

**PUBLIC WORKS AND LOCAL GOVERNMENT
(AMENDMENT) ACT.**

New South Wales



ANNO SEXTO DECIMO

ELIZABETHÆ II REGINÆ

Act No. 53, 1967.

An Act to make provision with respect to minerals within land compulsorily acquired under certain Acts; for this purpose to amend the Public Works Act, 1912, the Local Government Act, 1919, and certain other Acts; and for purposes connected therewith. [Assented to, 30th October, 1967.]

BE

Public Works and Local Government (Amendment).

BE it enacted by the Queen's Most Excellent Majesty, by No. 53, 1967 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. This Act may be cited as the "Public Works and Local Short title and citation. Government (Amendment) Act, 1967".

2. The Public Works Act, 1912, as amended by Amendment of Act No. 45, 1912. subsequent Acts, is amended by omitting section one hundred and forty-one and by inserting in lieu thereof the following Subst. sec. 141. section:—

141. (1) In this section "minerals" means mines or Constructing Authority entitled to minerals. deposits of minerals within land taken under this Act after the commencement of the Public Works and Local Government (Amendment) Act, 1967, including land so taken after that commencement pursuant to the authority conferred by any other Act, whether passed before or after that commencement.

(2) Subject to this section, the Constructing Authority shall be entitled to all minerals other than—

- (a) minerals that are expressly excepted in the notification of the taking; or
- (b) minerals that were vested in Her Majesty immediately before the taking, not being minerals so vested that—
 - (i) are expressly appropriated as such in the notification of the taking; or
 - (ii) necessarily must be dug or carried away or used in the construction of the works,

but any exception referred to in paragraph (a) of this subsection shall be deemed not to include minerals that necessarily must be dug or carried away or used in the construction of the works.

(3)

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(3) The Governor may, by notification published in the Gazette—

- (a) before payment of compensation for the taking of minerals within the land described in the notification; and
- (b) before any disposition of those minerals, being a disposition made by the Constructing Authority or other person in whom, by or under this or any other Act, they are vested in consequence of the taking,

declare that minerals taken and within the land so described are divested from the Constructing Authority or, where some other person is specified, that person, and vested in a specified person for a specified estate, subject to all trusts, obligations, estates, interests, contracts, charges, rates and rights-of-way or other easements from which they were freed and discharged upon the taking, other than such of them as may be expressly excepted in the notification, and thereupon those minerals shall be divested and shall vest accordingly.

For the purposes of this subsection and of any notification published thereunder "minerals" shall not include any minerals that, immediately before the taking, were vested in Her Majesty or any minerals that necessarily must be dug or carried away or used in the construction of the works.

(4) The Constructing Authority shall, in respect of minerals vested under this section—

- (a) where the minerals so vested were, immediately before the taking thereof, under the provisions of the Real Property Act, 1900, as amended by subsequent Acts, make a request under section fourteen of the Real Property (Amendment) Act, 1921, as amended by subsequent Acts, in relation to those minerals and furnish such of the evidence required in connection therewith as may be in his possession or under his control; or
- (b)

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- (b) where the minerals so vested were not, immediately before the taking thereof, under the provisions of the Real Property Act, 1900, as amended by subsequent Acts, forward a copy of the notification of the vesting to the Registrar-General who shall, upon receipt thereof—
- (i) cause a memorandum of the vesting of those minerals to be prepared and registered in the General Register of Deeds kept under the Registration of Deeds Act, 1897, as amended by subsequent Acts, and for the purposes of that Act, as so amended, that memorandum shall be deemed to be a registration copy of an instrument duly registered under that Act, as so amended; and
- (ii) cancel any certificate of title issued by him under section 31A of the Real Property Act, 1900, as amended by subsequent Acts, in so far as it relates to those minerals.

A request made by the Constructing Authority in compliance with paragraph (a) of this subsection shall be deemed to have been made by the person entitled to do so under section fourteen of the Real Property (Amendment) Act, 1921, as amended by subsequent Acts, and a certificate of title cancelled by the Registrar-General under subparagraph (ii) of paragraph (b) of this subsection shall, to the extent of the cancellation, be deemed never to have issued.

(5) Where, pursuant to a vesting under this section, a person has become entitled to an estate or interest in minerals equivalent to an estate or interest in those minerals converted by section forty-five of this Act into a claim for compensation he shall, notwithstanding anything contained in this Act, be deemed never to have been entitled to compensation pursuant to that claim.

(6)

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(6) For the purposes of this section, where land described in a notification published under subsection three of this section is land that by any Act is declared upon the taking thereof to be vested in Her Majesty as Crown land within the meaning of the Crown Lands Consolidation Act, 1913, as amended by subsequent Acts, or land that is reserved under section 25A of that Act, as so amended, the minerals taken and within that land (other than minerals that, immediately before the taking, were vested in Her Majesty and minerals that necessarily must be dug or carried away or used in the construction of the works) shall be deemed never to have been so vested or reserved and sections forty-three and forty-four and subsection one of section forty-five of this Act shall, in the case of minerals so deemed never to have vested, be deemed to have applied to and in respect of those minerals, upon the taking thereof.

(7) The costs and expenses of making any request or effecting any registration under subsection four of this section shall be borne by the Constructing Authority and no stamp duty shall be chargeable in respect of any such request or any instrument whereby minerals are vested under this section.

(8) Without limiting the discretion conferred upon the Registrar-General by section fourteen of the Real Property (Amendment) Act, 1921, as amended by subsequent Acts, with respect to the making of any entry, cancellation or correction in the register book, the Registrar-General shall not, when issuing a certificate of title for minerals pursuant to a request made under paragraph (a) of subsection four of this section, be required to make any entries in the register book other than—

(a) such entries as may be necessary to vest the minerals in the person and for the estate specified, in the notification of the vesting of those minerals, as the person in whom, and the estate for which, they were thereby vested; and

(b)

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(b) any entries relating to the land described in the notification, being entries that appeared in the register book immediately before the taking of that land, other than entries relating only to estates or interests excepted in the notification. **No. 53, 1967**

(9) Nothing in this section shall be construed as affecting the provisions of sections one hundred and forty-two to one hundred and forty-nine, both inclusive, of this Act.

3. The Local Government Act, 1919, as amended by subsequent Acts, is amended by omitting section 536AA and by inserting in lieu thereof the following section :—

Amendment
of Act No.
41, 1919.
Subst.
sec. 536AA.

536AA. (1) In this section “minerals” means mines or deposits of minerals within land resumed or appropriated under this Part after the commencement of the Public Works and Local Government (Amendment) Act, 1967, including land so resumed or appropriated under the authority conferred by any other Act, whether passed before or after that commencement.

Council
entitled to
minerals.

(2) Subject to this section, the council shall be entitled to all minerals other than—

- (a) minerals that are expressly excepted in the notice of resumption or appropriation; or
- (b) minerals that were vested in Her Majesty immediately before publication of that notice in the Gazette, not being minerals that—
 - (i) are expressly appropriated as such in the notice; or
 - (ii) necessarily must be dug or carried away or used in the construction by the council of any works upon the land resumed or appropriated,

but

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but any exception referred to in paragraph (a) of this subsection shall be deemed not to include minerals that necessarily must be dug or carried away or used in the construction by the council of any works upon the land resumed or appropriated.

(3) The council may, by notification published in the Gazette—

- (a) before payment of compensation for the resumption or appropriation of minerals within the land described in the notification; and
- (b) before any disposition of those minerals by the council,

declare that minerals resumed or appropriated and within the land so described are divested from the council and vested in a specified person for a specified estate, subject to all trusts, obligations, estates, interests, contracts, charges, rates and rights-of-way or other easements from which they were freed and discharged upon the resumption or appropriation, other than such of them as may be expressly excepted in the notification, and thereupon those minerals shall be divested and shall vest accordingly.

For the purposes of this subsection and of any notification published thereunder "minerals" shall not include any minerals that, immediately before the resumption or appropriation were vested in Her Majesty or any minerals that necessarily must be dug or carried away or used in the construction by the council of any works upon the land resumed or appropriated.

(4) The council shall, in respect of minerals vested under this section—

- (a) where the minerals so vested were, immediately before the resumption or appropriation thereof, under the provisions of the Real Property Act, 1900, make a request under section fourteen of the Real Property (Amendment) Act, 1921, as amended by subsequent Acts, in relation to those minerals

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minerals and furnish such of the evidence required in connection therewith as may be in its possession or under its control; or

- (b) where the minerals so vested were not, immediately before the resumption or appropriation thereof, under the provisions of the Real Property Act, 1900, forward a copy of the notification of the vesting to the Registrar-General who shall, upon receipt thereof—
- (i) cause a memorandum of the vesting of those minerals to be prepared and registered in the General Register of Deeds kept under the Registration of Deeds Act, 1897, and for the purposes of that Act that memorandum shall be deemed to be a registration copy of an instrument duly registered under that Act; and
 - (ii) cancel any certificate of title issued by him under section 31A of the Real Property Act, 1900, as amended by subsequent Acts, in so far as it relates to those minerals.

A request made by the council in compliance with paragraph (a) of this subsection shall be deemed to have been made by the person entitled to do so under section fourteen of the Real Property (Amendment) Act, 1921, as amended by subsequent Acts, and a certificate of title cancelled by the Registrar-General under subparagraph (ii) of paragraph (b) of this subsection shall, to the extent of the cancellation, be deemed never to have issued.

(5) Where, pursuant to a vesting under this section, a person has become entitled to an estate or interest in minerals equivalent to an estate or interest in those minerals converted, by the operation of section 536C of this Act and section forty-five of the Public Works Act, 1912, into a claim by him for compensation

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he shall, notwithstanding anything contained in this Part, be deemed never to have been entitled to compensation pursuant to that claim.

(6) The costs and expenses of making any request or affecting any registration under subsection four of this section shall be borne by the council and no stamp duty shall be chargeable in respect of any such request or any instrument whereby minerals are vested under this section.

(7) Without limiting the discretion conferred upon the Registrar-General by section fourteen of the Real Property (Amendment) Act, 1921, as amended by subsequent Acts, with respect to the making of any entry, cancellation or correction in the register book, the Registrar-General shall not, when issuing a certificate of title for minerals pursuant to a request made under paragraph (a) of subsection four of this section, be required to make any entries in the register book other than—

- (a) such entries as may be necessary to vest the minerals in the person and for the estate specified, in the notification of the vesting of those minerals, as the person in whom, and the estate for which, they were thereby vested; and
- (b) any entries relating to the land described in the notification, being entries that appeared in the register book immediately before the resumption or appropriation of that land, other than entries relating only to estates or interests excepted in the notification.

(8) Nothing in this section shall be construed as affecting the provisions of sections 536DA to 536DH, both inclusive, of this Act.

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