

MINING (AMENDMENT) ACT.

New South Wales



ANNO UNDEVICESIMO

ELIZABETHÆ II REGINÆ

Act No. 65, 1970.

An Act to abolish licenses to prospect; to enable an authority to prospect, an authority to enter or a lease to be granted in respect of land affected by an exploration license relating to a mineral differing from that to which the authority or lease relates; for these and other purposes to amend the Mining Act, 1906; and for purposes connected therewith. [Assented to, 19th November, 1970.]

BE

1520

Mining (Amendment).

BE it enacted by the Queen's Most Excellent Majesty, by No. 65, 1970 and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

1. (1) This Act may be cited as the "Mining (Amendment) Act, 1970". Short title and commencement

(2) This section shall commence on the day on which this Act receives the Royal assent.

(3) Subject to subsection two of this section, this Act shall commence in accordance with subsection four of this section.

(4) The Governor may appoint and notify by proclamation published in the Gazette the day on which a provision of this Act shall commence and may, at different times, appoint different days for different provisions and the provision to which such a proclamation relates shall commence as specified therein.

(5) The Mining Act, 1906, is in this Act referred to as the Principal Act.

2. (1) The Principal Act is amended—

Amendment of Act No. 49, 1906.

(a) (i) by omitting from subsection one of section three the definition of "License"; Sec. 3. (Interpretation.)

(ii) by omitting from the same subsection the definition of "Licensee";

(b) by omitting section 49A and the short heading thereto; Sec. 49A. (Application for license.)

(c)

No. 65, 1970Subst.
sec. 56.Holder
continuing
in occupa-
tion after
cancellation
of an
authority
to enter.Sec. 69.
(Lease or
agreement
by owner to
mine for
minerals
reserved
to the
Crown.)Sec. 83B.
(Exploration
licenses.)Sec. 83C.
(Disputes
between
holders of
licenses
and other
persons
carrying on
authorised
operations.)Sec. 133.
(Subjects
within
jurisdiction
of court.)Sec. 184.
(Purposes
for which
regulations
may be
made.)

(c) by omitting section fifty-six and by inserting in lieu thereof the following section :—

56. The holder of an authority to enter who, after cancellation of the authority, continues in occupation of the land defined in the authority, or any part thereof, shall be deemed to be a trespasser.

(d) (i) by omitting from subsection one of section sixty-nine the words "license to prospect or";

(ii) by omitting from the same subsection the word ", licensee,";

(e) (i) by omitting from paragraph (a) of subsection one of section 83B the word ", license";

(ii) by omitting from subsection seventeen of the same section the words "authority, license" wherever occurring and by inserting in lieu thereof the word "authority";

(f) (i) by omitting from paragraph (a) of subsection one of section 83C the word ", license";

(ii) by omitting from subsection two of the same section the words "authority, license" and by inserting in lieu thereof the word "authority";

(g) by omitting from paragraph (a) of subsection one of section one hundred and thirty-three the words ", license to prospect,";

(h) (i) by omitting from paragraph (ii) of section one hundred and eighty-four the words ", license to prospect";

(ii) by omitting from paragraph (xviii) of the same section the word ", licenses".

(2)

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(2) A license to prospect in force immediately ~~No. 65, 1970~~ before the commencement of this section shall, notwithstanding the amendments made by subsection one of this section, continue in force as if that subsection had not been enacted.

3. The Principal Act is further amended—

Further
amendment
of Act No.
49, 1906.

- (a) by omitting from the definition of "Mine" in sub-section one of section three the words "or reef," (Interpretation.) and by inserting in lieu thereof the words "reef or salt-pan (whether or not the salt-pan is natural or has been artificially created)";
- (b) by inserting in the definition of "To mine" in the same subsection after the word "earth" the words "or water".

4. The Principal Act is further amended—

Further
amendment
of Act No.
49, 1906.

- (a) (i) by inserting in subsection one of section seventeen after the word "subject" the words "to this section and";
- (ii) by omitting from the same subsection the words "or an exploration license granted under Part IVA of this Act (not being an exploration license held by the applicant)";
- (iii) by omitting from the same subsection the words "or license";
- (iv)

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(iv) by inserting next after the same subsection the following new subsection :—

(1A) An application for an authority to prospect on any land—

- (a) shall not be finally dealt with where—
 - (i) application for an exploration license affecting that land was made before application was made for the authority to prospect;
 - (ii) the exploration license so applied for has neither been granted nor refused; and
 - (iii) the authority to prospect has not been applied for by the applicant for the exploration license or by some person with his consent;
- (b) shall not be granted in respect of gold (whether alone or together with minerals) if an exploration license for the purpose of prospecting for gold (whether alone or together with minerals) affects the same land and the authority to prospect has not been applied for by the holder of that license or by some person with his consent; and
- (c) shall not be granted in respect of a mineral (whether alone or together with other minerals) if an exploration license for the purpose of prospecting for that mineral (whether alone or together with other minerals) affects the same land and the authority to prospect has not been applied for by the holder of that license or by some person with his consent.

(v)

Mining (Amendment).

- (v) by omitting from subsection two of the same No. 65, 1970 section the words "The application" and by inserting in lieu thereof the words "An application for an authority to prospect";
- (vi) by inserting next after subsection (2A) of the same section the following new subsections :—

(2B) Where application is made for an authority to prospect on land affected by an exploration license and the holder of the license, or some person with his consent, is not the applicant, the Minister shall, unless granting of the authority to prospect is prohibited by paragraph (b) or (c) of subsection (1A) of this section, cause notice of the application to be served on the holder of the exploration license.

(2C) The holder of an exploration license on whom a notice has been served under subsection (2B) of this section may object to the granting of an authority to prospect pursuant to the application to which the notice relates by serving, in the prescribed manner and within the prescribed period after service of the notice, an instrument in writing specifying the grounds of his objection.

(2D) Where the holder of an exploration license objects, pursuant to subsection (2C) of this section, to the grant of an authority to prospect, the Minister—

(a) shall refer the application for the authority, and the objection, to the Chief Inspector of Mines appointed under the Mines Inspection Act, 1901, or the Chief Inspector of Coal Mines appointed under the Coal Mines Regulation Act, 1912, for investigation and report; and

(b)

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(b) shall, after considering that report and such other information as he considers relevant—

- (i) grant or refuse the application; or
- (ii) grant the application subject to such conditions, provisions and stipulations as he thinks fit.

(2E) A notice referred to in subsection (2B) of this section may be served—

- (a) by delivering it to the person to whom it is directed; or
- (b) by sending it by certified mail to the person on whom it is to be served, addressed to him at his last known place of abode or business or, where that person is a company, to the registered office of the company,

and, where the notice is served in accordance with paragraph (b) of this subsection, it shall be deemed to have been served at the time it would have been delivered to the addressee in the ordinary course of post.

(vii) by omitting from subsection six of the same section the words “such application” and by inserting in lieu thereof the words “application for an authority to prospect”;

Sec. 23.
(Governor
may grant
leases.)

(b) (i) by omitting from paragraph (bi) of subsection two of section twenty-three the words “or an exploration license” wherever occurring;

(ii) by omitting from the same paragraph the words “or exploration license” wherever occurring;

(iii) by omitting from the same paragraph the words “or license” wherever occurring;

(iv)

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(iv) by inserting at the end of the same subsection No. 65, 1970 the following new paragraph :—

(f) A lease pursuant to an application in respect of which the Minister is required, pursuant to subsection seven of section twenty-seven of this Act to make a recommendation shall only be granted in accordance with that recommendation.

(v) by inserting next after subsection (2B) of the same section the following new subsection :—

(2C) An application for a lease of land under this Part—

(a) shall not be finally dealt with where—

(i) application for an exploration license affecting that land was made before the marking out of the land the subject of the application for the lease;

(ii) the exploration license so applied for has neither been granted nor refused; and

(iii) the lease has not been applied for by the applicant for the exploration license or by some person with his consent;

(b) shall not be granted in respect of gold (whether alone or together with minerals) if an exploration license for the

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the purpose of prospecting for gold (whether alone or together with minerals) affects the same land and the lease has not been applied for by the holder of that license or by some person with his consent; and

(c) shall not be granted in respect of a mineral (whether alone or together with other minerals) if an exploration license for the purpose of prospecting for that mineral (whether alone or together with other minerals) affects the same land and the lease has not been applied for by the holder of that license or by some person with his consent.

Sec. 27.
(Irregular
application
may be
granted.)

(c) by inserting next after subsection four of section twenty-seven the following new subsections :—

(5) Where application is made under this Part for a lease of land affected by an exploration license and the holder of the license, or some person with his consent, is not the applicant, the Minister shall, unless granting of the lease is prohibited by paragraph (b) or (c) of subsection (2c) of section twenty-three of this Act, cause notice of the application to be served on the holder of the exploration license.

(6) The holder of an exploration license on whom a notice has been served under subsection five of this section may object to the granting of a lease pursuant to the application to which the notice relates by serving, in the prescribed manner and within the prescribed period after service of the notice, an instrument in writing specifying the grounds of his objection.

(7)

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(7) Where the holder of an exploration license No. 65, 1970 objects, pursuant to subsection six of this section, to the grant of a lease, the Minister—

- (a) shall refer the application for the lease, and the objection, to the Chief Inspector of Mines appointed under the Mines Inspection Act, 1901, or the Chief Inspector of Coal Mines appointed under the Coal Mines Regulation Act, 1912, for investigation and report; and
- (b) shall, after considering that report and such other information as he considers relevant, recommend to the Governor that the application for the lease—
 - (i) be granted subject to the covenants, conditions, reservations and exemptions specified in the recommendation; or
 - (ii) be refused.

(8) A notice referred to in subsection five of this section may be served—

- (a) by delivering it to the person to whom it is directed; or
- (b) by sending it by certified mail to the person on whom it is to be served, addressed to him at his last known place of abode or business or, where that person is a company, to the registered office of the company,

and, where the notice is served in accordance with paragraph (b) of this subsection, it shall be deemed to have been served at the time it would have been delivered to the addressee in the ordinary course of post.

(d)

No. 65, 1970**Sec. 46.**
(Exempted
land.)

(d) (i) by omitting from subsection three of section forty-six the words "or to carry on operations under an exploration license";

(ii) by omitting from the same subsection the words " ; or in respect of land the subject of an application for an exploration license made before the time of the making of the application for the authority to enter" ;

(iii) by inserting next after the same subsection the following new subsections :—

(4) An application for an authority to enter in and upon any land under this Part—

(a) shall not be finally dealt with where—

- (i) application for an exploration license affecting that land was made before application was made for the authority to enter ;
- (ii) the exploration license so applied for has neither been granted nor refused ; and
- (iii) the authority to enter has not been applied for by the applicant for the exploration license or by some person with his consent ;

(b) shall not be granted in respect of gold (whether alone or together with minerals) if an exploration license for the purpose of prospecting for gold affects the same land and the authority to enter has not been applied for by the holder of that license or by some person with his consent ; and

(c)

Mining (Amendment).

(c) shall not be granted in respect of a No. 65, 1970 mineral (whether alone or together with other minerals) if an exploration license for the purpose of prospecting for that mineral (whether alone or together with other minerals) affects the same land and the authority to enter has not been applied for by the holder of that license or by some person with his consent.

(5) Where application is made for an authority to enter in and upon land under this Part and that land is affected by an exploration license and the holder of the license, or some person with his consent, is not the applicant, the Minister shall, unless granting of the authority to enter is prohibited by paragraph (b) or (c) of subsection four of this section, cause notice of the application to be served on the holder of the exploration license.

(6) The holder of an exploration license on whom a notice has been served under subsection five of this section may object to the granting of an authority to enter pursuant to the application to which the notice relates by serving, in the prescribed manner and within the prescribed period after service of the notice, an instrument in writing specifying the grounds of his objection.

(7) Where the holder of an exploration license objects, pursuant to subsection six of this section, to the grant of an authority to enter, the Minister—

(a) shall refer the application for the authority, and the objection, to the Chief Inspector of Mines appointed under the Mines Inspection Act, 1901, or the Chief Inspector of Coal Mines

appointed

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appointed under the Coal Mines Regulation Act, 1912, for investigation and report; and

(b) shall, after considering that report and such other information as he considers relevant—

- (i) dismiss the objection;
- (ii) direct the warden not to grant the application unless he imposes conditions specified in the direction, whether or not he imposes other conditions; or
- (iii) direct the warden to refuse the application.

(8) The warden shall comply with a direction given to him by the Minister under subsection seven of this section.

(9) A notice referred to in subsection five of this section may be served—

- (a) by delivering it to the person to whom it is directed; or
- (b) by sending it by certified mail to the person on whom it is to be served, addressed to him at his last known place of abode or business or, where that person is a company, to the registered office of the company,

and, where the notice is served in accordance with paragraph (b) of this subsection, it shall be deemed to have been served at the time it would have been delivered to the addressee in the ordinary course of post.

Sec. 50.
(Warden
may grant
authority.)

(e) by inserting in paragraph (a) of subsection two of section fifty after the word "three" the words "or four, or of subsections seven and eight,";

(f)

Mining (Amendment).

(f) (i) by omitting from subsection five of section No. 65, 1970 fifty-eight the words "or an exploration license" wherever occurring; Sec. 58.
 (Power to refuse, &c.)

(ii) by omitting from the same subsection the words "or exploration license" wherever occurring;

(iii) by omitting from the same subsection the words "or license" wherever occurring;

(iv) by inserting next after the same subsection the following new subsections :—

(6) An application for a lease of private land under this Part—

(a) shall not be finally dealt with where—

- (i) application for an exploration license affecting that land was made before the marking out of the land the subject of the application for the lease;
- (ii) the exploration license so applied for has neither been granted nor refused; and
- (iii) the lease has not been applied for by the applicant for the exploration license or by some person with his consent;

(b) shall not be granted in respect of gold (whether alone or together with minerals) if an exploration license for the purpose of prospecting for gold (whether alone or together with minerals) affects the same land and the lease has not been applied for by the holder of that license or by some person with his consent; and

(c)

No. 65, 1970

(c) shall not be granted in respect of a mineral (whether alone or together with other minerals) if an exploration license for the purpose of prospecting for that mineral (whether alone or together with other minerals) affects the same land and the lease has not been applied for by the holder of that license or by some person with his consent.

(7) Where application is made under this Part for a lease of land affected by an exploration license and the holder of the license, or some person with his consent, is not the applicant, the Minister shall, unless granting of the lease is prohibited by paragraph (b) or (c) of subsection six of this section, cause notice of the application to be served on the holder of the exploration license.

(8) The holder of an exploration license on whom a notice has been served under subsection seven of this section may object to the granting of a lease pursuant to the application to which the notice relates by serving, in the prescribed manner and within the prescribed period after service of the notice, an instrument in writing specifying the grounds of his objection.

(9) Where the holder of an exploration license objects, pursuant to subsection eight of this section, to the grant of a lease, the Minister—

(a) shall refer the application for the lease, and the objection, to the Chief Inspector of Mines appointed under the Mines Inspection Act, 1901, or the Chief Inspector of Coal Mines appointed

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appointed under the Coal Mines No. 65, 1970 Regulation Act, 1912, for investigation and report; and

- (b) shall, after considering that report and such other information as he considers relevant, recommend to the Governor that the application for the lease—
 - (i) be granted subject to the covenants, conditions, reservations and exemptions specified in the recommendation; or
 - (ii) be refused.

(10) A notice referred to in subsection seven of this section may be served—

- (a) by delivering it to the person to whom it is directed; or
- (b) by sending it by certified mail to the person on whom it is to be served, addressed to him at his last known place of abode or business or, where that person is a company, to the registered office of the company,

and, where the notice is served in accordance with paragraph (b) of this subsection, it shall be deemed to have been served at the time it would have been delivered to the addressee in the ordinary course of post.

(11) A lease pursuant to an application in respect of which the Minister is required, pursuant to subsection nine of this section, to make a recommendation shall only be granted in accordance with that recommendation.

(g)

No. 65, 1970**Sec. 83BA.**

(Lands held under two or more exploration licenses.)

New sec.
83BB.

Authority to prospect, &c., over land subject to exploration license.

Sec. 86.
(Governor may grant leases for purposes of mining by dredging, &c., and of what lands.)New sec.
86B.

Lease of land subject to exploration license.

(g) by inserting in subsection one of section 83BA after the word "license" where firstly occurring the words "or some person with his consent";

(h) by inserting next after the same section the following new section :—

83BB. The Minister shall cancel an exploration license to the extent to which it affects land in respect of which an authority to prospect, an authority to enter or a lease has been granted and is in force—

(a) in respect of gold, where the exploration license is in respect of gold; or

(b) in respect of a mineral, where the exploration license is in respect of that mineral.

(i) by omitting from subsection one of section eighty-six the words "held by the applicant";

(j) by inserting next after section 86A the following new section :—

86B. (1) An application for a lease of land under this Part—

(a) shall not be finally dealt with where—

(i) application for an exploration license affecting that land was made before the marking out of the land the subject of the application for the lease;

(ii)

Mining (Amendment).

- (ii) the exploration license applied for No. 65, 1970 has neither been granted nor refused; and
- (iii) the lease has not been applied for by the applicant for the exploration license or by some person with his consent;
- (b) shall not be granted in respect of gold (whether alone or together with minerals) if an exploration license for the purpose of prospecting for gold (whether alone or together with minerals) affects the same land and the lease has not been applied for by the holder of that license or by some person with his consent;
- (c) shall not be granted in respect of a mineral (whether alone or together with other minerals) if an exploration license for the purpose of prospecting for that mineral (whether alone or together with other minerals) affects the same land and the lease has not been applied for by the holder of that license or by some person with his consent.

(2) Where application has been made under this Part for a lease of land affected by an exploration license, the Minister shall, unless the granting of the lease is prohibited by paragraph (b) or (c) of subsection one of this section, cause notice of the application to be served on the holder of the exploration license.

(3) The holder of an exploration license on whom a notice has been served under subsection two of this section may object to the granting of a lease pursuant to the application to which the notice relates by serving, in the prescribed manner and

within

No. 65, 1970

within the prescribed period after service of the notice, an instrument in writing specifying the grounds of his objection.

(4) Where the holder of an exploration license objects, pursuant to subsection three of this section, to the grant of a lease, the Minister—

- (a) shall refer the application for the lease, and the objection, to the Chief Inspector of Mines appointed under the Mines Inspection Act, 1901, or the Chief Inspector of Coal Mines appointed under the Coal Mines Regulation Act, 1912, for investigation and report; and
- (b) shall, after considering that report and such other information as he considers relevant, recommend to the Governor that the application for the lease—
 - (i) be granted subject to the covenants, conditions, reservations and exemptions specified in the recommendation; or
 - (ii) be refused.

(5) A notice referred to in subsection two of this section may be served—

- (a) by delivering it to the person to whom it is directed; or
- (b) by sending it by certified mail to the person on whom it is to be served, addressed to him at his last known place of abode or business or, where that person is a company, to the registered office of the company,

and, where the notice is served in accordance with paragraph (b) of this subsection, it shall be deemed to have been served at the time it would have been delivered to the addressee in the ordinary course of post.

(6)

Mining (Amendment).

(6) A lease pursuant to an application No. 65, 1970 in respect of which the Minister is required, pursuant to subsection four of this section, to make a recommendation shall only be granted in accordance with that recommendation.

5. The Principal Act is further amended—

Further
amendment
of Act No.
49, 1906.

(a) by inserting next after subsection thirteen of section Sec. 83B.
83B the following new subsection :—
(Explora-
tion
licenses.)

(13A) Where an application is made for the renewal or further renewal of an exploration license and the renewal or further renewal is not granted or refused before the day on which the exploration license or renewal would, but for this subsection, expire—

- (a) the period of the exploration license shall be deemed to have been extended until the application is granted or refused;
- (b) the Minister may grant or refuse the application after the day on which the exploration license would, but for this subsection, expire; and
- (c) the provisions of this Act applicable to exploration licenses and the holders thereof shall apply to and in respect of an exploration license and the holder thereof during any period for which it is deemed by paragraph (a) of this subsection to be extended.

(b)

No. 65, 1970 (b) by omitting subsection seven of section 83BA;

Sec. 83BA.
(Lands
held under
two or more
exploration
licenses.)

Sec. 83D.
(Restriction
on rights of
holders of
licenses
over certain
lands.)

Further
amendment
of Act No.
49, 1906.

Sec. 47.
(Not to
extend to
within
certain
distance
of garden
or improved
land
without
consent.)

Sec. 50.
(Discretion
to refuse.)

(c) by inserting in subsection one of section 83D after the word "Act" the words ", unless the lands are so exempted only by reason of their being subject to an exploration license".

6. The Principal Act is further amended—

(a) by inserting in paragraph (b) of subsection (1B) of section forty-seven after the word "holder" the word "of";

(b) by omitting paragraph (ai) of subsection two of section fifty and by inserting in lieu thereof the following paragraphs :—

(ai) if the land to which the application relates is the subject of a prior application for a lease under this Part;

(aii) if the land to which the application relates is land in respect of which an authority to enter is in force;

(c)

Mining (Amendment).

(c) by inserting next after section 108E the following No. 65, 1970
new section :—

New sec.
108F.

108F. Where the Minister has granted consent Minister to an applicant for a lease under this Act or to his and certain other nominees to occupy for mining purposes the land persons applied for and to mine upon and in such land, indemnified in certain or to occupy and construct and use works upon circumstances. and in such land, the applicant or nominee holds the Crown, the Minister and every officer and employee employed in connection with the administration of this Act indemnified against all claims against the Crown, the Minister or any such officer or employee arising out of anything done or omitted to be done pursuant to, or as a consequence of, the giving by the Minister of such consent, or done or omitted to be done by the applicant or nominee or any of his agents or employees on or in respect of lands or any part thereof the subject of that consent.

7. The Principal Act is further amended—

Further
amendment
of Act No.
49, 1906.

(a) by omitting from subsection one of section seven- Sec. 17. teen the words “any mineral” and by inserting in (Authority lieu thereof the words “for specified minerals, or to prospect on Crown for gold and specified minerals.”;

(b) (i) by omitting from subsection one of section Sec. 50. fifty the words “any mineral” and by inserting (Warden in lieu thereof the words “for specified may grant authority.) minerals”;

(ii) by inserting in the same subsection after the word “Crown” the words “, or for gold and any specified minerals so reserved”;

(c) by inserting in subsection one of section fifty-three Sec. 53. after the word “granted” the words “and shall state (Extent of whether it is granted in respect of gold or in respect area and of specified minerals or in respect of gold and nature of deposit.) specified minerals”;

(d)

*Mining (Amendment).***No. 65, 1970****Sec. 70A.**

(Grant of authority to enter.)

Sec. 83B.
(Exploration licenses.)**Sec. 83BA.**
(Lands held under two or more exploration licenses.)**Sec. 83L.**
(Measure of compensation.)**Sec. 155.**
(How compensation assessed.)**Sec. 157A.**
(Compensation.)

(d) by omitting from subsection one of section 70A the words "any minerals" and by inserting in lieu thereof the words "any specified minerals";

(e) by omitting from subsection one of section 83B the words "any mineral" and by inserting in lieu thereof the words "specified minerals, or gold and specified minerals";

(f) (i) by omitting from subsection two of section 83BA the words "served on the Minister and";
(ii) by inserting in the same subsection after the word "objection" the words "and served in the prescribed manner";

(g) by omitting section 83L;

(h) (i) by inserting in subsection one of section one hundred and fifty-five after the word "right," wherever occurring the word "exploration";
(ii) by inserting in subsection two of the same section after the word "right," the word "exploration";
(iii) by inserting in subsection four of the same section after the word "lease," where firstly occurring the word "exploration";(i) (i) by inserting in section 157A after the word "right," the word "exploration";
(ii) by inserting in the same section after the word "claim," the word "exploration".

WHEAT