

MINING (AMENDMENT) ACT 1990 No. 37

NEW SOUTH WALES



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MINING (AMENDMENT) ACT 1990 No. 37

NEW SOUTH WALES



Act No. 37, 1990

An Act to amend the Mining Act 1973 to abolish prospecting licences and to revise procedures relating to claims, opal prospecting licences and applications for authorities; and to make consequential amendments to the Coal Mining Act 1973. [Assented to 22 June 1990]

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Mining (Amendment) Act 1990.

Commencement

2. (1) This Act commences on the date of assent, except as provided by this section.

(2) Schedules 1, 2, 4 and 5 commence on a day or days to be appointed by proclamation.

Amendment of Mining Act 1973 No. 42

3. The Mining Act 1973 is amended as set out in Schedules 1-4.

Consequential amendment of Coal Mining Act 1973 No. 81

- 4 The Coal Mining Act 1973 is amended as set out in Schedule 5.

**SCHEDULE 1 - AMENDMENTS RELATING TO ABOLITION OF
PROSPECTING LICENCES**

(Sec. 3)

(1) Section 6 (Definitions):

- (a) From the definition of "authority" in section 6 (1), omit "a prospecting licence,".
- (b) From section 6 (1), omit the definitions of "prospecting area" and "prospecting licence".

- (2) Sections 12 (2), 50 (1), 53 (3), (4), (5), 54 (1), (2) and (3), 57 (3), 58, 59 (3), 84 (1), 92 (1) and (4) (a):

Omit "a prospecting licence or" wherever occurring.

- (3) Sections 20 (1) (a), 25A (4) (b), 41 (1) and (2), 43 (1), (3) and (3A), 44 (1), (2) and (4)-(9), 45 (1) and (2) (b), 52 (5) and (6) (a), 57 (2), (4), (5) and (6), 66 (6) and (8) (a), 68, 75 (7), 79 (1), 83 (2), 84 (2), 92 (6), 94 (2), 95 (1), (3), (4), (6), (6A), (6B), (6C) and (7A) and 104 (1):

Omit "a prospecting licence," wherever occurring.

**SCHEDULE 1 - AMENDMENTS RELATING TO ABOLITION
OF PROSPECTING LICENCES - *continued***

(4) Sections 20 (2), 75 (7), 84 (3) and 95 (3):
Omit “the prospecting licence,” wherever occurring.

(5) Section 24 (**Reserves**):
(a) Omit section 24 (2) (c).
(b) Omit section 24 (5) (b).

(6) Section 29 (**Restrictions on registration of a claim**):
From section 29 (1) (c), omit “a prospecting area.”

(7) Sections 41 (1) (a) and (2) (a) and 43 (3) (a):
Omit “a licence or” wherever occurring.

(8) Sections 41 (1) (b) and (2), 43 (1) (c), 57 (1), (2), (5) and (6) and 84 (4):
Omit “licence or” wherever occurring.

(9) Section 41 (**Intending applicant for mining lease etc. over private lands etc. to give notice to owner etc.**):
(a) Omit section 41 (1) (c) and (2) (c).
(b) From section 41 (1) (a) and (2) (a), omit “, as the case may be,” where firstly occurring.

(10) Sections 43 (1) (b) and (3), 44 (1) (a), (4), (5) (b) and (8), 45 (1), 53 (3), (4), (5) and (5A), 54 (3), 59 (3), 66 (6), 68, 75 (7), 84 (1) (a) (i), 94 (2) and 95 (3), (6) and (6C):
Omit “the licence or” wherever occurring.

(11) Section 43 (**Application for a mining lease or a mining purposes lease**):
Omit section 43 (3) (c).

**SCHEDULE 1 - AMENDMENTS RELATING TO ABOLITION
OF PROSPECTING LICENCES - *continued***

(12) **Section 50 (Exclusive right to apply for an authority):**

- (a) From section 50 (2), omit "prospecting licence to prospect, or a mining lease to mine,", insert instead "mining lease to mine".
- (b) Omit section 50 (3).

(13) **Section 50A (Certain land excluded from applications):**

From section 50A, omit "50 (1), (2) or (3)" wherever occurring, insert instead "50 (1) or (2)".

(14) **Section 52 (Shape and dimensions of area over which exploration licence may be granted):**

From section 52 (1), omit "6 units and not more than 4 blocks", insert instead "1 unit and not more than 100 units",

(15) **Sections 52 (5) (a), 66 (4) and 95 (2) and (7):**

Omit "prospecting licence," wherever occurring.

(16) **Section 53 (Powers in relation to application for mining lease):**

- (a) Omit section 53 (1) and (1A).
- (b) From section 53 (5A), omit "prospecting licence or".

(17) **Section 53A (Application for mining lease dealt with as application for exploration licence):**

- (a) From section 53A, omit "a prospecting licence", wherever occurring, insert instead "an exploration licence".
- (b) From section 53A (2), omit ", subject to subsection (3),".
- (c) Omit section 53A (3).

(18) **Section 54 (Shape and dimensions of area over which mining lease may be granted):**

- (a) From section 54 (2) (a), omit "the prospecting licence or licences or".

**SCHEDULE 1 - AMENDMENTS RELATING TO ABOLITION
OF PROSPECTING LICENCES - *continued***

- (b) From section 54 (2) (a) and (3), omit "licence, licences," wherever occurring.
- (c) From section 54 (2) (b) and (3) (b), omit "the prospecting licence or", wherever occurring.
- (19) Sections 57 (1) and 79 (6):
Omit "prospecting licence, a" wherever occurring.
- (20) Section 61 (**Control of corporation may be taken into account**):
From section 61, omit ", a prospecting licence",
- (21) Section 65 (**Period for which authority granted**):
Omit section 65 (2).
- (22) Section 66 (2), 69 (3) and 76 (3) (a):
Omit "or a prospecting licence" wherever occurring.
- (23) Section 66 (**Application for renewal of authority**):
Omit section 66 (7) (c) and (8) (c).
- (24) Section 69 (**Powers of Minister on application for renewal of authority**):
Omit section 69 (5).
- (25) Section 72A (**Certain exploration licences continued**):
Omit the section.
- (26) Section 79 (**Authority not to be granted over land used as gardenetc.**):
 - (a) Omit section 79 (7) (a) and (c).
 - (b) From section 79 (7) (d), omit "or (c)".

**SCHEDULE 1 - AMENDMENTS RELATING TO ABOLITION
OF PROSPECTING LICENCES - *continued***

(27) **Section 83 (Authority not to be granted over land in a fossicking area etc.):**
From section 83 (2), omit "licences", insert instead "a licence".

(28) **Section 84A (Definitions)** (as inserted by Act No. 136, 1989):
From the definition of "licensee", omit "or prospecting licence".

(29) **Sections 84D (3) (b) and 121A (1)** (as inserted by Act No. 136, 1989):
Omit "or prospecting licence" wherever occurring.

(30) **Section 88 (Rights of registered holder of a prospecting licence):**
Omit the section.

(31) **Section 92 (Addition of mineral or mining purpose to lease):**
(a) From section 92 (1), omit "his licence or", insert instead "the".
(b) From section 92 (1), omit "the licence or".

(32) **Section 95 (Rent):**
(a) From section 95 (1), (2) and (4), omit "licence or" wherever occurring.
(b) From section 95 (1) and (2), omit "as the case may be," wherever occurring.
(c) From section 95 (1) (b) and (2) (b), omit "licences or" wherever occurring.
(d) From section 95 (7), omit "prospecting licence," wherever occurring.

**SCHEDULE 1 - AMENDMENTS RELATING TO ABOLITION
OF PROSPECTING LICENCES - *continued***

(33) Section 95A (**Variation of liability for rent in respect of certain authorities**):

- Omit section 95A (1) (a) (i).
- From section 95A (1) (a) and (b), omit "prospecting licence," wherever occurring.

(34) Section 170 (**Circumstances in which land ceases to be part of exploration area etc.**):

- Omit section 170 (1).
- From section 170 (2), omit ", an exploration area or a prospecting area", insert instead "or an exploration area".

(35) First Schedule (**Agricultural land**):

- From clause 3 (b), omit ", an exploration licence or a prospecting licence", insert instead "or an exploration licence".
- From clause 3 (b), omit "or prospecting licence".

**SCHEDULE 2 - AMENDMENTS RELATING TO CLAIMS AND
OPAL PROSPECTING LICENCES**

(Sec. 3)

(1) Section 25C (**Opal prospecting blocks**):

- In section 25C (3) (a) (i) and (ii), after "area;" wherever occurring, insert "and".
- After section 25C (3) (a) (iv), insert the following subparagraphs:
 - the period for which an opal prospecting licence over each opal prospecting block within the opal prospecting area may be granted; and
 - any special conditions which are to apply to an opal prospecting licence relating to the programme of work to be carried out in an opal prospecting block, the amount of money which is to be expended on prospecting and any other

**SCHEDULE 2 - AMENDMENTS RELATING TO CLAIMS AND
OPAL PROSPECTING LICENCES - *continued***

matters which the Minister considers should be depicted on the map as special conditions; and

(c) After section 25C (3), insert:

(3A) The Minister may from time to time, as appears to the Minister to be appropriate, cause the map referred to in subsection (3) to be amended by:

- (a) varying the boundary of the opal prospecting area; or
- (b) varying the boundary of one or more opal prospecting blocks within the opal prospecting area; or
- (c) varying the period for which an opal prospecting licence over each opal prospecting block within the opal prospecting area may be granted; or
- (d) varying the special conditions which are to apply to an opal prospecting licence.

(3B) Where, under subsection (3A), the Minister has caused the map referred to in subsection (3) to be amended, the Minister must, as soon as is practicable, cause a copy of the map, as amended, to be furnished to the mining registrar for each division within which the relevant opal prospecting area, or any part of the area, is situated.

(d) In section 25C (4), after "subsection (3) (b)", insert "or (3B)".

(2) Section 26D (Applications for opal prospecting licences):

- (a) In section 26D (2), omit "subject to such", insert instead "subject to the special conditions, if any, applicable under section 25C (3) (a) (vi) and to such other".
- (b) From section 26D (3) (a), omit "28", insert instead "10".
- (c) Omit section 26D (5), insert instead:

(5) An opal prospecting licence is in force during the period specified in accordance with section 25C (3) or (3A)

SCHEDULE 2 - AMENDMENTS RELATING TO CLAIMS AND OPAL PROSPECTING LICENCES - *continued*

on the map for the opal prospecting block to which the licence relates.

(3) Section 27 (Marking out land over which claim is to be registeredetc.):

- (a) In section 27 (3) (c), omit "or".
- (b) Omit section 27 (3) (d), insert instead:
 - (d) that is situated within 50 metres of any improvement (being a substantial building, dam, reservoir, tank, drain, contour bank or graded bank or water disposal area, for soil conservation purposes, or any other valuable improvement) other than an improvement constructed or effected for mining purposes and not bona fide used for other purposes, without the consent of the occupier of the land on which there is such an improvement; or
 - (e) that is situated within 200 metres of any woolshed or shearing shed which is in use as such, without the consent of the occupier of the land on which there are such improvements.
- (c) In section 27 (5), omit "or (d)", insert instead ", (d) or (e)".

(4) Section 120A (Entitlement to compensation in respect of operations in an opal prospecting block):

Omit section 120A (3), insert instead:

(3) The holder of an opal prospecting licence must, before exercising any right conferred on the holder by section 26E (1):

- (a) serve notice of the holder's intention to exercise the right on the occupier of the Crown lands within the opal prospecting block to which the licence relates; and
- (b) pay the amount of compensation determined or assessed to be payable in accordance with subsection (2) to any owner or occupier entitled to compensation.

SCHEDULE 2 - AMENDMENTS RELATING TO CLAIMS AND OPAL PROSPECTING LICENCES - *continued*

(4) If the holder of an opal prospecting licence exercises any right conferred on the holder by section 26E (1) before complying with subsection (3) (b), the mining registrar must cancel the opal prospecting licence.

(5) **Section 121 (Entitlement to compensation in respect of operations under a claim):**

Omit section 121 (3), insert instead:

(3) The registered holder of a claim must, before commencing prospecting or mining operations:

- (a) serve on any person entitled to compensation under subsection (1) (a) a notice stating the registered holder's intention to commence operations; and
- (b) pay the amount of compensation determined or assessed to be payable in accordance with subsection (2) to any owner or occupier entitled to compensation.

(4) If the registered holder of a claim commences prospecting or mining operations before complying with subsection (3) (b), the mining registrar must cancel registration of the claim.

SCHEDULE 3 - AMENDMENTS RELATING TO LODGMENT OF APPLICATIONS

(Sec. 3)

(l) **Section 39 (Application for exploration licence):**

(a) Omit section 39 (1), insert instead:

(1) An application for an exploration licence is to be lodged with a mining registrar.

(b) After section 39 (6), insert:

(7) The Director-General may direct that an application for an exploration licence, whether lodged before or after the commencement of this section, is to be dealt with by the mining registrar with whom it was lodged or by any other mining registrar nominated by the Director-General.

**SCHEDULE 3 - AMENDMENTS RELATING TO LODGMENT
OF APPLICATIONS - *continued***

(2) Section 43 (**Application for a mining lease or a mining purposeslease**):

(a) Omit section 43 (1) (a), insert instead:

(a) be lodged with a mining registrar;

(b) After section 43 (5), insert:

(6) The Director-General may direct that an application for a mining lease or a mining purposes lease, whether lodged before or after the commencement of this section, is to be dealt with by the mining registrar with whom it was lodged or by any other mining registrar nominated by the Director-General

**SCHEDULE 4 - AMENDMENTS CONCERNING TRANSITIONAL
PROVISIONS AND SAVINGS**

(Sec. 3)

Second Schedule (Transitional provisions and savings**):**

(1) At the end of clause 1A (1), insert:

Mining (Amendment) Act 1990.

(2) At the end of the Schedule, insert:

**PART 4 - TRANSITIONAL PROVISIONS AND
SAVINGS CONSEQUENT ON THE ENACTMENT
OF THE MINING (AMENDMENT) ACT 1990**

Definitions

30. In this Part:

"amending Act" means the Mining (Amendment) Act 1990;

"appointed day" means the day on which this Part commences;

"existing exploration licence" means an exploration licence that was in force immediately before the appointed day;

**SCHEDULE 4 - AMENDMENTS CONCERNING
TRANSITIONAL PROVISIONS AND SAVINGS - *continued***

"existing prospecting licence" means a prospecting licence that was in force immediately before the appointed day, but does not include any renewal of such a licence effected after that day.

Saving of existing prospecting licences

31. An existing prospecting licence granted in respect:

- (a) of a mineral prescribed as all or part of a group of minerals—is to be taken to be an exploration licence granted in respect of that group of minerals; and
- (b) of minerals prescribed as all or part of 2 or more groups of minerals—is to be taken to be an exploration licence granted in respect of each of groups of minerals,

on the conditions set out in the existing prospecting licence.

Terms of saved licences

32. Unless it is sooner cancelled, a licence referred to in clause 31 continues in force for the unexpired portion of the period specified in the licence.

Issue of fresh documents

33. A fresh licence or licences may be issued to the holder of an existing prospecting licence where this becomes necessary as the result of the operation of clause 31.

Continuation of liabilities

34. Liabilities, including any liability to pay rent, under a licence referred to in clause 31 are not affected by that clause.

Applications

35. (1) An application for a prospecting licence lodged under section 43 that is pending immediately before the

**SCHEDULE 4 - AMENDMENTS CONCERNING
TRANSITIONAL PROVISIONS AND SAVINGS -continued**

appointed day is to be taken to be an application lodged under section 39 for an exploration licence.

(2) Section 39 (2) does not apply to an application referred to in this clause.

(3) An application for the renewal of a prospecting licence lodged under section 66 as in force immediately before the appointed day is to be taken to be an application for the renewal of an exploration licence lodged under that section.

Notice of application

36. A notice in respect of an application for a prospecting licence published under section 43 (3) before the appointed day is to be taken to be a notice in respect of an application for an exploration licence published under section 38.

Priority of application

37. An application for a prospecting licence lodged under section 43 that is pending immediately before the appointed day and that is to be taken to be an application for an exploration licence under clause 35 is to be dealt with on the basis of the priorities established under section 60 (1). Section 60 (3) does not apply to the application.

Certain exploration licences continued

38. An exploration licence continued pursuant to the provisions of section 72A that is still in force immediately before the appointed day, continues, under this clause, to have effect until the date on which

- (a) notification of the withdrawal of the application for a prospecting licence taken under clause 35 to be an application for an exploration licence is published in the Gazette under section 20; or
- (b) notification of refusal of the application for a prospecting licence taken under clause 35 to be an

**SCHEDULE 4 - AMENDMENTS CONCERNING
TRANSITIONAL PROVISIONS AND SAVINGS - *continued***

application for an exploration licence is published in the Gazette under section 20; or

(c) the new exploration licence has effect, as provided in section 64,

unless the existing licence is sooner cancelled under section 75.

Authority not to be granted over land used as garden etc.

39. The prescribed time for the purposes of section 79 in respect of an application for a mining lease lodged by the registered holder of a prospecting licence that is to be taken to be an exploration licence under clause 31, is the time when the application for that prospecting licence was lodged.

Restriction on grant of exploration licence over certain land

40. Section 82 does not apply to an application for a prospecting licence that is to be taken to be an application for an exploration licence under clause 35.

Grant of one exploration licence in respect of a number of applications

41. The Minister may grant to an applicant a single exploration licence in respect of one or more applications for prospecting licences taken to be applications for exploration licences under clause 35 made by the applicant.

**SCHEDULE 5 - CONSEQUENTIAL AMENDMENTS TO
COAL MINING ACT 1973**

(Sec. 4)

(1) Section 6 (Definitions):

From the definition of "authority" in section 6 (1), omit "a prospecting licence,".

(2) Section 40 (Area over which exploration permit may be granted):

From section 40 (4) (d) and (5) (d), omit "a prospecting licence," wherever occurring.

*[Minister's second reading speech made in—
Legislative Assembly on 22 May 1990
Legislative Council on 31 May 1990]*