



Western Australia

Duties Amendment (Farm-in Agreements) Act 2022

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Western Australia

Duties Amendment (Farm-in Agreements) Act 2022

No. 37 of 2022

An Act to amend the *Duties Act 2008*.

[Assented to 1 November 2022]

The Parliament of Western Australia enacts as follows:

s. 1

1. Short title

This is the *Duties Amendment (Farm-in Agreements) Act 2022*.

2. Commencement

This Act comes into operation as follows —

- (a) sections 1 and 2 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on the day after that day.

3. Act amended

This Act amends the *Duties Act 2008*.

4. Section 9 amended

- (1) In section 9 delete the definitions of:

exploration amount

farm-in agreement

- (2) In section 9 insert in alphabetical order:

concessional farm-in transaction has the meaning given in section 91K(1);

exploration requirement has the meaning given in section 91K(1);

farmee has the meaning given in section 91K(1);

5. Section 11 amended

Delete section 11(1)(j) and insert:

- (j) a concessional farm-in transaction.

6. Section 13 deleted

Delete section 13.

7. Section 42 amended

Delete section 42(15).

8. Chapter 2 Part 5 Division 9 inserted

At the end of Chapter 2 Part 5 insert:

Division 9 — Farm-in agreements and farm-in transactions

Subdivision 1 — Preliminary

91J. Introduction to Division

This Division —

- (a) explains farm-in agreements, farm-in transactions and related concepts; and
- (b) includes various provisions dealing with the treatment of farm-in agreements and farm-in transactions for duty purposes.

91K. Terms used

(1) In this Division —

concessional farm-in transaction has the meaning given in section 91L(3), subject to section 91L(4), Subdivision 4 and section 91U;

exploration includes development that is carried out solely —

- (a) for the purpose of facilitating exploration; or
- (b) otherwise incidentally to exploration;

exploration amount has the meaning given in section 91N(5), subject to section 91N(6);

exploration licence means an exploration licence granted under the *Mining Act 1978* section 57;

exploration requirement has the meaning given in section 91N(1) to (4), subject to section 91N(6);

farmee has the meaning given in section 91L(1)(b);

farm-in agreement has the meaning given in section 91L(1) and (2);

farm-in transaction has the meaning given in section 91M(1), subject to section 91M(2) to (5);

farmor has the meaning given in section 91L(1)(a);

minerals has the meaning given in the *Mining Act 1978* section 8(1);

mining has the meaning given in the *Mining Act 1978* section 8(1);

primary farmor —

- (a) means a person who is the holder, or 1 of the holders, of a mining tenement; and
- (b) includes a person (the **transferee**) who is not the holder, or 1 of the holders, of a mining tenement in a case where —
 - (i) there is a transfer of an interest in the mining tenement to the transferee in order to make the transferee the holder, or 1 of the holders, of the mining tenement; and
 - (ii) the transfer is still to be registered under the *Mining Act 1978* section 103C; and

(iii) but for the application of the *Mining Act 1978* section 103C(8) to the transfer, the transferee would be the holder, or 1 of the holders, of the mining tenement; and

(iv) subsection (2) of this section applies to the transfer;

and

(c) includes a person who is the applicant, or 1 of the applicants, under the *Mining Act 1978* for a mining tenement in a case where the application is still to be determined;

prospecting licence means a prospecting licence granted under the *Mining Act 1978* section 40;

purchase agreement has the meaning given in section 91M(9);

relevant derivative mining right, in relation to a farm-in transaction, means a derivative mining right that is a relevant derivative mining right for the farm-in transaction under section 91M(1)(a)(ii), subject to subsection (3) of this section;

relevant mining tenement, in relation to a farm-in transaction, means a mining tenement that is a relevant mining tenement for the farm-in transaction under section 91M(1)(a)(i), subject to subsection (3) of this section;

replacement derivative mining right has the meaning given in section 91M(7) and (8);

replacement mining tenement has the meaning given in section 91M(6);

vary, in relation to an agreement, includes to modify the agreement's effect.

- (2) This subsection applies to a transfer for the purposes of paragraph (b)(iv) of the definition of *primary farmor* in subsection (1) if —
- (a) the transfer is made to the transferee —
 - (i) under a farm-in transaction as contemplated in section 91M(1)(c)(i); and
 - (ii) without limiting subparagraph (i), after the transferee has fulfilled the exploration requirement;
 - or
 - (b) the transfer is made to the transferee as a purchaser of the interest in the mining tenement.
- (3) In sections 91M(1)(c) and (d) and (3) to (5), 91N(2) and (4), 91Q(2), 91T(3) and (4)(b) and 91V(1), references to a relevant mining tenement or relevant derivative mining right include, respectively —
- (a) a replacement mining tenement for the relevant mining tenement; or
 - (b) a replacement derivative mining right for the relevant derivative mining right.
- (4) In this Division, references to a mining tenement or derivative mining right being granted to replace another mining tenement or derivative mining right include cases where the mining tenement or derivative mining right is granted in substitution, conversion or renewal of the other mining tenement or derivative mining right.
- (5) In this Division, references to exploration of a mining tenement or derivative mining right are to exploration of land the subject of the mining tenement or derivative mining right.

Subdivision 2 — Explanation of farm-in agreements, farm-in transactions and related concepts**91L. Farm-in agreements and concessional farm-in transactions**

- (1) A *farm-in agreement* is an agreement, whether conditional or not, that is made between the following persons and contains 1 or more farm-in transactions —
 - (a) a person (the *farmor*) who is either or both of the following —
 - (i) a primary farmor for 1 or more mining tenements;
 - (ii) the holder, or 1 of the holders, of 1 or more derivative mining rights;
 - (b) another person (the *farmee*).
- (2) In addition to the 1 or more farm-in transactions, a farm-in agreement may contain other types of transactions.
- (3) A farm-in transaction contained in a farm-in agreement is a *concessional farm-in transaction*.
- (4) Despite subsection (3), a farm-in transaction contained in a farm-in agreement is not a *concessional farm-in transaction* if, when the farm-in agreement is made —
 - (a) the farmee —
 - (i) is a primary farmor for a relevant mining tenement; or
 - (ii) is the holder, or 1 of the holders, of a derivative mining right that authorises exploitation of land the subject of a relevant mining tenement; or
 - (iii) otherwise has any interest in a relevant mining tenement or in a derivative

mining right of the type referred to in subparagraph (ii);

or

- (b) the farmee —
- (i) is 1 of the holders of a relevant derivative mining right; or
 - (ii) is a primary farmor for a mining tenement to which a relevant derivative mining right relates; or
 - (iii) is the holder, or 1 of the holders, of a derivative mining right (other than a relevant derivative mining right) that authorises exploitation of land the subject of a mining tenement of the type referred to in subparagraph (ii); or
 - (iv) otherwise has any interest in a relevant derivative mining right, in a mining tenement of the type referred to in subparagraph (ii) or in a derivative mining right of the type referred to in subparagraph (iii).

91M. Farm-in transactions and other concepts

- (1) A *farm-in transaction* is an agreement, whether conditional or not, to the effect that —
- (a) as set out in paragraphs (b) to (d), the agreement relates to either or both of the following —
 - (i) the mining tenement, or 1 or more of the mining tenements, referred to in section 91L(1)(a)(i) (each such mining tenement to which the agreement relates being a *relevant mining tenement*);

- (ii) the derivative mining right, or 1 or more of the derivative mining rights, referred to in section 91L(1)(a)(ii) (each such derivative mining right to which the agreement relates being a *relevant derivative mining right*);

and

- (b) the farmee is to fulfil, or has the option of fulfilling, an exploration requirement; and
- (c) if paragraph (a)(i) applies — after the farmee fulfils the exploration requirement, the farmor is to do, or the farmee has the option of requiring the farmor to do, either or both of the following —
 - (i) transfer to the farmee an interest in each relevant mining tenement;
 - (ii) grant the farmee a derivative mining right in relation to each relevant mining tenement;

and

- (d) if paragraph (a)(ii) applies — after the farmee fulfils the exploration requirement, the farmor is to arrange, or the farmee has the option of requiring the farmor to arrange, for the farmee to acquire an interest in each relevant derivative mining right.

- (2) Despite subsection (1), an agreement is not a *farm-in transaction* if —
 - (a) otherwise than under a purchase agreement, the farmee is to acquire, or has the option of acquiring, a beneficial interest without fulfilling the exploration requirement; and

- (b) the beneficial interest corresponds (wholly or partly) to a legal interest that the farmee is to acquire, or has the option of acquiring, after fulfilling the exploration requirement as contemplated in subsection (1)(c)(i) or (ii) or (d).
- (3) The requirement of subsection (1)(c)(i) is met only if —
 - (a) the agreement specifies —
 - (i) the interest or interests to be transferred; or
 - (ii) the way in which the interest or interests are to be determined;
 - and
 - (b) in relation to each relevant mining tenement, the interest to be transferred is, or will be, such that, were the transfer to be made, the farmor and farmee would both be, or would still both be, holders of the relevant mining tenement.
- (4) The requirement of subsection (1)(c)(ii) is met only if —
 - (a) the agreement specifies —
 - (i) the mining to be authorised by each derivative mining right; or
 - (ii) the way in which that mining is to be determined;
 - and
 - (b) in relation to each relevant mining tenement, were the derivative mining right to be granted, the grant would not result in the farmee having, at any time, substantially the same authority to carry out mining that the farmor has, at that time, under the relevant mining tenement.

- (5) The requirement of subsection (1)(d) is met only if —
- (a) the agreement specifies —
 - (i) the interest or interests to be acquired; or
 - (ii) the way in which the interest or interests are to be determined;
 and
 - (b) in relation to each relevant derivative mining right, the interest to be acquired is, or will be, such that, were it to be acquired, the farmor and farmee would both be, or would still both be, holders of the relevant derivative mining right.
- (6) A **replacement mining tenement**, for a relevant mining tenement, is a mining tenement —
- (a) that is granted, after the making of the farm-in transaction concerned, to replace (wholly or partly) —
 - (i) the relevant mining tenement; or
 - (ii) an earlier replacement mining tenement for the relevant mining tenement; or
 - (iii) a mining tenement referred to in subparagraph (i) or (ii), together with 1 or more other mining tenements each of which is also a relevant mining tenement for the farm-in transaction or a replacement mining tenement for such a relevant mining tenement;
 and
 - (b) that relates only to the land, or to a part of the land, the subject of —
 - (i) the mining tenement that is replaced; or

- (ii) the mining tenements that are replaced (taken together as if they were a single mining tenement);
 - and
 - (c) of which the farmor is the holder or 1 of the holders.
- (7) A **replacement derivative mining right**, for a relevant derivative mining right, is a derivative mining right —
- (a) that is granted, after the making of the farm-in transaction concerned, to replace (wholly or partly) —
 - (i) the relevant derivative mining right; or
 - (ii) an earlier replacement derivative mining right for the relevant derivative mining right; or
 - (iii) a derivative mining right referred to in subparagraph (i) or (ii), together with 1 or more other derivative mining rights each of which is also a relevant derivative mining right for the farm-in transaction or a replacement derivative mining right for such a relevant derivative mining right;
- and
- (b) that relates only to the land, or to a part of the land, the subject of —
 - (i) the derivative mining right that is replaced; or
 - (ii) the derivative mining rights that are replaced (taken together as if they were a single derivative mining right);
- and

- (c) subject to subsection (8), that does not authorise any mining beyond the mining authorised by —
 - (i) the derivative mining right that is replaced; or
 - (ii) the derivative mining rights that are replaced;and
 - (d) of which the farmor is the holder or 1 of the holders.
- (8) The requirement of subsection (7)(c) does not have to be met if —
- (a) the derivative mining right is granted in relation to a mining tenement (the ***new mining tenement***) that was granted to replace (wholly or partly) another mining tenement (the ***previous mining tenement***); and
 - (b) the new mining tenement authorises mining beyond the mining authorised by the previous mining tenement; and
 - (c) the derivative mining right only authorises mining for minerals for which mining is authorised by —
 - (i) the derivative mining right that is replaced; or
 - (ii) the derivative mining rights that are replaced.
- (9) A ***purchase agreement***, in relation to a farm-in transaction, is an agreement made between the farmor and farmee to the effect that —
- (a) the farmee is to provide consideration, or has the option of providing consideration, to the farmor; and

- (b) the providing of the consideration by the farmee would be in lieu of the farmee fulfilling a part (but not the whole) of the exploration requirement; and
- (c) were the farmee to provide the consideration — the farm-in transaction would be varied —
 - (i) so as to reduce the exploration requirement by excluding the part referred to in paragraph (b); and
 - (ii) so that, accordingly, the reduced exploration requirement would become the exploration requirement for the farm-in transaction.

91N. Exploration requirement and exploration amount

- (1) For the purposes of section 91M(1), an ***exploration requirement*** is a requirement to do either or both of the following after the farm-in transaction is made —
 - (a) expend, on exploration carried out by the farmee after the farm-in transaction is made, an amount that is specified in, or determined in accordance with, the farm-in transaction;
 - (b) carry out exploration as specified in, or determined in accordance with, the farm-in transaction.
- (2) In subsection (1)(a) and (b), references to exploration are to —
 - (a) subject to paragraph (b) and subsection (4), exploration that consists, and only consists, of the following —
 - (i) if only section 91M(1)(a)(i) applies — exploration of each relevant mining tenement;

- (ii) if only section 91M(1)(a)(ii) applies — exploration of each relevant derivative mining right;
 - (iii) if both section 91M(1)(a)(i) and (ii) apply — exploration of each relevant mining tenement and each relevant derivative mining right;
- and
- (b) in relation to exploration of a relevant derivative mining right, exploration that consists only of either or both of the following —
 - (i) mining that is authorised by the relevant derivative mining right;
 - (ii) activities that are solely incidental to mining that is so authorised.
- (3) Subsection (4) —
 - (a) applies to any relevant mining tenement that has not been granted when the farm-in transaction is made; but
 - (b) cannot be relied upon in a way that would mean, in effect, that —
 - (i) no amount is required to be expended as referred to in subsection (1)(a); and
 - (ii) no exploration is required to be carried out as referred to in subsection (1)(b).
- (4) Despite subsection (2)(a)(i) and (iii), the exploration on which an amount is required to be expended as referred to in subsection (1)(a), or that is required to be carried out as referred to in subsection (1)(b), need not include any exploration of the relevant mining tenement.

- (5) In relation to a concessional farm-in transaction, the *exploration amount* is, as the case requires —
- (a) the amount required to be expended as referred to in subsection (1)(a); or
 - (b) the amount expended by the farmee after the concessional farm-in transaction is made on the exploration required to be carried out as referred to in subsection (1)(b); or
 - (c) the amount required to be expended as referred to in subsection (1)(a) and any additional amount expended by the farmee after the concessional farm-in transaction is made on the exploration required to be carried out as referred to in subsection (1)(b).
- (6) The Commissioner may, in relation to an agreement, allow expenditure on administrative costs that would not otherwise be regarded as expenditure on exploration for the purposes of this section to be so regarded, subject to any limits or other conditions imposed by the Commissioner.

Subdivision 3 — Treatment of farm-in agreements and farm-in transactions for duty purposes

910. Consideration

- (1) For the purposes of this Act, the exploration amount for a concessional farm-in transaction is taken not to be consideration for the concessional farm-in transaction.
- (2) Section 11(2) does not prevent a concessional farm-in transaction from being a dutiable transaction.
- (3) Subsections (4) to (6) apply if —
 - (a) a farm-in agreement is made; and

- (b) there is, or will be, consideration (the *relevant consideration*) that is, or will be, consideration for the farm-in agreement (as opposed to being, for example, consideration for a concessional farm-in transaction, or for another type of transaction, contained in the farm-in agreement).
- (4) The farm-in agreement is taken to contain, in addition to the 1 or more transactions that it actually contains, a dutiable transaction that is the acquisition by the farmee of a derivative mining right.
- (5) The derivative mining right is taken to be acquired by the farmee on the making of the farm-in agreement.
- (6) The dutiable value of the dutiable transaction is taken to be the relevant consideration.

91P. General rules relating to charging of duty

- (1) Nominal duty is chargeable on a concessional farm-in transaction if there is not, and will not be, any consideration for the concessional farm-in transaction.
- (2) Subsection (3) applies if —
 - (a) a farm-in agreement contains 2 or more concessional farm-in transactions; and
 - (b) apart from subsection (3), nominal duty would be chargeable on all of the concessional farm-in transactions contained in the farm-in agreement.
- (3) Nominal duty is chargeable on all of the concessional farm-in transactions taken together as if they were a single dutiable transaction.

- (4) The dutiable value of a dutiable transaction that is a concessional farm-in transaction is the consideration for the concessional farm-in transaction.
- (5) Duty is not chargeable on a concessional farm-in transaction if —
 - (a) apart from this subsection, the concessional farm-in transaction would be chargeable with nominal duty; and
 - (b) the farm-in agreement that contains the concessional farm-in transaction also contains 1 or more other concessional farm-in transactions on which duty is chargeable at the general rate of duty.
- (6) If a farm-in agreement contains 2 or more concessional farm-in transactions on which duty is chargeable at the general rate of duty, the amount of duty chargeable on each of those concessional farm-in transactions must be determined as follows —
 - (a) first, aggregate the dutiable values of the concessional farm-in transactions;
 - (b) second, apply the general rate of duty to the aggregate dutiable value;
 - (c) third, apportion the resulting amount of duty between the concessional farm-in transactions in the way determined by the Commissioner.
- (7) If a farm-in agreement contains 2 or more concessional farm-in transactions and the Commissioner is, at any time, reassessing the duty chargeable on any of the concessional farm-in transactions, the Commissioner must also reassess the duty chargeable on any of the other concessional farm-in transactions as necessary for the purpose of applying subsection (3), (5) or (6).

- (8) The limitations as to time in the Taxation Administration Act section 17 do not apply in respect of a reassessment under subsection (7).

91Q. Changes to consideration

- (1) Subsection (3) applies to a concessional farm-in transaction if, before the concessional farm-in transaction is completed, the consideration for the concessional farm-in transaction is increased or reduced.

Example for this subsection:

There is a purchase agreement in relation to a concessional farm-in transaction and the farmee provides the consideration referred to in section 91M(9)(a).

- (2) For the purposes of subsection (1), a concessional farm-in transaction is **completed** when either of the following applies after the farmee has fulfilled the exploration requirement —
- (a) as contemplated in section 91M(1)(c) or (d), the farmee —
 - (i) acquires an interest in a relevant mining tenement; or
 - (ii) is granted a derivative mining right in relation to a relevant mining tenement; or
 - (iii) acquires an interest in a relevant derivative mining right;
 - (b) paragraph (a) cannot apply because all of the farmee's options, as contemplated in section 91M(1)(c) and (d), have terminated without being exercised.
- (3) The Commissioner must assess or reassess the duty chargeable on the concessional farm-in transaction on the basis of the increased or reduced consideration.

- (4) However, if it is reduced consideration, the Commissioner does not have to reassess the duty unless the taxpayer makes an application for the reassessment.
- (5) If there is increased consideration after the concessional farm-in transaction is duty endorsed, section 31(5) applies with any necessary modifications.
- (6) Duty is chargeable on a reassessment under subsection (3) in relation to a concessional farm-in transaction at the same rate and using the same thresholds that applied when liability for duty on the concessional farm-in transaction initially arose.
- (7) Subsection (3) does not apply in a case where a taxpayer may apply for a reassessment because of subsection (8).
- (8) If any part of the consideration for a concessional farm-in transaction is dependent on the happening of a future event, or on a future event not happening, section 32(1) and (3) apply, with any necessary modifications, as if references to an agreement for the transfer of dutiable property were to the concessional farm-in transaction.
- (9) For the purposes of subsection (8), the Taxation Administration Act section 17 applies as if —
 - (a) despite subsection (1) of that section, a person is not entitled to apply for a reassessment after the later of the following —
 - (i) 5 years after the day on which the concessional farm-in transaction was made;

- (ii) 12 months after the day on which the requirements of section 32(1)(b) and (c) (as applied under subsection (8)) were fulfilled;

and

- (b) despite subsection (4) of that section, the Commissioner may only make a reassessment on an application if the application was made within that time.

91R. No double duty

- (1) In this section —
consideration, in relation to a dutiable transaction, does not include the exploration amount for the concessional farm-in transaction concerned.
- (2) Duty is not chargeable on a dutiable transaction if —
 - (a) the dutiable transaction —
 - (i) is under a concessional farm-in transaction as contemplated in section 91M(1)(c) or (d); and
 - (ii) without limiting subparagraph (i), occurs after the farmee has fulfilled the exploration requirement;
 - and
 - (b) the concessional farm-in transaction is duty endorsed.
- (3) Duty is not chargeable on a dutiable transaction (the *replacement dutiable transaction*) if —
 - (a) the replacement dutiable transaction —
 - (i) is in lieu of a dutiable transaction that, had it occurred, would have been under a concessional farm-in transaction as

- contemplated in section 91M(1)(c) or (d); and
- (ii) would be a dutiable transaction under the concessional farm-in transaction as contemplated in section 91M(1)(c) or (d) except only that the replacement dutiable transaction involves a replacement mining tenement for a relevant mining tenement, or a replacement derivative mining right for a relevant derivative mining right, that was not anticipated in the concessional farm-in transaction; and
 - (iii) without limiting subparagraphs (i) and (ii), occurs after the farmee has fulfilled the exploration requirement for the concessional farm-in transaction;
- and
- (b) the concessional farm-in transaction is duty endorsed.
- (4) Duty is chargeable on a dutiable transaction to which subsection (2) or (3) would otherwise apply if there is, or will be, consideration for the dutiable transaction.
- (5) For the purposes of subsection (4), the dutiable value of the dutiable transaction is the consideration for the dutiable transaction to the extent that the consideration was not taken into account when the concessional farm-in transaction was duty endorsed.
- (6) In subsection (3)(a)(i), the reference to a dutiable transaction includes a transaction that would be a dutiable transaction but for the application of section 91DA to the transaction.

Subdivision 4 — Variations and other events affecting farm-in agreements and farm-in transactions

91S. Farm-in transaction added to farm-in agreement

- (1) This section applies if a farm-in transaction (the *additional farm-in transaction*) is added to a farm-in agreement after the farm-in agreement is made.
- (2) The additional farm-in transaction is a concessional farm-in transaction only —
 - (a) if the additional farm-in transaction —
 - (i) is a concessional farm-in transaction under subsection (3) or (4); and
 - (ii) if both section 91M(1)(a)(i) and (ii) apply — is a concessional farm-in transaction under both subsections (3) and (4);
 - or
 - (b) in any circumstances prescribed for the purposes of this paragraph.
- (3) The additional farm-in transaction is a concessional farm-in transaction if —
 - (a) section 91M(1)(a)(i) and (c)(i) apply; and
 - (b) each relevant mining tenement for the additional farm-in transaction is also either of the following —
 - (i) a relevant mining tenement for a concessional farm-in transaction that was contained in the farm-in agreement when the farm-in agreement was made;

- (ii) a replacement mining tenement for a relevant mining tenement referred to in subparagraph (i);
 - and
 - (c) when the additional farm-in transaction is added to the farm-in agreement, the farmee is not the holder, or 1 of the holders, of any relevant mining tenement for the additional farm-in transaction.
- (4) The additional farm-in transaction is a concessional farm-in transaction if —
- (a) section 91M(1)(a)(ii) applies; and
 - (b) each relevant derivative mining right for the additional farm-in transaction is also either of the following —
 - (i) a relevant derivative mining right for a concessional farm-in transaction that was contained in the farm-in agreement when the farm-in agreement was made;
 - (ii) a replacement derivative mining right for a relevant derivative mining right referred to in subparagraph (i);
- and
- (c) the Commissioner is satisfied that, when the additional farm-in transaction is added to the farm-in agreement, the farmee is not the holder, or 1 of the holders, of any relevant derivative mining right for the additional farm-in transaction.
- (5) If the additional farm-in transaction is a concessional farm-in transaction, the Commissioner may, for the purpose of applying section 91P(3), (5) or (6), reassess

the duty chargeable on any other concessional farm-in transaction contained in the farm-in agreement —

- (a) on the Commissioner's own initiative; or
 - (b) on the application of the taxpayer.
- (6) For the purposes of a reassessment under subsection (5) of the duty chargeable on a concessional farm-in transaction, the concessional farm-in transaction is to be taken to have been made when the additional farm-in transaction is added to the farm-in agreement.
- (7) For the purposes of a reassessment under subsection (5), the Taxation Administration Act section 17 applies as if —
- (a) in subsection (1) of that section, the reference to 5 years after the original assessment was made were to the later of the following —
 - (i) 5 years after the day on which the original assessment was made;
 - (ii) 12 months after the day on which the additional farm-in transaction is added to the farm-in agreement;
- and
- (b) in subsection (4) of that section, references to 5 years after the date of the original assessment were to the later of the following —
 - (i) 5 years after the day on which the original assessment was made;
 - (ii) 12 months after the day on which the additional farm-in transaction is added to the farm-in agreement.

91T. Variation to farm-in transaction

- (1) If an agreement that is a concessional farm-in transaction ceases to meet the requirements for a farm-in transaction set out in section 91M(1) to (5), the agreement ceases to be a concessional farm-in transaction accordingly.
- (2) Subsection (4) applies if an agreement that is a concessional farm-in transaction is varied so as to add a relevant mining tenement or relevant derivative mining right, except that subsection (4) does not apply in any of the following circumstances —
 - (a) subsection (1) applies as a result of the variation;
 - (b) all of the following apply —
 - (i) the relevant mining tenement is a prospecting licence or exploration licence or the relevant derivative mining right relates to a prospecting licence or exploration licence;
 - (ii) the relevant mining tenement or relevant derivative mining right was granted after the concessional farm-in transaction was made;
 - (iii) the variation occurs within 3 months after the day on which the relevant mining tenement or relevant derivative mining right was granted or within a longer period allowed by the Commissioner;
 - (c) any circumstances prescribed for the purposes of this paragraph.
- (3) Subsection (4) also applies if an agreement that is a concessional farm-in transaction is varied so as to

increase the interest in a relevant mining tenement, or in a relevant derivative mining right, that the farmee is to acquire, or might acquire, as contemplated in section 91M(1)(c)(i) or (d), except that subsection (4) does not apply in any of the following circumstances —

- (a) subsection (1) applies as a result of the variation;
 - (b) as the case requires —
 - (i) the farmee is not the holder, or 1 of the holders, of the relevant mining tenement when the variation occurs; or
 - (ii) the Commissioner is satisfied that, when the variation occurs, the farmee is not the holder, or 1 of the holders, of the relevant derivative mining right;
 - (c) any circumstances prescribed for the purposes of this paragraph.
- (4) The agreement is taken not to be a concessional farm-in transaction to the extent that the agreement relates to —
- (a) the relevant mining tenement or relevant derivative mining right that is added; or
 - (b) the increase in the interest in the relevant mining tenement or relevant derivative mining right.
- (5) Regulations may prescribe circumstances in which, if an agreement that is a concessional farm-in transaction is varied, the agreement —
- (a) ceases to be a concessional farm-in transaction; or
 - (b) is taken not to be a concessional farm-in transaction to a prescribed extent.

- (6) Subsections (7) to (10) apply if, at any time (the *relevant time*), under this section or under regulations made for the purposes of subsection (5) —
 - (a) an agreement ceases to be a concessional farm-in transaction; or
 - (b) an agreement is taken not to be a concessional farm-in transaction to an extent.
- (7) If, as the agreement stands at the relevant time, the agreement gives effect to, or evidences, a dutiable transaction that is not a concessional farm-in transaction —
 - (a) duty is chargeable on the dutiable transaction as if the dutiable transaction had occurred at the relevant time; and
 - (b) the other provisions of this Act apply accordingly.
- (8) If subsection (7) applies because of subsection (6)(b), the reference in subsection (7) to the agreement is to the agreement to the extent that it is taken not to be a concessional farm-in transaction.
- (9) The ceasing of the agreement to be a concessional farm-in transaction, or the taking of the agreement not to be a concessional farm-in transaction to an extent, does not affect any liability for duty that arose before the relevant time.
- (10) However, nothing in this section, or in regulations made for the purposes of subsection (5), prevents section 107 from applying to the agreement as a concessional farm-in transaction if the event giving rise to the application of this section or those regulations would, apart from this section or those regulations, cause the agreement to become a cancelled transaction as defined in that section.

Subdivision 5 — Other provisions**91U. Farm-in transactions relating to prospecting licences**

(1) In this section —

non-prospecting interest, in relation to a farm-in transaction, means —

- (a) an interest in a non-prospecting mining tenement in a case where the non-prospecting mining tenement is a replacement mining tenement for a relevant mining tenement; or
- (b) a derivative mining right that relates to a non-prospecting mining tenement in a case where the non-prospecting mining tenement is a replacement mining tenement for a relevant mining tenement; or
- (c) an interest in a derivative mining right in a case where the derivative mining right —
 - (i) is a replacement derivative mining right for a relevant derivative mining right; and
 - (ii) relates to a non-prospecting mining tenement;

non-prospecting mining tenement means a mining tenement that is not a prospecting licence;

prospecting farm-in transaction means a farm-in transaction contained in a farm-in agreement in a case where —

- (a) if only section 91M(1)(a)(i) applies —
 - (i) each relevant mining tenement is a prospecting licence; and

- (ii) apart from this section, section 91L(4) would not prevent the farm-in transaction from being a concessional farm-in transaction;
 - or
 - (b) if only section 91M(1)(a)(ii) applies —
 - (i) each relevant derivative mining right relates to a mining tenement that is a prospecting licence; and
 - (ii) apart from this section, section 91L(4) would not prevent the farm-in transaction from being a concessional farm-in transaction;
 - or
 - (c) if both section 91M(1)(a)(i) and (ii) apply —
 - (i) each relevant mining tenement is a prospecting licence; and
 - (ii) each relevant derivative mining right relates to a mining tenement that is a prospecting licence; and
 - (iii) apart from this section, section 91L(4) would not prevent the farm-in transaction from being a concessional farm-in transaction.
- (2) Section 91DA does not prevent a concessional farm-in transaction from being a dutiable transaction.
- (3) Subject to subsections (6) and (8), a prospecting farm-in transaction is neither a concessional farm-in transaction nor a dutiable transaction.
- (4) Subsection (6) applies to a farm-in transaction that is a prospecting farm-in transaction if a dutiable transaction

- involving a non-prospecting interest (the ***non-prospecting dutiable transaction***) occurs —
- (a) under the farm-in transaction as contemplated in section 91M(1)(c) or (d); and
 - (b) without limiting paragraph (a), after the farmee has fulfilled the exploration requirement.
- (5) Subsection (6) also applies to a farm-in transaction that is a prospecting farm-in transaction if —
- (a) a dutiable transaction involving a non-prospecting interest (the ***non-prospecting dutiable transaction***) occurs; and
 - (b) the non-prospecting dutiable transaction —
 - (i) is in lieu of a transaction that, had it occurred, would have been under the farm-in transaction as contemplated in section 91M(1)(c) or (d); and
 - (ii) would be a transaction under the farm-in transaction as contemplated in section 91M(1)(c) or (d) except only that the non-prospecting dutiable transaction involves a replacement mining tenement for a relevant mining tenement, or a replacement derivative mining right for a relevant derivative mining right, that was not anticipated in the farm-in transaction; and
 - (iii) without limiting subparagraphs (i) and (ii), occurs after the farmee has fulfilled the exploration requirement for the farm-in transaction.

- (6) The following apply in relation to the farm-in transaction —
- (a) the farm-in transaction ceases to be a prospecting farm-in transaction when the non-prospecting dutiable transaction occurs;
 - (b) the farm-in transaction is, and is taken always to have been, a concessional farm-in transaction and, accordingly, a dutiable transaction;
 - (c) liability for duty chargeable on the farm-in transaction arises when the non-prospecting dutiable transaction occurs (despite the item for a concessional farm-in transaction in Schedule 1).
- (7) Subsection (8) applies if, at any time (the **relevant time**), a farm-in transaction that is a prospecting farm-in transaction is varied so as to add —
- (a) a relevant mining tenement that is a non-prospecting mining tenement; or
 - (b) a relevant derivative mining right that relates to a non-prospecting mining tenement.
- (8) The following apply in relation to the farm-in transaction —
- (a) the farm-in transaction ceases to be a prospecting farm-in transaction at the relevant time;
 - (b) the farm-in transaction is, and is taken always to have been, a concessional farm-in transaction and, accordingly, a dutiable transaction;
 - (c) liability for duty chargeable on the farm-in transaction arises at the relevant time (despite the item for a concessional farm-in transaction in Schedule 1).

- (9) The Commissioner may reassess the duty chargeable on any dutiable transaction for the purpose of applying subsection (6) or (8) —
 - (a) on the Commissioner’s own initiative; or
 - (b) on the application of the taxpayer.
- (10) The limitations as to time in the Taxation Administration Act section 17 do not apply in respect of a reassessment under subsection (9).

91V. Treatment of certain options under farm-in agreements

- (1) Subsection (2) applies if —
 - (a) separately from any concessional farm-in transaction contained in it, a farm-in agreement provides, whether conditionally or not, for the grant to the farmee, after the making of the farm-in agreement, of an option to acquire an interest in —
 - (i) a mining tenement that is a relevant mining tenement for a concessional farm-in transaction contained in the farm-in agreement; or
 - (ii) a derivative mining right that is a relevant derivative mining right for a concessional farm-in transaction contained in the farm-in agreement;
 - and
 - (b) were the option to be granted, the farmee’s acquisition of the option on the grant would be a dutiable transaction under section 11(1)(f).
- (2) The option is taken to have been granted, and therefore to have been acquired by the farmee, on the making of the farm-in agreement.

- (3) Duty is not chargeable on the acquisition of an option that is taken to have occurred under subsection (2) if, subsequently, the option will not actually be granted because —
 - (a) the time for the grant of the option, as specified in, or determined in accordance with, the farm-in agreement, passes or expires without the option being granted; or
 - (b) the farmor and farmee otherwise agree that the option is not to be granted.
- (4) If subsection (3) applies, the Commissioner must, on the application of the taxpayer, reassess the liability to duty on the acquisition of the option.
- (5) For the purposes of subsection (4), the Taxation Administration Act section 17 applies as if —
 - (a) despite subsection (1) of that section, a person is not entitled to apply for a reassessment after the later of the following —
 - (i) 5 years after the day on which the original assessment was made;
 - (ii) 12 months after the day on which the event referred to in subsection (3)(a) or (b) occurred;
 - and
 - (b) despite subsection (4) of that section, the Commissioner may only make a reassessment on an application if the application was made within that time.

91W. Derivative mining right granted for purposes of exploration requirement for farm-in transaction

Duty is not chargeable on a dutiable transaction that is the acquisition of a derivative mining right if —

- (a) the person who acquires the derivative mining right is the farmee under a farm-in agreement; and
- (b) the derivative mining right authorises mining only for the purpose of fulfilling the exploration requirement for a concessional farm-in transaction contained in the farm-in agreement; and
- (c) there is not, and will not be, any consideration for the dutiable transaction.

9. Section 107 amended

(1) In section 107(2):

- (a) in paragraph (c) delete “reason.” and insert:

reason;

- (b) after paragraph (c) insert:

- (d) a concessional farm-in transaction if the farmee has fulfilled the exploration requirement for the concessional farm-in transaction.

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- (2) In section 107(7):
- (a) delete “property, the *Taxation Administration Act 2003*” and insert:

property or to a concessional farm-in transaction, the
Taxation Administration Act
 - (b) delete paragraph (a)(ii) and insert:
 - (ii) more than 12 months after the day on which the agreement for the transfer of dutiable property, or the concessional farm-in transaction, became a cancelled transaction,

10. Section 135 deleted

Delete section 135.

11. Section 205Q amended

In section 205Q(1) delete “other than section 42(15)”.

12. Section 205S amended

In section 205S(1) delete “8” and insert:

9

13. Schedule 1 amended

In Schedule 1 delete the item for section 11(1)(j) and insert:

s. 11(1)(j)	A concessional farm-in transaction	When the concessional farm-in transaction is made	The farmee
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14. Schedule 3 Division 11 inserted

At the end of Schedule 3 insert:

Division 11 — Provisions for *Duties Amendment (Farm-in Agreements) Act 2022*

Subdivision 1 — Preliminary

60. Terms used

(1) In this Division —

actual section 13 farm-in agreement means an agreement made during the first pre-amendment period that is, apart from clause 64(2), a farm-in agreement under section 13;

amending Act means the *Duties Amendment (Farm-in Agreements) Act 2022*;

amendment day means the day on which section 14 of the amending Act comes into operation;

deemed section 13 farm-in agreement, subject to clause 65(7) and (8), means an agreement —

- (a) that is taken under clause 64(2) to be a farm-in agreement under section 13; or
- (b) that is a deemed section 13 farm-in agreement under clause 65(2)(b);

first pre-amendment period means the period beginning on 1 July 2008 and ending on the day before amendment day;

second pre-amendment period means the period beginning on 28 November 2018 and ending on the day before amendment day;

section 13 means section 13 as in force from time to time before amendment day and as modified under Subdivision 5;

section 13 exploration amount —

- (a) in relation to an actual section 13 farm-in agreement, means the exploration amount for the agreement as defined in subsection (2) of section 13; and
- (b) in relation to a deemed section 13 farm-in agreement, means the exploration amount for the agreement as defined in section 91N(5), subject to section 91N(6);

section 13 exploration requirement —

- (a) in relation to an actual section 13 farm-in agreement, means the requirement to expend the section 13 exploration amount; and
- (b) in relation to a deemed section 13 farm-in agreement, means the exploration requirement for the agreement as defined in section 91N(1) to (4), subject to section 91N(6);

section 13 farm-in agreement means an actual section 13 farm-in agreement or a deemed section 13 farm-in agreement;

section 42(15) means section 42(15) as in force from time to time before amendment day.

- (2) If a term used in this Division is given a meaning in section 91K, it has the same meaning in this Division (unless otherwise indicated).
- (3) If a provision of this Division listed in subclause (4) refers to a provision of Chapter 2 Part 5 Division 9, the provision of Chapter 2 Part 5 Division 9 applies, for the purposes of

the provision of this Division, in relation to a deemed section 13 farm-in agreement —

- (a) as it applies in relation to a farm-in transaction; and
 - (b) with any necessary modifications.
- (4) The provisions of this Division are as follows —
- (a) paragraph (b) of the definition of **section 13 exploration amount** in subclause (1);
 - (b) paragraph (b) of the definition of **section 13 exploration requirement** in subclause (1);
 - (c) clause 62(a);
 - (d) clause 69;
 - (e) clause 71(4)(b);
 - (f) paragraph (b) of the definition of **replacement mining tenement** in clause 73(1);
 - (g) paragraph (b) of the definition of **replacement derivative mining right** in clause 74(1).

61. Assessments

- (1) In this clause —
- made**, in relation to an assessment, includes purportedly made;
- relevant provision** means clause 64(2), 67(1), 68(1), 69, 70(2), 71(2), 72(1), 73(2) or (5) or 74(3).
- (2) Subclause (3) applies to an assessment of duty chargeable under this Act that —
- (a) is made before amendment day; and
 - (b) accords with a relevant provision.
- (3) Without limiting the relevant provision, the assessment is, and is taken always to have been, valid and effective so far as it accords with the relevant provision.
- (4) Subclause (5) applies in relation to an assessment of duty chargeable under this Act that —
- (a) is made before amendment day; and

- (b) does not accord with a relevant provision.
- (5) In order to give effect to the relevant provision, the Commissioner may make a reassessment of the duty chargeable —
 - (a) on the Commissioner’s own initiative; or
 - (b) on the application of the taxpayer.
- (6) For the purposes of a reassessment under subclause (5), the Taxation Administration Act section 17 applies as if —
 - (a) in subsection (1) of that section, the reference to 5 years after the original assessment was made were to the later of the following —
 - (i) 5 years after the day on which the original assessment was made;
 - (ii) 12 months after amendment day;and
 - (b) in subsection (4) of that section, references to 5 years after the date of the original assessment were to the later of the following —
 - (i) 5 years after the day on which the original assessment was made;
 - (ii) 12 months after amendment day.

Subdivision 2 — Provisions relating to Chapter 2 Part 5 Division 9

62. Application of section 91K(2)

For the purposes of paragraph (b)(iv) of the definition of *primary farmor* in section 91K(1), section 91K(2) also applies to a transfer if the transfer is made to the transferee —

- (a) under an actual section 13 farm-in agreement as contemplated in subsection (1)(c) and (d) of section 13 or under a deemed section 13 farm-in agreement as contemplated in section 91M(1)(c)(i); and

- (b) without limiting paragraph (a), after the transferee has fulfilled the section 13 exploration requirement.

63. Application of Chapter 2 Part 5 Division 9

An agreement can be a farm-in agreement or farm-in transaction under Chapter 2 Part 5 Division 9 only if the agreement is made on or after amendment day.

Subdivision 3 — Deemed section 13 farm-in agreements

64. Certain agreements taken to be farm-in agreements under section 13

- (1) Subclause (2) applies to an agreement made during the first pre-amendment period if —
 - (a) the agreement is not an actual section 13 farm-in agreement; and
 - (b) if Chapter 2 Part 5 Division 9 applied to agreements made during the first pre-amendment period — the agreement would, under that Division, be a concessional farm-in transaction.
- (2) For the purposes of this Act, the agreement is taken to be, and to have always been, a farm-in agreement under section 13.
- (3) For the purposes of the application of this Division to agreements made during the first pre-amendment period, Chapter 2 Part 5 Division 9 is taken to be modified in accordance with subclauses (4) to (8).
- (4) In relation to an agreement made before 13 June 2019, references to a derivative mining right are to a right to exploit a mining tenement.
- (5) In relation to an agreement made before 28 November 2018, the definition of *exploration* in section 91K(1) is replaced with:

exploration includes development;

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- (6) In section 91N(2) —
 - (a) in paragraph (a)(ii) and (iii), references to exploration of each relevant derivative mining right are to exploration of each mining tenement to which a relevant derivative mining right relates; and
 - (b) paragraph (b) is deleted.
- (7) Subdivision 4 is deleted.
- (8) Section 91U is deleted.
- (9) This clause is subject to clause 65.

65. Variations and other events affecting section 13 farm-in agreements

- (1) Subclauses (2) to (6) apply if, on or after amendment day, an agreement (the *additional agreement*) is added to an agreement (the *existing agreement*) that contains 1 or more section 13 farm-in agreements.
- (2) The additional agreement —
 - (a) cannot be a concessional farm-in transaction; but
 - (b) is a deemed section 13 farm-in agreement if, apart from paragraph (a), the additional agreement would be a concessional farm-in transaction —
 - (i) under section 91S(3) or (4) and, if both section 91M(1)(a)(i) and (ii) apply, under both section 91S(3) and (4); or
 - (ii) under any regulations made for the purposes of section 91S(2)(b).
- (3) For the purposes of subclause (2)(b), section 91S(3) and (4), and any regulations made for the purposes of section 91S(2)(b), apply, with any necessary modifications, as if —
 - (a) the existing agreement were a farm-in agreement; and

- (b) any section 13 farm-in agreement contained in the existing agreement were a concessional farm-in transaction.
- (4) If the additional agreement is a deemed section 13 farm-in agreement under subclause (2)(b), the Commissioner may, for the purpose of applying clause 70(5), (6) or (7), reassess the duty chargeable on any other section 13 farm-in agreement contained in the existing agreement —
 - (a) on the Commissioner’s own initiative; or
 - (b) on the application of the taxpayer.
- (5) For the purposes of a reassessment under subclause (4) of the duty chargeable on a section 13 farm-in agreement, the section 13 farm-in agreement is to be taken to have been made when the additional agreement is added to the existing agreement.
- (6) For the purposes of a reassessment under subclause (4), the Taxation Administration Act section 17 applies as if —
 - (a) in subsection (1) of that section, the reference to 5 years after the original assessment was made were to the later of the following —
 - (i) 5 years after the day on which the original assessment was made;
 - (ii) 12 months after the day on which the additional agreement is added to the existing agreement;and
 - (b) in subsection (4) of that section, references to 5 years after the date of the original assessment were to the later of the following —
 - (i) 5 years after the day on which the original assessment was made;
 - (ii) 12 months after the day on which the additional agreement is added to the existing agreement.

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- (7) If, on or after amendment day, an agreement that is a deemed section 13 farm-in agreement ceases to meet the requirements for a farm-in transaction set out in section 91M(1) to (5), the agreement ceases to be a deemed section 13 farm-in agreement accordingly.
- (8) If, on or after amendment day in a case in which subclause (7) does not apply, an agreement that is a deemed section 13 farm-in agreement is varied, section 91T(2) to (4), and any regulations made for the purposes of section 91T(2)(c), (3)(c) or (5), apply for the purpose of determining whether, as a result of the variation —
 - (a) the agreement ceases to be a deemed section 13 farm-in agreement; or
 - (b) the agreement is taken not to be a deemed section 13 farm-in agreement to an extent.
- (9) For the purposes of subclause (8), section 91T(2) to (4), and any regulations made for the purposes of section 91T(2)(c), (3)(c) or (5), apply, with any necessary modifications, as if the agreement were a concessional farm-in transaction.
- (10) If an agreement ceases to be, or is taken not to be to an extent, a deemed section 13 farm-in agreement under subclause (7) or (8), section 91T(7) to (10) apply, with any necessary modifications, in relation to the agreement as they apply in relation to an agreement referred to in section 91T(6).

Subdivision 4 — Ongoing application of Act in relation to section 13 farm-in agreements

66. Act to apply in relation to section 13 farm-in agreements as if sections 4 to 13 of amending Act not enacted

On and after amendment day, this Act applies to section 13 farm-in agreements, and dutiable transactions under section 13 farm-in agreements, as if sections 4 to 13 of the amending Act had not been enacted (subject to the other provisions of this Division where relevant).

Subdivision 5 — Modifications of section 13

67. Restriction on activities regarded as exploration or development for purposes of section 13(2)

- (1) For the purposes of this Act, subsection (2) of section 13 is taken to have applied during the second pre-amendment period, and applies on and after amendment day under clause 66, subject to subclause (2).
- (2) In subsection (2) of section 13, in relation to an agreement made during the second pre-amendment period, the reference to exploration or development only includes development to the extent that it is carried out solely —
 - (a) for the purpose of facilitating exploration; or
 - (b) otherwise incidentally to exploration.

68. Commissioner may allow expenditure on administrative costs to be regarded as expenditure on exploration or development for purposes of section 13(2)

- (1) For the purposes of this Act, subsection (2) of section 13 is taken to have applied during the first pre-amendment period, and applies on and after amendment day under clause 66, subject to subclause (2).
- (2) The Commissioner may, in relation to an agreement made during the first pre-amendment period, allow expenditure on administrative costs that would not otherwise be regarded as expenditure on exploration or development for the purposes of subsection (2) of section 13 to be so regarded, subject to any limits or other conditions imposed by the Commissioner.

Subdivision 6 — Duty chargeable in relation to section 13 farm-in agreements

69. Application of Schedule 1 to deemed section 13 farm-in agreements

For the purposes of this Act, in relation to a deemed section 13 farm-in agreement, Schedule 1 is taken to have

applied during the first pre-amendment period, and applies on and after amendment day under clause 66, as if, in the item for section 11(1)(j) column 4, the reference to the person referred to in section 13(1)(b) were to the farmee as defined in section 91L(1)(b).

70. Section 13 farm-in agreements: modified rules relating to charging of duty

- (1) In this clause —
section 135 means section 135 as in force from time to time before amendment day.
- (2) For the purposes of this Act, in relation to section 13 farm-in agreements, section 135 is taken to have applied during the first pre-amendment period, and applies on and after amendment day under clause 66, subject to subclauses (3) to (9).
- (3) For the purposes of subsection (3) of section 135, the exploration amount is the section 13 exploration amount.
- (4) Subclause (5) applies if —
 - (a) an agreement contains 2 or more section 13 farm-in agreements that are dutiable transactions; and
 - (b) apart from subclause (5), nominal duty would be chargeable on all of the section 13 farm-in agreements contained in the agreement that are dutiable transactions.
- (5) Nominal duty is chargeable on all of the section 13 farm-in agreements taken together as if they were a single dutiable transaction.
- (6) Duty is not chargeable on a section 13 farm-in agreement if —
 - (a) apart from this subclause, the section 13 farm-in agreement would be chargeable with nominal duty; and
 - (b) the section 13 farm-in agreement is contained in an agreement that also contains 1 or more other

section 13 farm-in agreements on which duty is chargeable at the general rate of duty.

- (7) If an agreement contains 2 or more section 13 farm-in agreements on which duty is chargeable at the general rate of duty, the amount of duty chargeable on each of those section 13 farm-in agreements must be determined as follows —
 - (a) first, aggregate the dutiable values of the section 13 farm-in agreements;
 - (b) second, apply the general rate of duty to the aggregate dutiable value;
 - (c) third, apportion the resulting amount of duty between the section 13 farm-in agreements in the way determined by the Commissioner.
- (8) If an agreement contains 2 or more section 13 farm-in agreements and the Commissioner is, at any time, reassessing the duty chargeable on any of the section 13 farm-in agreements, the Commissioner must also reassess the duty chargeable on any of the other section 13 farm-in agreements as necessary for the purpose of applying subclause (5), (6) or (7).
- (9) The limitations as to time in the Taxation Administration Act section 17 do not apply in respect of a reassessment under subclause (8).

71. Changes to consideration

- (1) In this clause —

consideration does not include the section 13 exploration amount;

derivative mining right, in relation to a section 13 farm-in agreement made before 13 June 2019, means a right to exploit a mining tenement.
- (2) In relation to section 13 farm-in agreements that are made during the second pre-amendment period or that are deemed section 13 farm-in agreements under clause 65(2)(b), this

Act is taken to have applied during the second pre-amendment period, and applies on and after amendment day under clause 66, subject to subclauses (3) to (11).

- (3) Subclause (5) applies to a section 13 farm-in agreement if, before the section 13 farm-in agreement is completed, the consideration for the section 13 farm-in agreement is increased or reduced.
- (4) For the purposes of subclause (3), a section 13 farm-in agreement is **completed** when —
 - (a) in the case of an actual section 13 farm-in agreement, after the section 13 exploration requirement is fulfilled, the mining tenement, or the derivative mining right, becomes held as referred to in subsection (1)(d) of section 13; or
 - (b) in the case of a deemed section 13 farm-in agreement, the agreement is completed in accordance with section 91Q(2).
- (5) The Commissioner must assess or reassess the duty chargeable on the section 13 farm-in agreement on the basis of the increased or reduced consideration.
- (6) However, if it is reduced consideration, the Commissioner does not have to reassess the duty unless the taxpayer makes an application for the reassessment.
- (7) If there is increased consideration after the section 13 farm-in agreement is duty endorsed, section 31(5) applies —
 - (a) as if the reference to 2 months after the day on which consideration under the transaction is increased were, if later, to 2 months after amendment day; and
 - (b) with any other necessary modifications.
- (8) Duty is chargeable on a reassessment under subclause (5) in relation to a section 13 farm-in agreement at the same rate and using the same thresholds that applied when liability for duty on the section 13 farm-in agreement initially arose.

- (9) Subclause (5) does not apply in a case where a taxpayer may apply for a reassessment because of subclause (10).
- (10) If any part of the consideration for a section 13 farm-in agreement is dependent on the happening of a future event, or on a future event not happening, section 32(1) and (3) apply, with any necessary modifications, as if references to an agreement for the transfer of dutiable property were to the section 13 farm-in agreement.
- (11) For the purposes of subclause (10), the Taxation Administration Act section 17 applies as if —
 - (a) despite subsection (1) of that section, a person is not entitled to apply for a reassessment after the latest of the following —
 - (i) 5 years after the day on which the section 13 farm-in agreement was made;
 - (ii) 12 months after the day on which the requirements of section 32(1)(b) and (c) (as applied under subclause (10)) were fulfilled;
 - (iii) 12 months after amendment day;and
 - (b) despite subsection (4) of that section, the Commissioner may only make a reassessment on an application if the application was made within that time.

72. No double duty: exploration amount

- (1) This Act is taken to have applied during the first pre-amendment period, and applies on and after amendment day under clause 66, subject to subclause (2).
- (2) In paragraph (b) of section 42(15), in relation to a section 13 farm-in agreement, the reference to the exploration amount under the agreement having been expended is a reference to the section 13 exploration requirement for the agreement having been fulfilled.

73. No double duty: mining tenements

- (1) In this clause —
- replacement mining tenement*** —
- (a) in relation to an actual section 13 farm-in agreement, means a mining tenement —
 - (i) that is granted, after the making of the actual section 13 farm-in agreement, to replace (wholly or partly) the mining tenement referred to in subsection (1)(a) of section 13 or an earlier replacement mining tenement; and
 - (ii) that relates only to the land, or to a part of the land, the subject of the mining tenement that is replaced; and
 - (iii) of which the owner referred to in subsection (1)(a) of section 13 is the holder or 1 of the holders;
- and
- (b) in relation to a deemed section 13 farm-in agreement, has the meaning given in section 91M(6).
- (2) This Act is taken to have applied during the first pre-amendment period, and applies on and after amendment day under clause 66, subject to subclauses (3) and (4).
- (3) Duty is not chargeable on a transfer of, or an agreement for the transfer of, an interest in a mining tenement (the ***affected mining tenement***) if —
- (a) the affected mining tenement is a replacement mining tenement in relation to a section 13 farm-in agreement; and
 - (b) the transfer or agreement —
 - (i) is in lieu of a transfer of, or an agreement for the transfer of, an interest in a mining tenement that, had it occurred, would have

been under the section 13 farm-in agreement; and

- (ii) would be a transfer or agreement under the section 13 farm-in agreement except only that the affected mining tenement is a replacement mining tenement or is a replacement mining tenement that was not anticipated in the section 13 farm-in agreement;

and

- (c) the section 13 farm-in agreement is duty endorsed; and
 - (d) the section 13 exploration requirement for the section 13 farm-in agreement has been fulfilled.
- (4) The requirement of paragraph (a) of section 42(15), or of subclause (3)(c), does not have to be met if the section 13 farm-in agreement concerned is not duty endorsed because of the application of section 91DA to the section 13 farm-in agreement.
 - (5) This Act is taken to have applied during the second pre-amendment period, and applies on and after amendment day under clause 66, subject to subclauses (6) to (8).
 - (6) Duty is chargeable on a transfer of, or an agreement for the transfer of, an interest in a mining tenement to which section 42(15) or subclause (3) would otherwise apply if —
 - (a) there is, or will be, consideration for the transfer or agreement; and
 - (b) the section 13 farm-in agreement concerned is made during the second pre-amendment period or is a deemed section 13 farm-in agreement under clause 65(2)(b).

- (7) For the purposes of subclause (6), the dutiable value of the transfer or agreement is —
- (a) if the section 13 farm-in agreement concerned is not duty endorsed as referred to in subclause (4) — the consideration for the transfer or agreement; or
 - (b) otherwise — that consideration to the extent that the consideration was not taken into account when the section 13 farm-in agreement concerned was duty endorsed.
- (8) For the purposes of subclauses (6) and (7), the section 13 exploration amount for the section 13 farm-in agreement concerned is taken not to be consideration for the transfer or agreement.

74. No double duty: derivative mining rights

- (1) In this clause —
- derivative mining right***, in relation to a section 13 farm-in agreement made before 13 June 2019, means a right to exploit a mining tenement;
- replacement derivative mining right*** —
- (a) in relation to an actual section 13 farm-in agreement, means a derivative mining right —
 - (i) that is granted, after the making of the section 13 farm-in agreement, to replace (wholly or partly) the derivative mining right referred to in subsection (1)(a) of section 13 or an earlier replacement derivative mining right; and
 - (ii) that relates only to the land, or to a part of the land, the subject of the derivative mining right that is replaced; and
 - (iii) subject to subclause (2), that does not authorise any mining beyond the mining authorised by the derivative mining right that is replaced; and

- (iv) of which the person referred to in subsection (1)(a) of section 13 is the holder or 1 of the holders;

and

- (b) in relation to a deemed section 13 farm-in agreement, has the meaning given in section 91M(7) and (8);

replacement mining tenement has the meaning given in clause 73(1).

- (2) The requirement in paragraph (a)(iii) of the definition of **replacement derivative mining right** in subclause (1) does not have to be met if —
 - (a) the derivative mining right is granted in relation to a mining tenement (the **new mining tenement**) that was granted to replace (wholly or partly) another mining tenement (the **previous mining tenement**); and
 - (b) the new mining tenement authorises mining beyond the mining authorised by the previous mining tenement; and
 - (c) the derivative mining right only authorises mining for minerals for which mining is authorised by the derivative mining right that is replaced.
- (3) This Act is taken to have applied during the period beginning on 13 June 2019 and ending on the day before amendment day, and applies on and after amendment day under clause 66, subject to subclauses (4) to (11).
- (4) Duty is not chargeable on a dutiable transaction under a section 13 farm-in agreement if —
 - (a) the dutiable transaction involves a derivative mining right; and
 - (b) the section 13 farm-in agreement is duty endorsed; and
 - (c) the section 13 exploration requirement for the section 13 farm-in agreement has been fulfilled.

- (5) Duty is not chargeable on a dutiable transaction involving a derivative mining right if —
- (a) the derivative mining right relates to a mining tenement (the ***affected mining tenement***) that is a replacement mining tenement in relation to a section 13 farm-in agreement; and
 - (b) the dutiable transaction —
 - (i) is in lieu of a dutiable transaction involving a derivative mining right that, had it occurred, would have been under the section 13 farm-in agreement; and
 - (ii) would be a dutiable transaction under the section 13 farm-in agreement except only that the affected mining tenement is a replacement mining tenement or is a replacement mining tenement that was not anticipated in the section 13 farm-in agreement;
- and
- (c) the section 13 farm-in agreement is duty endorsed; and
 - (d) the section 13 exploration requirement for the section 13 farm-in agreement has been fulfilled.
- (6) Duty is not chargeable on a dutiable transaction involving a derivative mining right (the ***affected derivative mining right***) if —
- (a) the affected derivative mining right is a replacement derivative mining right in relation to a section 13 farm-in agreement; and
 - (b) the dutiable transaction —
 - (i) is in lieu of a dutiable transaction involving a derivative mining right that, had it occurred, would have been under the section 13 farm-in agreement; and
 - (ii) would be a dutiable transaction under the section 13 farm-in agreement except only

that the affected derivative mining right is a replacement derivative mining right or a replacement derivative mining right that was not anticipated in the section 13 farm-in agreement;

and

- (c) the section 13 farm-in agreement is duty endorsed;
and
 - (d) the section 13 exploration requirement for the section 13 farm-in agreement has been fulfilled.
- (7) In subclauses (5)(b)(i) and (6)(b)(i), references to a dutiable transaction include a transaction that would be a dutiable transaction but for the application of section 91DA to the transaction.
- (8) The requirement of subclause (4)(b), (5)(c) or (6)(c) does not have to be met if the section 13 farm-in agreement is not duty endorsed because of the application of section 91DA to the section 13 farm-in agreement.
- (9) Duty is chargeable on a dutiable transaction to which subclause (4), (5) or (6) would otherwise apply if —
- (a) there is, or will be, consideration for the dutiable transaction; and
 - (b) the section 13 farm-in agreement concerned is made during the second pre-amendment period or is a deemed section 13 farm-in agreement under clause 65(2)(b).
- (10) For the purposes of subclause (9), the dutiable value of the dutiable transaction is —
- (a) if the section 13 farm-in agreement concerned is not duty endorsed as referred to in subclause (8) — the consideration for the dutiable transaction; or
 - (b) otherwise — that consideration to the extent that the consideration was not taken into account when the section 13 farm-in agreement concerned was duty endorsed.

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- (11) For the purposes of subclauses (9) and (10), the section 13 exploration amount for the section 13 farm-in agreement concerned is taken not to be consideration for the dutiable transaction.

