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The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

**Environment Protection and Biodiversity
Conservation Amendment (Mining,
Petroleum and Water Resources) Bill
2011**

No. , 2011

(Mr Windsor)

**A Bill for an Act to amend the *Environment
Protection and Biodiversity Conservation Act 1999*,
and for related purposes**

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1 **A Bill for an Act to amend the *Environment*
2 *Protection and Biodiversity Conservation Act 1999,*
3 and for related purposes**

4 The Parliament of Australia enacts:

5 **1 Short title**

6 This Act may be cited as the *Environment Protection and
7 Biodiversity Conservation Amendment (Mining, Petroleum and
8 Water Resources) Act 2011.*

9 **2 Commencement**

- 10 (1) Each provision of this Act specified in column 1 of the table
11 commences, or is taken to have commenced, in accordance with
12 column 2 of the table. Any other statement in column 2 has effect
13 according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	
2. Schedule 1	The day after the Bill for this Act is introduced into the House of Representatives.	

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3
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Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

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(2) Any information in column 3 of the table is not part of this Act.
Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

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9
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13

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendments

Environment Protection and Biodiversity Act 1999

1 After Subdivision FA of Division 1 of Part 3

Insert:

Subdivision FB—Protection of water resources from mining operations

24D Requirement for approval of mining operations with a significant impact on water resources

(1) A constitutional corporation, the Commonwealth or a Commonwealth agency must not take an action in the course of mining operations that has, will have or is likely to have a significant impact on the quality, structural integrity or hydraulic balance of a water resource.

Civil Penalty:

- (a) for an individual—5,000 penalty units;
- (b) for a body corporate—50,000 penalty units.

(2) A person must not, for the purposes of trade or commerce:

- (a) between Australia and another country; or
- (b) between 2 States; or
- (c) between a State and Territory; or
- (d) between 2 Territories;

take an action in the course of mining operations that has, will have or is likely to have a significant impact on the quality, structural integrity or hydraulic balance of a water resource.

Civil Penalty:

- (a) for an individual—5,000 penalty units;
- (b) for a body corporate—50,000 penalty units.

(3) A person must not take an action in the course of mining operations in:

- (a) a Commonwealth area; or

1 (b) a Territory;
2 that has, will have or is likely to have a significant impact on the
3 quality, structural integrity or hydraulic balance of a water
4 resource.

5 Civil Penalty:

- 6 (a) for an individual—5,000 penalty units;
7 (b) for a body corporate—50,000 penalty units.

- 8 (4) Subsections (1) to (3) (inclusive) do not apply to an action if:
9 (a) an approval of the taking of the action by the constitutional
10 corporation, Commonwealth agency, Commonwealth or
11 person is in operation under Part 9 for the purposes of this
12 section; or
13 (b) Division 2, 5A or 6 of Part 4 lets the constitutional
14 corporation, Commonwealth agency, Commonwealth or
15 person take the action without an approval under Part 9 for
16 the purposes of this section; or
17 (c) there is in force a decision of the Minister under Division 2
18 of Part 7 that this section is not a controlling provision for the
19 action and, if the decision was made because the Minister
20 believed the action would be taken in a manner specified in
21 the notice of the decision under section 77, the action is taken
22 in that manner; or
23 (d) the action is an action described in subsection 160(2) (which
24 describes actions whose authorisation is subject to a special
25 environmental assessment process).

26 **24E What are *mining operations*?**

- 27 (1) The following are *mining operations*:
28 (a) operations or activities connected with, or incidental to, the
29 mining or recovery of minerals (including petroleum or gas)
30 or the production of material from minerals, including:
31 (i) prospecting and exploration for minerals; and
32 (ii) milling, refining, treatment and processing of minerals;
33 and
34 (iii) storage and disposal of minerals and materials produced
35 from minerals;
-

-
- 1 (b) the construction and use of towns, camps, dams, pipelines
2 power lines or other structures for the purposes of operations
3 or activities described in paragraph (a);
4 (c) the performance of any other work for the purposes of
5 operations or activities described in paragraph (a).
- 6 (2) A **mineral** is any non-living substance that can be extracted from
7 the ground, whether naturally occurring or created by or during the
8 process of extraction:
9 (a) including, but not limited to, coal, ores, petroleum, natural
10 gas, coal seam gas, rock, sand and gravel; but
11 (b) not including water, except where water is extracted as a part
12 of the process of extracting another substance.

13 **24F What is a *water resource*?**

14 A *water resource* is:

- 15 (a) the whole or any part of a river, lake, aquifer or other place
16 where water occurs naturally on or below the surface of the
17 ground, whether permanently, seasonally or during unusually
18 wet seasons; or
19 (b) any recharge zone or system for such a place.

20 **24G Offences relating to mining operations**

- 21 (1) A constitutional corporation, or a Commonwealth agency that does
22 not enjoy the immunities of the Commonwealth, commits an
23 offence if:
24 (a) the corporation or agency takes an action in the course of
25 mining operations; and
26 (b) the action results or will result in a significant impact on the
27 quality, structural integrity or hydraulic balance of a water
28 resource.

29 Penalty: Imprisonment for 7 years or 420 penalty units, or both.

- 30 (2) A constitutional corporation, or a Commonwealth agency that does
31 not enjoy the immunities of the Commonwealth, commits an
32 offence if:
33 (a) the corporation or agency takes an action in the course of
34 mining operations; and
-

- 1 (b) the action is likely to have a significant impact on the quality,
2 structural integrity or hydraulic balance of a water resource.

3 Penalty: Imprisonment for 7 years or 420 penalty units, or both.

- 4 (3) A person commits an offence if:
5 (a) the person takes an action in the course of mining operations;
6 and
7 (b) the action is taken for the purposes of trade or commerce:
8 (i) between Australia and another country; or
9 (ii) between 2 States; or
10 (iii) between a State and Territory; or
11 (iv) between 2 Territories; and
12 (c) the action results or will result in a significant impact on the
13 quality, structural integrity or hydraulic balance of a water
14 resource.

15 Penalty: Imprisonment for 7 years or 420 penalty units, or both.

- 16 (4) A person commits an offence if:
17 (a) the person takes an action in the course of mining operations;
18 and
19 (b) the action is taken for the purposes of trade or commerce:
20 (i) between Australia and another country; or
21 (ii) between 2 States; or
22 (iii) between a State and Territory; or
23 (iv) between 2 Territories; and
24 (c) the action is likely to have a significant impact on the quality,
25 structural integrity or hydraulic balance of a water resource.

26 Penalty: Imprisonment for 7 years or 420 penalty units, or both.

- 27 (5) A person commits an offence if:
28 (a) the person takes an action in the course of mining operations;
29 and
30 (b) the action is taken in:
31 (i) a Commonwealth area; or
32 (ii) a Territory; and

- 1 (c) the action results or will result in a significant impact on the
 2 quality, structural integrity or hydraulic balance of a water
 3 resource.

4 Penalty: Imprisonment for 7 years or 420 penalty units, or both.

5 (6) A person commits an offence if:

- 6 (a) the person takes an action in the course of mining operations;
 7 and
 8 (b) the action is taken in:
 9 (i) a Commonwealth area; or
 10 (ii) a Territory; and
 11 (c) the action is likely to have a significant impact on the quality,
 12 structural integrity or hydraulic balance of a water resource,

13 Penalty: Imprisonment for 7 years or 420 penalty units, or both.

14 Note 1: An executive officer of a body corporate convicted of an offence
 15 against this section may also commit an offence against section 495.

16 Note 2: If a person takes an action on land that contravenes this section, a
 17 landholder may commit an offence against section 496C.

18 (7) Subsections (1) to (6) (inclusive) do not apply to an action if:

- 19 (a) an approval of the taking of the action by the constitutional
 20 corporation, Commonwealth agency or person is in operation
 21 under Part 9 for the purposes of this section; or
 22 (b) Division 2, 5A or 6 of Part 4 lets the constitutional
 23 corporation, Commonwealth agency or person take the action
 24 without an approval under Part 9 for the purposes of this
 25 section; or
 26 (c) there is in force a decision of the Minister under Division 2
 27 of Part 7 that this section is not a controlling provision for the
 28 action and, if the decision was made because the Minister
 29 believed the action would be taken in a manner specified in
 30 the notice of the decision under section 77, the action is taken
 31 in that manner; or
 32 (d) the action is an action described in subsection 160(2) (which
 33 describes actions whose authorisation is subject to a special
 34 environmental assessment process).

35 Note: The defendant bears an evidential burden in relation to the matters in
 36 this subsection. See subsection 13.3(3) of the *Criminal Code*.

1 **2 Section 34 (after table item 13G)**

2 Insert:

3

13H	section 24D	water resources
13I	section 24G	water resources

4

5 **3 After Division 5 of Part 4**

6 Insert:

7

8 **Division 5A—Mining operations covered by Ministerial
9 declarations and accredited mining authorisation
processes**

10 **Subdivision A—Effect of declarations**

11 **43AA Actions declared by Minister not to need approval**

12 A person may take an action described in a provision of
13 Subdivision FB of Division 1 of Part 3 (Protection of water
14 resources from mining operations) without an approval under
15 Part 9 for the purposes of the provision if:

- 16 (a) the action is one of a class of actions declared by the Minister
17 under section 43AB not to require approval under Part 9 for
18 the purposes of the provision (because the action is approved
19 in accordance with an accredited mining authorisation
20 process for the purposes of the declaration); and
- 21 (b) the declaration is in operation when the action is taken; and
- 22 (c) the action is taken in accordance with the accredited mining
23 authorisation process.

Subdivision B—Making declarations**43AB Making declaration that actions do not need approval under Part 9***Declaration of actions not needing approval*

- (1) The Minister may, by legislative instrument, declare that actions in a class of actions specified in the declaration wholly or partly by reference to the fact that their taking has been approved under a law of a State or self-governing Territory, in accordance with an authorisation process that is an accredited mining authorisation process for the purposes of the declaration, do not require approval under Part 9 for the purposes of a provision of Subdivision FB of Division 1 of Part 3.

Note 1: Subdivisions C and D set out rules about prerequisites for making a declaration and limits on making a declaration.

Note 2: Section 43AD provides for revocation of a declaration.

What is an accredited mining authorisation process?

- (2) An authorisation process is an *accredited mining authorisation process* for the purposes of a declaration that certain actions do not require approval under Part 9 for the purposes a provision of Subdivision FB of Division 1 of Part 3 if and only if:
- the authorisation process is set out in a law of a State or self-governing Territory, and the law and the authorisation process are identified in or under the declaration; and
 - the authorisation process has been accredited in writing by the Minister in accordance with this section for the purposes of the declaration.

Accrediting authorisation process

- (3) For the purposes of subsection (2), the Minister may accredit by written instrument an authorisation process for the purposes of a declaration. However, the Minister may do so only if the Minister is satisfied that:
- the authorisation process and the law under which it is in operation, or in which it is set out, meet the criteria prescribed by the regulations (if any); and

Schedule 1 Amendments

- 1 (b) there has been or will be adequate assessment of the impacts
2 that actions approved in accordance with the authorisation
3 process:
4 (i) have or will have; or
5 (ii) are likely to have;
6 on water resources protected by Subdivision FB of Division 1
7 of Part 3; and
8 (c) actions approved or taken in accordance with the
9 authorisation process will not have unacceptable or
10 unsustainable impacts on water resources protected by
11 Subdivision FB of Division 1 of Part 3.

12 The Minister must publish in accordance with the regulations (if
13 any) the instrument accrediting the authorisation process.

Tabling of authorisation process before accreditation

- 14 (4) The Minister must cause to be laid before each House of the
15 Parliament:
16 (a) a copy of the relevant part of the law in which the
17 authorisation process is set out that the Minister is
18 considering accrediting for the purposes of subsection (2);
19 and
20 (b) a notice that the Minister proposes to accredit the
21 authorisation process for the purposes of a declaration under
22 this section.

Limitations on accreditation during period for opposition

- 24 (5) The Minister must not accredit an authorisation process for the
25 purposes of subsection (2):
26 (a) before, or within 15 sitting days after, a copy of the
27 authorisation process is laid before each House of the
28 Parliament under this section; or
29 (b) if, within those 15 sitting days of a House, notice of a motion
30 to oppose accreditation of the authorisation process is given
31 in that House—subject to subsection (6), within 15 sitting
32 days of that House after the notice is given.

- 33 (6) If:
34 (a) notice of a motion to oppose accreditation of the
35 authorisation process is given in a House of the Parliament
-

1 within 15 sitting days after the authorisation process is laid
2 before the House under this section; and

3 (b) the notice is withdrawn or otherwise disposed of within 15
4 sitting days of that House after the notice is given;

5 then, subject to paragraph (5)(a), the Minister may accredit the
6 authorisation process after the motion is withdrawn or otherwise
7 disposed of.

8 *No accreditation after accreditation opposed*

9 (7) The Minister must not accredit the authorisation process if either
10 House of the Parliament passes a resolution opposing accreditation
11 of the authorisation process following a motion of which notice has
12 been given within 15 sitting days after the relevant part of the law
13 has been laid before the House under this section.

14 *No accreditation if motion not defeated in time*

15 (8) The Minister must not accredit the authorisation process if, at the
16 end of 15 sitting days after notice of a motion to oppose
17 accreditation of the authorisation process that was given in a House
18 of the Parliament within 15 sitting days after the relevant part of
19 the law was laid before the House under this section:
20 (a) the notice has not been withdrawn and the motion has not
21 been called on; or
22 (b) the motion has been called on, moved and seconded and has
23 not been withdrawn or otherwise disposed of.

24 *Extended time after dissolution or prorogation*

25 (9) If:
26 (a) notice of a motion to oppose the accreditation of the
27 authorisation process is given in a House of the Parliament
28 (the **opposing House**); and
29 (b) before the end of 15 sitting days of the opposing House after
30 the notice is given:
31 (i) the House of Representatives is dissolved or expires; or
32 (ii) the Parliament is prorogued; and
33 (c) at the time of the dissolution, expiry or prorogation (as
34 appropriate):

1 (i) the notice has not been withdrawn and the motion has
2 not been called on; or
3 (ii) the motion has been called on, moved and seconded and
4 has not been withdrawn or otherwise disposed of;
5 the relevant part of the law is taken for the purposes of
6 subsections (5), (6), (7) and (8) to have been laid before the
7 opposing House on the first sitting day of that House after the
8 dissolution, expiry or prorogation (as appropriate).

9 Subdivision C—Prerequisites for making declarations

**10 43AC Minister may only make declaration if prescribed criteria are
11 met**

12 The Minister may make a declaration under section 43AB only if
13 the Minister is satisfied that the declaration:

- 14 (a) accords with the objects of this Act; and
15 (b) meets the requirements (if any) prescribed by the regulations.

16 Subdivision D—Other rules about declarations

17 43AD Revoking declarations

18 Revoking declarations

- 19 (1) The Minister may, by legislative instrument, revoke a declaration
20 made under section 43AB.

21 Revocation does not affect some actions

- 22 (2) If:
23 (a) a declaration made under section 43AB is revoked; and
24 (b) before the revocation, an action was being taken that could be
25 taken without approval under Part 9 because its taking was
26 covered by the declaration; and
27 (c) the action had not been completed before the revocation;
28 this Act continues to operate in relation to the action as if the
29 declaration had not been revoked.

1 **43AE Other rules about declarations**

2 *Minister must not give preference*

3 In making a declaration or accrediting an authorisation process
4 under section 43AB, or revoking a declaration under
5 section 43AD, relating to an action taken:

- 6 (a) by a person for the purposes of trade between Australia and
7 another country or between 2 States; or
8 (b) by a constitutional corporation;

9 the Minister must not give preference (within the meaning of
10 section 99 of the Constitution) to one State or part of a State over
11 another State or part of a State.

12 **43AF Minor amendments of accredited mining authorisation
13 process**

14 If:

- 15 (a) an authorisation process is an accredited mining authorisation
16 process; and
17 (b) the authorisation process is amended, or is proposed to be
18 amended; and
19 (c) the Minister is satisfied that the amendments are, or will be,
20 minor; and
21 (d) the Minister is satisfied that the authorisation process as
22 amended meets, or will meet, the requirements of:
23 (i) paragraphs 43AB(3)(a), (b) and (c); and
24 (ii) section 43AC;

25 the Minister may, by legislative instrument, determine that the
26 authorisation process as amended continues in effect, for the
27 purposes of this Act, as the accredited mining authorisation
28 process.

29 **4 At the end of Division 6 of Part 4**

30 Add:

1 **43C Mining operations with prior authorisation**

2 A person may take an action described in a provision of
3 Subdivision FB of Division 1 of Part 3 without an approval under
4 Part 9 for the purposes of the provision if taking the action:

- 5 (a) was, or would have been, lawful immediately before the
6 commencement of Subdivision FB of Division 1 of Part 3;
7 and
8 (b) would be lawful at the time it is taken if Subdivision FB of
9 Division 1 of Part 3 had not been enacted.

10 **5 At the end of subsection 25AA(2)**

11 Add:

- 12 ; (i) subsections 24G(1) to (6).

13 **6 At the end of subsection 25AA(3)**

14 Add:

- 15 ; (i) subsections 24D(1) to (3).

16 **7 After subparagraph 495(2)(a)(vi)**

17 Insert:

- 18 (vib) section 24G (Offences relating to mining operations); or

19 **8 After subparagraph 496C(1)(a)(vii)**

20 Insert:

- 21 (viib) section 24G (Offences relating to mining operations); or

22 **9 At the end of subsection 355(1)**

23 Add:

24 Note: For *mining operations*, see section 24E.

25 **10 Subsections 355(2) and (3)**

26 Repeal the subsections.

27 **11 Section 528 (definition of *mineral*)**

28 Omit “355(3)”, substitute “24E(2)”.

29 **12 Section 528 (definition of *mining operations*)**

1 Omit “355(2)”, substitute “24E(1)”.

2 **13 Section 528**

3 Insert:

4 *water resource* has the meaning given by section 24F.