (b) must not unnecessarily impede or obstruct the lawful use or enjoyment of any land by an owner of the land.
- 10 (3) A person authorised by the Minister to conduct an investigation or survey under subsection (1) must provide the Minister with the results of the investigation or survey conducted by the person in a manner, and within a period, specified by the Minister in the notice of authorisation.
- 15 (4) The Minister or an authorised person (as the case requires) must, at least 14 days before undertaking an investigation or survey under this section, give written notice, in a manner and form determined by the Minister to the owner of land and any licensee in respect of an area of land in which the investigation or survey will be undertaken—
- 20 (a) describing the area of land in which the investigation or survey will be undertaken; and
- (b) setting a completion date in respect of the investigation or survey.
- 25 (5) At least 14 days before the Minister or any authorised person undertakes an investigation or survey under this section, the Minister may, by notice in the Gazette—
- (a) describe the area of land in which the investigation or survey will be undertaken; and
- (b) set a completion date in respect of the investigation or survey.
- 30 (6) The Minister may vary the completion date set under subsection (5)(b) by further notice in the Gazette, and must notify the owner of land and any licensee in respect of the area of land in which the investigation or survey is being undertaken of the varied completion date.
- 35 (7) The Minister may refuse to receive and consider an application for a licence under this Act in respect of the land described in a notice under subsection (5) until the completion date set by the Minister.
- (8) The Minister may publish, in a manner the Minister thinks fit, the results of an investigation or survey under this section.
- 40 (9) A person must not interfere with or obstruct any person exercising a power under this section.

Maximum penalty: \$20 000 or imprisonment for 6 months.

10—Amendment of section 10—Regulated activities

(1) Section 10(1)—delete subsection (1) and substitute:

(1) The following are *regulated activities*:

- (a) exploring or searching for a regulated resource;
- (b) operations to establish the nature and extent of a discovery of a regulated resource, and to establish the commercial feasibility of production and the appropriate production techniques;
- (c) production or processing of a regulated substance;
- (d) utilisation of a natural reservoir to store a regulated substance (including in a case where a trace element naturally occurs with the regulated substance);
- (e) production of geothermal energy;
- (f) producing or generating energy from a source of geothermal energy;
- (g) generating hydrogen for a prescribed commercial purpose;
- (h) construction, operation, maintenance, modification and decommissioning of a transmission pipeline;
- (i) activities for the rehabilitation of land on account of the impact of any activities under a preceding paragraph;
- (j) any other activity brought within the ambit of this definition by the regulations;

(2) Section 10(3)(a)—after "land" insert:

(other than as authorised under section 9A)

(3) Section 10(3)(b)—delete paragraph (b)

(4) Section 10(3)(c)—delete "petroleum or another" and substitute:

a

(5) Section 10(3)(f) to (h) (inclusive)—delete paragraphs (f) to (h) and substitute:

(f) construction, operation, maintenance, modification and decommissioning of a facility;

(6) Section 10(3)(j)—delete paragraph (j)

11—Amendment of section 13—Licence classes

Section 13—after paragraph (h) insert:

and

- (i) hydrogen energy licence (with 2 categories of licence under this Act).

12—Amendment of section 26—Term and renewal of exploration licence

Section 26(1)—after "5 years" insert:

or such term of less than 5 years as determined by the Minister in a particular case

5 13—Amendment of section 27—Production of regulated resource under exploration licence

Section 27(2a)—delete "petroleum or another" and substitute:

a

14—Amendment of section 28—Retention licences

10 Section 28(2)(a)(iii)—delete "petroleum or another" and substitute:

a

15—Amendment of section 30—Grant of retention licence

Section 30(1a)—delete "petroleum or another" wherever occurring and substitute in each case:

15 a

16—Amendment of section 31—Area of retention licence

Section 31(1)—delete subsection (1) and substitute:

(1) The area of a petroleum retention licence must not exceed—

20 (a) twice the area under which (according to a reasonable estimate at the time when the licence was granted or last renewed) the discovery is likely to extend; or

(b) 10 000 km²,

whichever is the lesser.

17—Amendment of section 32—Term of retention licence

25 Section 32(1)—after "5 years" insert:

or such term of less than 5 years as may be determined by the Minister in a particular case

18—Amendment of section 34—Production licences

(1) Section 34(2)(a)—delete "petroleum or some other" and substitute:

30 a

(2) Section 34(2)(a)(i)—delete "petroleum or another" wherever occurring and substitute in each case:

a

(3) Section 34(2)(a)(ii)—delete "petroleum or another" and substitute:

35 a

(4) Section 34(2)(c)—delete "petroleum or some other" and substitute:

a

(5) Section 34(2)(c)—delete "petroleum or other"

19—Amendment of section 35—Grant of production licence

5 Section 35—after subsection (4) insert:

(5) Subsection (3) does not apply if the Minister has entered into a safety net agreement under section 94 in relation to a production licence in respect of a regulated resource in that particular area.

20—Amendment of section 43—Royalty on regulated resources

10 Section 43(4)—delete "within 30 days after the end of each month" and substitute:
by the last day of the month immediately following each month

21—Amendment of section 48—Alteration of pipeline

Section 48, penalty provision—delete "\$120 000" and substitute:
\$250 000

22—Amendment of section 59—Relationship with other licences

(1) Section 59(3)(b)—before "the Minister" insert:

subject to subsection (3a),

(2) Section 59—after subsection (3) insert:

20 (3a) The Minister need not consult with an existing licensee if the existing licensee is the person applying for the associated activities licence.

23—Repeal of section 59A

Section 59A—delete the section

24—Amendment of section 59B—Special facilities licence

25 Section 59B(1)(a)—delete "(within a declared area)"

25—Amendment of section 59E—Relationship with other licences

(1) Section 59E(3)(b)—before "the Minister" insert:

subject to subsection (3a),

(2) Section 59E—after subsection (3) insert:

30 (3a) The Minister need not consult with an existing licensee if the existing licensee is the person applying for the special facilities licence.

26—Insertion of Part 9B

After section 59E insert:

Part 9B—Hydrogen energy licence**59F—Interpretation**

5 For the purposes of this Part, a reference to hydrogen includes a hydrogen compound or another substance that is a by-product of the generation of hydrogen.

59G—Hydrogen energy licence

(1) There will be 2 categories of hydrogen energy licence:

- 10 (a) a *hydrogen energy generation licence*;
(b) a *hydrogen energy storage licence*.

(2) A hydrogen energy generation licence authorises the licensee, subject to the terms and conditions specified in the licence—

- 15 (a) to establish and operate a site (which must not exceed 5km² in area) at a location specified in the licence for the purposes of generating hydrogen for a prescribed commercial purpose; and
20 (b) to establish and operate facilities and systems associated with generating hydrogen for a prescribed commercial purpose (but not an electricity generation facility or a facility for manufacturing chemicals); and
25 (c) to undertake any other activities that may be associated with, relevant or incidental to, generating hydrogen for a prescribed commercial purpose; and
(d) if relevant, confer rights of access to and use of land specified in the licence necessary for undertaking activities under the licence.

(3) A hydrogen energy storage licence authorises the licensee, subject to the terms and conditions specified in the licence—

- 30 (a) to undertake operations for the use of a natural reservoir for the storage of hydrogen generated under a hydrogen energy generation licence; and
(b) to undertake operations associated with the withdrawal of hydrogen that has been stored in the natural reservoir.

(4) The area of a hydrogen energy storage licence—

- 35 (a) must not exceed 1 000km²; and
(b) cannot be located within the area of gas storage exploration licence, a gas storage retention licence or a gas storage licence.

- (5) For the purposes of this Part—
- (a) the holder of a hydrogen energy licence does not need to be the holder of any other licence under this Act; and
 - (b) the site in respect of which the hydrogen energy licence is granted need not be located within the area of any other licence under this Act.

59H—Term of hydrogen energy licence

- (1) A hydrogen energy licence will be granted for a term determined by the Minister.
- (2) The Minister may—
 - (a) extend the term of a hydrogen energy licence from time to time; or
 - (b) cancel a hydrogen energy licence if the Minister considers that the licence is no longer being used for the purposes for which the licence was granted.

59I—Relationship with other licences

- (1) This section applies in relation to a hydrogen energy licence authorising operations located within the area of another licence.
- (2) The rights conferred by a hydrogen energy licence prevail over rights conferred by another licence to the extent (if any) determined by the Minister to be reasonable and appropriate and specified in the hydrogen energy licence.
- (3) Before the Minister grants a hydrogen energy licence to which this section applies—
 - (a) the Minister must have regard to—
 - (i) the reasons put forward by the applicant for the grant of the licence and, in particular, whether they justify the grant of the licence in derogation from the rights of the existing licensee; and
 - (ii) the legitimate business interests of the holder of the existing licence; and
 - (iii) the effect of the operations to be carried out under the hydrogen energy licence on the operations carried out under the existing licence; and
 - (iv) the operational and technical requirements for the safe, efficient and reliable conduct of operations under both licences; and
 - (v) any other matters the Minister considers relevant; and

(b) subject to subsection (4), the Minister must consult with the existing licensee about the matters referred to in paragraph (a) and about the conditions to be included in the licence.

(4) The Minister need not consult with an existing licensee as required under subsection (3) if the existing licensee is the person applying for the hydrogen energy licence.

(5) The holder of the other licence is to be entitled to compensation for diminution of the rights conferred by that licence—

(a) to be agreed between the licensees; or

(b) in default of agreement, to be determined by the relevant court.

(6) The Supreme Court may, on application by the holder of the other licence made within 2 months after the grant of the hydrogen energy licence, review the terms and conditions of the hydrogen energy licence and vary them as the Court considers just.

(7) The Supreme Court may, in exercising its powers under subsection (6), require the relocation or variation of the site to which the hydrogen energy licence relates.

27—Amendment of section 65—Application for licence

(1) Section 65(1)(a)—delete "an approved form" and substitute:

a manner and form determined by the Minister

(2) Section 65(1)(d)—delete "in the approved form" and substitute:

by the Minister

(3) Section 65(1)(e)—delete "fee prescribed by the regulations" and substitute:

prescribed fee

(4) Section 65(2)(a)—delete "an approved form" and substitute:

a manner and form determined by the Minister

(5) Section 65(2)(d)—delete "fee prescribed by the regulations" and substitute:

prescribed fee

28—Amendment of section 69—Grant of compatible licence to area already under licence

(1) Section 69(1)—after "the Minister must" insert:

, subject to subsection (1a),

(2) Section 69—after subsection (1) insert:

(1a) The Minister need not consult with an existing licensee—

(a) if the existing licensee is the person applying for the compatible licence; or

- (b) whose licence, on the day on which the application for the relevant licence is made, had been offered but not yet granted to them by the Minister in accordance with section 66.

5 **29—Insertion of section 73A**

After section 73 insert:

73A—Mandatory condition as to management system

- (1) It is a mandatory condition of every licence that the licensee must establish and maintain a management system in relation to the regulated activities to be carried out under the licence.
- (2) A management system must be in a form, and contain the matters, prescribed by the regulations.

10 **30—Amendment of section 74—Classification of activities to be conducted under licence**

15 Section 74(3)(b)—delete "regulation" and substitute:
determination of the Minister

31—Amendment of section 77—Non-compliance with licence conditions

Section 77, penalty provision—delete "\$120 000" and substitute:
\$250 000

20 **32—Amendment of section 84—Records to be kept by the licensee**

Section 84(1)—after paragraph (c) insert:

- (ca) a record of their approved statement of environmental objectives under section 99; and

33—Substitution of section 85

25 Section 85—delete the section and substitute:

85—Reporting of certain incidents

- (1) A licensee must report an immediately reportable incident to the Minister as follows:
 - (a) an initial report must be provided to the Minister within 24 hours after the licensee becomes aware of the occurrence of the incident;
 - (b) a comprehensive report must be provided to the Minister, in a manner and form determined by the Minister—
 - (i) unless subparagraph (ii) applies—within 3 months after the licensee becomes aware of the occurrence of the incident; or
 - (ii) within a period determined by the Minister in a particular case.

Administrative penalty.

- (2) A licensee must report, in a manner and form determined by the Minister, a reportable incident to the Minister as required by determination of the Minister.

Administrative penalty.

- (3) In this section—

immediately reportable incident means—

- (a) an incident arising from activities conducted under a licence specified in the relevant statement of environmental objectives to be an immediately reportable incident; or
- (b) any other matter brought within the ambit of this definition by a determination of the Minister or by the regulations;

reportable incident means—

- (a) an incident (not being an immediately reportable incident) arising from activities conducted under a licence specified in the statement of environmental objectives under section 98 to be a reportable incident; or
- (b) any other matter brought within the ambit of this definition by a determination of the Minister or by the regulations.

34—Amendment of section 86—Information to be provided by licensee

- (1) Section 86(1)—delete subregulation (1) and substitute:

- (1) A licensee must, if requested to do so by the Minister by written notice, provide information or material relevant to carrying out regulated activities under this Act in a manner specified in the notice.

Administrative penalty.

- (2) Section 86—after subsection (5) insert:

- (5a) Any cost associated with a requirement under this section is to be borne by the licensee.

35—Amendment of section 86A—Fitness for purpose assessment

- (1) Section 86A(1) and (2)—delete subsections (1) and (2) and substitute:

- (1) A licensee must carry out a fitness for purpose assessment of prescribed facilities operated on land within the area of the licence at intervals prescribed by the regulations in order to assess the risk imposed by the prescribed facilities on—

- (a) public health and safety; and
- (b) the environment; and
- (c) the security of production or supply of natural gas (so far as this may be relevant).

(2) Section 86A—after subsection (7) insert:

(8) In this section—

prescribed facility means—

- (a) a transmission pipeline; or
- (b) a pipeline or flowline; or
- (c) a road or access track; or
- (d) any equipment to be used in the production, generation or processing of a regulated substance or a regulated resource; or
- (e) a water disposal pond; or
- (f) a well; or
- (g) an airstrip; or
- (h) a power line; or
- (i) telecommunications infrastructure, other than mobile telecommunications equipment; or
- (j) permanent fencing; or
- (k) any other facility brought within the ambit of this definition by the regulations.

36—Amendment of section 87—Activities to be carried out with due care and in accordance with good industry practice

Section 87, penalty provision—delete "\$120 000" and substitute:

\$250 000

37—Amendment of section 88—Ministerial direction

(1) Section 88(1)—after paragraph (a) insert:

or

- (ab) to take specified action required to ensure obligations under this Act or the licence are met; or

(2) Section 88—after subsection (1) insert:

(1a) A notice under subsection (1)—

- (a) must specify the grounds on which it is issued; and
- (b) must allow a reasonable time for compliance with the direction.

(3) Section 88(2), penalty provision—delete "\$120 000" and substitute:

\$250 000

- 5
- (3) In connection with subsection (2), the only activities that the licensee may undertake during the period of the extension are activities to give effect to the requirement referred to in subsection (2)(b).
- (4) The Minister must take reasonable steps to consult with the relevant licence holder before acting under subsection (2).
- (5) The Minister may, in acting under this section—
- 10
- (a) reduce the area of the licence to an area that is smaller than the area of the original licence at the time of its expiry; and
- (b) confer rights of access to and use of land to which the licence relates on terms and conditions specified in the licence.
- (6) The Minister must ensure that a notice of the extension of the term of a licence under this section is given to the licence holder and the owner of the land.

15

91C—Reinstatement of licence

- (1) This section applies in relation to—
- 20
- (a) an exploration licence; or
- (b) a production licence; or
- (c) a retention licence; or
- (d) a pipeline licence; or
- (e) a special facilities licence; or
- (f) an associated facilities licence; or
- (g) a hydrogen energy licence,
- (being a licence that has expired).
- 25
- (2) This section sets out a scheme that will allow the Minister to reinstate a licence to which this section applies that has expired.
- (3) The Minister may act under this section if the Minister considers—
- 30
- (a) that the holder of a licence to which this section applies has contravened, or failed to comply with, a provision of this Act; and
- (b) that the licence should be reinstated in order to support the requirement that the licensee take action—
- 35
- (i) to rehabilitate land in accordance with the requirements of a statement of environmental objectives; or
- (ii) to rehabilitate land to a standard required to secure compliance with a condition of the licence; or
- (iii) to prevent or address undue damage to the environment,
- 40
- (including to land outside the area of the licence).

- (4) In connection with subsection (3), the only activities that the licensee may undertake during the period of the reinstatement are activities to give effect to the requirement referred to in subsection (3)(b).
- (5) The Minister may act under this section despite the cessation of regulated activities under a licence on or before the expiration of the relevant licence.
- (6) If the Minister decides to act under this section—
- (a) the licence will be taken to have been reinstated from the date on which the licence expired or from a later date determined by the Minister; but
 - (b) any section of this Act prescribed by the regulations will not apply in relation to the licence.
- (7) The Minister may, in acting under this section—
- (a) reinstate a licence in relation to an area that is smaller than the area of the original licence at the time of its expiry; and
 - (b) confer rights of access to and use of land to which the licence relates on terms and conditions specified in the licence.
- (8) The term of the licence, as reinstated under this section, will be—
- (a) a term determined by the Minister; or
 - (b) a term that expires at some later time on a date to be determined by the Minister.
- (9) The Minister reinstates a licence under this section by notice in the Gazette.
- (10) The Minister must ensure that a notice of the reinstatement of a licence under this section is given to the licensee and the owner of the land.

40—Amendment of section 93—Obligation not to interfere with regulated activities

Section 93, penalty provision—delete "\$60 000" and substitute:

\$150 000

41—Insertion of Part 12 Division 2A

After section 96 insert:

Division 2A—Environmental impact assessment criteria

96A—Environmental impact assessment criteria

- (1) The Minister must, by notice in the Gazette, determine criteria (the *environmental impact assessment criteria*) against which the environmental impact of regulated activities may be assessed for the purposes of this Part.

- (2) The Minister may, by subsequent notice in the Gazette, vary or revoke a notice under this section.
- (3) The Minister may, in accordance with any requirements prescribed by the regulations, undertake a review of the environmental impact assessment criteria determined under this section.

42—Amendment of heading to Part 12 Division 3

Heading to Part 12 Division 3—delete "and classification of regulated activities"

43—Amendment of section 97—Environmental impact report

Section 97—after subsection (3) insert:

- (4) An environmental impact report must include an assessment against the environmental impact assessment criteria in a manner determined by the Minister or prescribed by the regulations.
- (5) A licensee must undertake consultation on the proposed environmental impact report in accordance with the requirements of the regulations.

44—Repeal of section 98

Section 98—delete the section

45—Substitution of section 99

Section 99—delete the section and substitute:

99—Statement of environmental objectives

- (1) A statement of environmental objectives for regulated activities—
- (a) must be prepared in accordance with the requirements prescribed by the regulations; and
 - (b) must be submitted to the Minister for approval.
- (2) If the Minister determines that an approved statement of environmental objectives should be revised, a revised statement of environmental objectives—
- (a) must be prepared in accordance with the requirements prescribed by the regulations; and
 - (b) must be submitted to the Minister for approval.
- (3) A licensee must undertake consultation on the proposed statement of environmental objectives in accordance with the requirements of the regulations.

46—Amendment of section 100—Content of statement of environmental objectives

- (1) Section 100(1)(c) and (d)—delete paragraphs (c) and (d) and substitute:
- (c) must set out leading performance criteria; and
 - (d) must contain such information as prescribed by the regulations.

(2) Section 100(3)—delete subsection (3)

47—Substitution of sections 101 to 103

Sections 101 to 103 (inclusive)—delete the sections and substitute:

101—Approval of statement of environmental objectives

- 5
- (1) The Minister may—
- (a) approve a statement (or revised statement) of environmental objectives without amendment; or
- (b) after consultation with the licensee—require amendment to a statement (or revised statement) of environmental objectives or the environmental impact report on which the statement is based.
- 10
- (2) If a statement (or revised statement) of environmental objectives is required to be amended under subsection (1)(b), but not substantially, the Minister may approve it in its amended form but, if it is substantially amended, the Minister must undertake public consultation in accordance with section 105A until it is approved without substantial amendment.
- 15
- (3) When the Minister approves a statement (or revised statement) of environmental objectives, the Minister must give notice of the approval in the Gazette.
- 20
- (4) The statement (or revised statement) of environmental objectives comes into force when notice of its approval is published in the Gazette or on a later date stated in the notice of approval.
- 25
- (5) When a revised statement of environmental objectives comes into force it supersedes the previous statement of environmental objectives for the relevant regulated activities.

102—Review of statement of environmental objectives

- (1) An approved statement of environmental objectives must be reviewed—
- 30
- (a) if the Minister directs that the statement of environmental objectives be reviewed; or
- (b) if a review is required at a time or in circumstances prescribed by the regulations.
- (2) A review must be conducted—
- 35
- (a) in accordance with any requirements prescribed by the regulations; and
- (b) taking into account the requirements of section 100; and
- (c) within a period prescribed by the regulations.
- (3) A revised statement of environmental objectives subject to a review under this section must be submitted to the Minister in accordance with any requirements prescribed by the regulations.
- 40

(4) The Minister may, on receipt of a revised statement of environmental objectives submitted to the Minister under this section—

(a) approve the revised statement of environmental objectives without amendment; or

(b) require amendments to the revised statement of environmental objectives after consultation with the licensee.

(5) If a revised statement of environmental objectives subject to a review under this section is required to be amended under subsection (4)(b), but not substantially, the Minister may approve it in its amended form but, if it is substantially amended, the Minister must undertake public consultation in accordance with section 105A until it is approved without substantial amendment.

48—Amendment of section 105—Condition of licence to comply with statement of environmental objectives

Section 105(2) to (4) (inclusive)—delete subsections (2) to (4)

49—Insertion of Part 12 Division 4A

After section 105 insert:

Division 4A—Consultation by Minister

105A—Consultation requirements on environmental impact report and statement of environmental objectives

(1) Subject to this Part, the Minister must undertake public consultation on the environmental impact report or statement (or revised statement) of environmental objectives in accordance with the requirements prescribed by the regulations.

(2) Without limiting subsection (1), regulations made under this section may address the following:

(a) the manner and form in which the Minister is to give notice to members of the public that consultation is to occur;

(b) the manner in which the environmental impact report or statement (or revised statement) of environmental objectives may be inspected by members of the public;

(c) the manner in which submissions are to be made to the Minister and the time before which submissions must be provided to the Minister (which must be not less than 30 business days from the day on which notice is given under paragraph (a));

(d) the publication of submissions by the Minister (including that the Minister may refuse to publish submissions on grounds that the submissions are irrelevant, offensive or on any other grounds that the Minister thinks fit);

- (e) any action that must be undertaken by the licensee as a result of or in response to the consultation.
- (3) Subject to the regulations, in determining whether or not to approve a statement (or revised statement) of environmental objectives, the Minister must have regard to any submissions received under this section.

50—Amendment of section 106—Environmental register

Section 106(2)—delete subsection (2) and substitute:

- (2) The register must contain—
- (a) a copy of every environmental impact report prepared for the purposes of this Act; and
- (b) a copy of the current environmental impact assessment criteria; and
- (c) a copy of every current statement (or revised statement) of environmental objectives approved under this Act and a copy of the environmental impact report on which the statement is based; and
- (d) a copy of a report of a prescribed kind submitted by the licensee in connection with a statement (or revised statement) of environmental objectives; and
- (e) any other document prescribed by the regulations.

51—Substitution of sections 108 and 109

Sections 108 and 109—delete the sections and substitute:

108—Power to direct persons to take action to prevent or minimise environmental harm

- (1) If, in the Minister's opinion, regulated activities are being conducted in a way that results in, or that is reasonably likely to result in—
- (a) undue damage to the environment; or
- (b) a breach of a statement of environmental objectives; or
- (c) any other breach of this Act,

the Minister may, by written notice given to a licensee (an *environmental direction*), direct that action be taken to comply with specified requirements to prevent or minimise damage to the environment (to the extent necessary to address the relevant matter arising under paragraph (a), (b) or (c)).

- (2) A direction under this section may impose any requirement reasonably required for the purpose for which the direction is issued including 1 or more of the following:
- (a) a requirement that a person specified or identified in the direction discontinue, or not commence, a specified activity indefinitely or for a specified period or until further notice from the Minister or an authorised officer;
 - (b) a requirement that a person specified or identified in the direction take specified action in a specified way, and within a specified period or at specified times or in specified circumstances;
 - (c) a requirement that a person specified or identified in the direction take action to prevent or minimise any damage to the environment, or to control any specified activity;
 - (d) a requirement that a person specified or identified in the direction undertake specified tests or monitoring and, in relation to such a requirement—
 - (i) a requirement that the tests or monitoring be carried out by a person with specified qualifications or experience; or
 - (ii) a requirement that a report or reports be provided to the Minister, or to any other specified person;
 - (e) a requirement that a person specified or identified in the direction take specified action to rehabilitate or restore any land;
 - (f) a requirement that a person specified or identified in the direction prepare a plan of action (that complies with any specified requirements and to the satisfaction of the Minister) to prevent or address—
 - (i) undue damage to the environment; or
 - (ii) a breach of a statement of environmental objectives; or
 - (iii) any other breach of this Act;
 - (g) a requirement that a person specified or identified in the direction provide the Minister with specified results or reports.
- (3) A direction under this section must—
- (a) specify the grounds on which the direction is issued; and
 - (b) allow a reasonable time for compliance with the direction.
- (4) A person to whom a direction relates must comply with a direction under this section within the time allowed in the direction.

Maximum penalty: \$250 000.

- 5
- (5) If a direction is given under this section, the Minister may review the adequacy of the relevant statement of environmental objectives and, if it appears on the review that a revised statement of environmental objectives is appropriate, the Minister may take the necessary steps to have a revised statement of environmental objectives prepared and brought into force.
- (6) The Minister must ensure that the owner of land is notified of an environmental direction given under this section.

109—Power to direct rehabilitation of land

- 10
- (1) The Minister may, by written notice given to a licensee (a *rehabilitation direction*), direct that action be taken—
- (a) —
- (i) to rehabilitate land in accordance with the requirements of a statement of environmental objectives; or
- 15
- (ii) to rehabilitate land to a standard required to secure compliance with a condition of the relevant licence, (including land outside the area of the licence); or
- (b) to remove abandoned equipment and facilities.
- 20
- (2) A direction under this section—
- (a) must specify the grounds on which the direction is issued; and
- (b) must allow a reasonable time for compliance with the direction.
- 25
- (3) A licensee must comply with a direction under this section within the time allowed in the direction.
Maximum penalty: \$250 000.
- (4) For the purposes of this section, a rehabilitation direction may be issued at any time (including after a licence has expired or been cancelled or surrendered) and a reference to a licensee extends (in all cases) to the holder of a licence that has since expired, or has been cancelled or surrendered (but, in such a case, a notice may only be given to the person who was the holder of the licence immediately before its expiration, cancellation or surrender).
- 30
- (5) The Minister must ensure that the owner of land is notified of a rehabilitation direction given under this section.
- 35

52—Amendment of section 110—Application for review of determination

Section 110—delete "an environmental direction" wherever occurring and substitute in each case:

40 a direction under this Division

53—Amendment of section 111—Liability for damage caused by authorised activities

Section 111—after subsection (2) insert:

- 5 (2a) A report under subsection (2) must be made in a manner and comply with any requirements determined by the Minister.

54—Amendment of section 112—Registrable dealings

(1) Section 112—after paragraph (c) insert:

or

- 10 (d) the acquisition of a controlling interest in a business that—
(i) holds a licence; or
(ii) holds the whole or any part of an interest conferred by a licence.

(2) Section 112—after its present contents (now to be designated as subsection (1)) insert:

- 15 (2) In this section—
business includes bodies and associations (corporate and incorporated) and partnerships;
a person has a *controlling interest in a business* if the person would be treated as having a controlling interest in the business for the purposes of section 72 of the *Payroll Tax Act 2009* (disregarding section 72(1)).
20

55—Amendment of section 120—Powers of entry and inspection

(1) Section 120(2), penalty provision—delete "\$4 000" and substitute:

\$10 000

(2) Section 120—after subsection (2) insert:

- 25 (3) A person must give an authorised officer such assistance as is reasonably required for the effective exercise of a power conferred by this section.
Maximum penalty: \$10 000 or imprisonment for 6 months.

56—Amendment of section 121—Power to gather information

30 (1) Section 121(2), penalty provision—delete "\$4 000" and substitute:

\$10 000

(2) Section 121(3), penalty provision—delete "\$4 000" and substitute:

\$10 000

57—Amendment of section 122—Production of records

35 Section 122(2), penalty provision—delete "\$4 000" and substitute:

\$10 000

58—Substitution of sections 129 and 130

Sections 129 and 130—delete the sections and substitute:

129—Service

A notice or document required to be given or sent to a person under this Act may—

- (a) be given to the person personally; or
- (b) be posted in an envelope addressed to the person—
 - (i) at the person's last known address; or
 - (ii) at any address for service provided by the person; or
- (c) be left for the person with someone apparently over the age of 16 years at any address for service provided by the person; or
- (d) be transmitted by email to an email address provided by the person (in which case the notice or document will be taken to have been given or sent at the time of transmission).

130—False or misleading information

A person who gives information to the Minister, an authorised officer or any other person involved in the administration of this Act that is false or misleading in a material particular is guilty of an offence.

Maximum penalty: \$150 000.

59—Insertion of section 132

After section 131 insert:

132—Charge on property if debt due to Crown

- (1) This section applies to property (other than real property) if the owner of the property is liable to pay a debt due to the Crown under this Act.
- (2) A charge on the property to secure payment of the debt to the Crown is created by force of this section.
- (3) A charge created on property under subsection (2)—
 - (a) has priority over any other interest in the property (including a security interest within the meaning of the *Personal Property Securities Act 2009* of the Commonwealth); and
 - (b) has priority over all other encumbrances; and
 - (c) is not affected by a change in ownership of the property.
- (4) Section 73(2) of the *Personal Property Securities Act 2009* of the Commonwealth applies to the charge.

- (5) The charge remains in force until the debt is paid in full or otherwise discharged.

60—Substitution of section 135

Section 135—delete the section and substitute:

135—Disclosure of information

An authorised officer or any other person who carries out or has carried out duties related to the administration of this Act must not disclose confidential information obtained by them in the course of the administration of this Act except—

- (a) to another person in the course of the administration of this Act; or
- (b) as permitted by the person in whose favour the duty of confidentiality exists; or
- (c) as permitted by the Minister after consultation (where practicable) with the person in whose favour the duty of confidentiality exists; or
- (d) to a person for the purposes of ensuring compliance with a requirement of this Act or a prescribed Act; or
- (e) to a prescribed authority or an officer or employee of a prescribed authority; or
- (f) as required by law; or
- (g) as is otherwise necessary for the proper administration of this Act or a prescribed Act.

Maximum penalty: \$20 000.

61—Amendment of section 136—Administrative penalties

Section 136(4)(a)—delete "\$10 000" and substitute:

\$15 000

62—Substitution of section 138

Section 138—delete the section and substitute:

138—Regulations and fee notice

- (1) The Governor may make such regulations as are contemplated by, or necessary or expedient for the purposes of, this Act.
- (2) Without limiting the generality of subsection (1), the regulations may—
 - (a) regulate the conduct of operations involved in exploration for, or the production or generation of, a regulated substance or a regulated resource; or
 - (b) prohibit or restrict activities that may result in waste—
 - (i) of a regulated resource or a regulated substance; or

(ii) associated with undertaking a regulated activity;
and

(c) require licensees generally or a particular class of licensee to provide prescribed information certified, if the regulations so require, by declaration under this Act; and

(d) provide that any matter or thing in respect of which regulations may be made is to be determined according to the discretion of the Minister; and

(e) prescribe a penalty not exceeding \$20 000 for a contravention of any regulation.

(3) The Governor may by regulation, make provisions of a saving or transitional nature consequent on the amendment of this Act by another Act.

(4) A provision made by a regulation under subsection (3) may be in addition to any provision of a saving or transitional nature made by the Act that makes the amendment.

(5) A provision made by a regulation under subsection (3) may, if the regulations so provide, take effect from the commencement of the amendment or from a later day.

(6) To the extent to which a provision takes effect under subsection (5) from a day earlier than the day of the publication of the regulation in the Gazette, the provision does not operate to the disadvantage of a person by—

(a) decreasing the person's rights; or

(b) imposing liabilities on the person.

(7) The Minister may prescribe fees for the purposes of this Act by fee notice under the *Legislation (Fees) Act 2019*.

Acknowledgement of Country

The Department for Energy and Mining (DEM) acknowledges Aboriginal people as the First Nations Peoples of South Australia. We recognise and respect the cultural connections as the traditional owners and occupants of the land and waters of South Australia, and that they continue to make a unique and irreplaceable contribution to the state.



Government of South Australia
Department for Energy and Mining