



New South Wales

# Mining Amendment Act 1999 No 43

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New South Wales

## **Mining Amendment Act 1999 No 43**

Act No 43, 1999

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An Act to amend the *Mining Act 1992* with respect to the rights of landholders whose lands are affected by mining titles; and for other purposes. [Assented to 8 July 1999]

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**The Legislature of New South Wales enacts:**

**1 Name of Act**

This Act is the *Mining Amendment Act 1999*.

**2 Commencement**

This Act commences on a day or days to be appointed by proclamation.

**3 Amendment of Mining Act 1992 No 29**

The *Mining Act 1992* is amended as set out in Schedules 1–3.

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## **Schedule 1 Amendment of Mining Act 1992 in relation to rights of landholders**

(Section 3)

### **[1] Section 24 Land over which exploration licence may be granted**

Omit section 24 (1). Insert instead:

- (1) An exploration licence may be granted over land of any title or tenure.

### **[2] Sections 31 (1) (a), 49 (1) (a) and 62 (1) (a)**

Omit “the occupier of the land on which the dwelling-house is situated” wherever occurring.

Insert instead “the person occupying it”.

### **[3] Sections 31 (1), 49 (1) and 62 (1)**

Omit “occupier (and, in the case of private land, the owner) of the land on which the dwelling-house, garden or improvement is situated” wherever occurring.

Insert instead “owner of the dwelling-house, garden or improvement (and, in the case of the dwelling-house, the written consent of its occupant)”.

### **[4] Section 32F Access arrangement required for prospecting operations under low-impact licences**

Omit “owners or occupiers of land” from section 32F (4).

Insert instead “landholders”.

### **[5] Section 42 Land over which assessment lease may be granted**

Omit section 42 (1). Insert instead:

- (1) An assessment lease may be granted over land of any title or tenure.

### **[6] Section 68 Land over which mining lease may be granted**

Omit section 68 (1). Insert instead:

- (1) A mining lease may be granted over land of any title or tenure.

**[7] Section 76 Fencing of land subject to mining lease**

Omit section 76 (2) (a) and (b). Insert instead:

- (a) given by the landholder of the land concerned, or
- (b) in the case of Crown land (within the meaning of the *Crown Lands Act 1989*) for which there is no landholder other than the Crown—given by the Minister.

**[8] Section 77 Addition of mineral to mining lease**

Omit section 77 (3). Insert instead:

- (3) The holder of a mining lease over any land must, within 21 days after lodging the application, serve a copy of the application on each landholder.

**[9] Section 81 Surface prospecting in relation to subsurface leases**

Omit section 81 (1) (a). Insert instead:

- (a) the landholder, and

**[10] Section 138 Application of Division**

Omit “on private land or on land held under a pastoral lease” from section 138 (1).

Insert instead “on any land”.

**[11] Section 138 (2)**

Omit “an owner or occupier of land”. Insert instead “a landholder”.

**[12] Section 138 (2)**

Omit “an owner or occupier” where secondly occurring.

Insert instead “a landholder”.

**[13] Section 140 Prospecting to be carried out in accordance with access arrangement**

Omit “each owner and occupier of the land” from section 140 (a).

Insert instead “each landholder”.

**[14] Section 141 Matters for which access arrangement to provide**

Omit “any owner or occupier of the land” from section 141 (1) (f).  
Insert instead “any landholder of the land”.

**[15] Section 141 (2)**

Omit “each owner or occupier”. Insert instead “each landholder”.

**[16] Section 141 (4)**

Omit “the owner or occupier of the land”.  
Insert instead “a landholder of the land concerned”.

**[17] Section 141 (4) (b)**

Omit “the owner or occupier”. Insert instead “the landholder”.

**[18] Section 142 Holder of prospecting title to seek access arrangement**

Omit “each owner and occupier” from section 142 (1).  
Insert instead “each landholder”.

**[19] Section 142 (3)**

Omit “, and each owner and occupier of the land concerned,”.  
Insert instead “and each landholder of the land concerned”.

**[20] Section 143 Appointment of arbitrator by agreement**

Omit “each owner and occupier of the land” wherever occurring in section 143 (1).  
Insert instead “each landholder”.

**[21] Section 143 (1)**

Omit “each such owner and occupier”. Insert instead “each landholder”.

**[22] Section 143 (2)**

Omit “, and each owner and occupier of the land concerned,”.  
Insert instead “and each landholder of the land concerned”.

**[23] Section 144 Appointment of arbitrator in default of agreement**

Omit “each owner and occupier” from section 144 (1).

Insert instead “each landholder”.

**[24] Section 145 Arbitration**

Omit “each owner and occupier of that land” from section 145 (1) (b).

Insert instead “each landholder”.

**[25] Section 145 (2)**

Omit “each owner and occupier of the land concerned”.

Insert instead “each landholder”.

**[26] Section 146 Right of appearance**

Omit “each owner and occupier of the land” from section 146 (1).

Insert instead “each landholder”.

**[27] Section 150 Further arbitration**

Omit “each owner and occupier of that land” from section 150 (2) (b).

Insert instead “each landholder”.

**[28] Section 150 (3)**

Omit “each owner and occupier”. Insert instead “each landholder”.

**[29] Section 158 Duration of access arrangements**

Omit section 158 (a) and (b). Insert instead:

- (a) if a landholder with whom the arrangement is made ceases to be a landholder of the land, or
- (b) on the death of a landholder with whom the arrangement is made.

**[30] Section 164 Rights of way**

Omit “owner or occupier” wherever occurring in section 164 (2) (a) and (7).

Insert instead “landholder”.

**[31] Section 165 Right of access to water**

Omit section 165 (1). Insert instead:

- (1) If land subject to an authority includes the surface of any land, a landholder who is entitled to use the land for stock watering or water drainage purposes is entitled to free and uninterrupted access, for those purposes, to the water in any stream (whether perennial or intermittent) or any lagoon or swamp (whether permanent or temporary) on or adjacent to the land.

**[32] Section 165 (2)**

Omit “owner or occupier” where firstly occurring.  
Insert instead “landholder”.

**[33] Section 165 (2)**

Omit “owner or occupier, or all of them,”. Insert instead “landholder”.

**[34] Sections 166 (1) and (2) and 213 (1) and (2)**

Omit “any private land or Crown land held under a pastoral lease” wherever occurring.  
Insert instead “the land”.

**[35] Section 166 Use of water, timber and pasturage etc**

Omit “the owner or occupier of the surface of the land or, if the owner or occupier” from section 166 (1).  
Insert instead “any landholder of the surface of the land or, if such a landholder”.

**[36] Section 166 (2) (b)**

Omit “owner or occupier”.  
Insert instead “landholder”.

**[37] Section 177 Notice of intention to apply for mineral claim**

Omit “Crown land” from section 177 (1). Insert instead “any land”.



**[38] Section 177 (1)**

Omit “the occupier of the land to which the proposed application relates”.  
Insert instead “the landholder”.

**[39] Section 178 Application for granting of mineral claim**

Omit “in the case of an application that relates to Crown land—” from section 178 (2) (f).

**[40] Section 178 (2) (f)**

Omit “occupier of that land”.  
Insert instead “landholder of the land concerned”.

**[41] Section 179 Objection as to agricultural land**

Omit section 179 (1). Insert instead:

- (1) A landholder who is entitled to use land for agricultural purposes and who is served with a notice under section 177 may object to the granting of a mineral claim over the land on the basis that the land is agricultural land.

**[42] Section 180 General restrictions**

Omit section 180 (5).

**[43] Section 188 Dwelling-houses, gardens and improvements**

Omit “the occupier of the land on which the dwelling-house is situated” from section 188 (1) (a).

Insert instead “the person occupying it”.

**[44] Section 188 (1)**

Omit “occupier (and, in the case of private land, the owner) of the land on which the dwelling-house, woolshed, shearing shed, garden or improvement is situated”.

Insert instead “owner of the dwelling-house, woolshed, shearing shed, garden or improvement (and, in the case of the dwelling-house, the written consent of its occupant)”.

**[45] Section 200 Application for transfer**

Omit section 200 (2) (d). Insert instead:

- (d) must be accompanied by a copy of the relevant notice served under subsection (2A).

**[46] Section 200 (2A)**

Insert after section 200 (2):

- (2A) Notice of an intention to make an application under this section must be given by the applicant to the landholder of the land to which the mineral claim relates.

**[47] Section 211 Rights of way**

Omit “owner or occupier” wherever occurring in section 211 (2) (a) and (7).  
Insert instead “landholder”.

**[48] Section 212 Right of access to water**

Omit section 212 (1). Insert instead:

- (1) If land subject to a mineral claim includes the surface of any land, a landholder who is entitled to use the land for stock watering or water drainage purposes is entitled to free and uninterrupted access, for those purposes, to the water in any stream (whether perennial or intermittent) or any lagoon or swamp (whether permanent or temporary) on or adjacent to the land.

**[49] Section 212 (2)**

Omit “any such owner or occupier”. Insert instead “any such landholder”.

**[50] Section 212 (2)**

Omit “the owner or occupier, or all of them,”.  
Insert instead “the landholder”.

**[51] Section 213 Use of water, timber and pasturage etc**

Omit “the owner or occupier of the surface of the land or, if the owner or occupier” from section 213 (1).

Insert instead “any landholder of the surface of the land or, if such a landholder”.

**[52] Section 213 (2) (b)**

Omit “owner or occupier”. Insert instead “landholder”.

**[53] Section 220 Opal prospecting areas**

Omit “any Crown land”. Insert instead “any prescribed land”.

**[54] Section 220 (2) and (3)**

Insert at the end of section 220:

(2) For the purposes of this section, *prescribed land* is:

- (a) any land held under a lease or licence for grazing purposes under the *Crown Lands Act 1989*, the *Crown Lands (Continued Tenures) Act 1989* or the *Western Lands Act 1901*, or
- (b) Crown land, or land within a reserve, other than:
  - (i) land that is held under a lease or licence (not being a lease or licence referred to in paragraph (a)) under the *Crown Lands Act 1989*, the *Crown Lands (Continued Tenures) Act 1989* or the *Western Lands Act 1901*, or
  - (ii) land that has been sold or lawfully contracted to be sold, or
  - (iii) land in respect of which a reserve trust has been established under Division 4 of Part 5 of the *Crown Lands Act 1989* or that is under the control of a council pursuant to section 48 of the *Local Government Act 1993*, or
  - (iv) land that is subject to an easement, or
  - (v) any land of a class or description prescribed by the regulations.

(3) In subsection (2):

*Crown land* has the same meaning as in the *Crown Lands Act 1989*.

*licence* includes a permissive occupancy.

*reserve* has the same meaning as in Part 5 of the *Crown Lands Act 1989*.

**[55] Section 221 Notification of landholders**

Omit “occupied Crown” wherever occurring.

**[56] Section 221**

Omit “any occupier of the land”. Insert instead “the landholder”.

**[57] Section 221 (b) and (c)**

Omit “occupier” wherever occurring. Insert instead “landholder”.

**[58] Section 222 Objections**

Omit “An occupier of Crown land” from section 222 (1).

Insert instead “A landholder of any land”

**[59] Section 222 (1) (a)**

Insert “, if the landholder is a person who is entitled to use the land for agricultural purposes” after “agricultural land”.

**[60] Section 253 Encroachments by mining works**

Omit “an owner or occupier” from section 253 (2).

Insert instead “a landholder”.

**[61] Section 254 Permit to enter land**

Omit “Crown land held under a pastoral lease” from section 254 (1).

Insert instead “any land”.

**[62] Section 254 (3) and (4)**

Insert after section 254 (2):

- (3) A permit under this section may not be granted over any land:
  - (a) on which, or within the prescribed distance of which, is situated a dwelling-house that is the principal place of residence of the person occupying it or a woolshed or shearing shed that is in use as such, or
  - (b) on which, or within the prescribed distance of which, is situated any garden, or
  - (c) on which is situated any improvement (being a substantial building, dam, reservoir, contour bank, graded bank, levee, water disposal area, soil conservation work or other valuable work or structure) other than an improvement constructed or used for mining purposes and for no other purposes.
- (4) The *prescribed distance* is:
  - (a) 200 metres (or, if a greater distance is prescribed by the regulations, the greater distance) for the purposes of subsection (3) (a), and
  - (b) 50 metres (or, if a greater distance is prescribed by the regulations, the greater distance) for the purposes of subsection (3) (b).

**[63] Section 255 Restriction of power of entry**

Omit “occupier of the land” wherever occurring in section 255 (1) (b) and (d).

Insert instead “landholder”.

**[64] Section 255 (2)**

Omit “the owner of the land (in the case of private land) or the occupier of the land (in the case of Crown land)”.

Insert instead “the landholder of the land concerned”.

**[65] Section 255 (2)**

Omit “the occupier of the land” where secondly occurring.

Insert instead “the landholder”.

**[66] Section 262 Definition**

Omit “owner or occupier of that land” from section 262 (c).  
Insert instead “landholder”.

**[67] Section 263 Compensation arising under exploration licence**

Omit section 263 (1). Insert instead:

- (1) On the granting of an exploration licence, a landholder of any land (whether or not subject to the licence) becomes entitled to compensation for any compensable loss suffered, or likely to be suffered, by the landholder as a result of the exercise of the rights conferred by the licence or by an access arrangement in respect of the licence.

**[68] Section 263 (2)**

Omit “an owner or occupier”. Insert instead “a landholder”.

**[69] Section 264 Compensation arising under assessment lease**

Omit section 264 (1). Insert instead:

- (1) On the granting of an assessment lease, a landholder of any land (whether or not subject to the lease) becomes entitled to compensation for any compensable loss suffered, or likely to be suffered, by the landholder as a result of the exercise of the rights conferred by the lease or by an access arrangement in respect of the lease.

**[70] Section 264 (2)**

Omit “an owner or occupier”. Insert instead “a landholder”.

**[71] Section 265 Compensation arising under mining lease**

Omit section 265 (1). Insert instead:

- (1) On the granting of a mining lease, a landholder of any land (whether or not subject to the lease) becomes entitled to compensation for any compensable loss suffered, or likely to be suffered, by the landholder as a result of the exercise of the rights conferred by the lease.

**[72] Section 265 (2) and (3)**

Omit “an owner or occupier” wherever occurring.  
Insert instead “a landholder”.

**[73] Section 265 (4)**

Omit “payable to an owner or occupier under subsection (1) (a)”.  
Insert instead “payable to a landholder under subsection (1)”.

**[74] Section 267A Effect of determination and payment of compensation under provisions of Commonwealth Native Title Act**

Omit “owner” from section 267A (1) (a). Insert instead “landholder”.

**[75] Section 268 Compensation payable on transfer of certain authorities etc**

Omit “private land”. Insert instead “any land”.

**[76] Section 268**

Omit “an owner or occupier” wherever occurring.  
Insert instead “a landholder”.

**[77] Section 270 Compensation arising under environmental assessment permit**

Omit section 270 (1). Insert instead:

- (1) If the holder of an environmental assessment permit enters any land under the authority of the permit, landholders become entitled to compensation from the holder of the permit for any compensable loss they suffer as a result of the exercise of the rights conferred by the permit.

**[78] Section 270 (2)**

Omit “owner or occupier”. Insert instead “landholder”.

**[79] Section 277 Directions to furnish names and addresses**

Omit “the owner or occupier” where firstly occurring in section 277 (1).  
Insert instead “a landholder”.

**[80] Section 277 (1)**

Omit “the owner or occupier of the land” from section 277 (1).  
Insert instead “the landholder”.

**[81] Section 383 Service of documents**

Omit “an owner or occupier of land” from section 383 (2).  
Insert instead “a landholder”.

**[82] Section 383 (6) and (7)**

Insert after section 383 (5):

- (6) A requirement of this Act to serve a document on a landholder is, if the landholder is the Crown, a requirement to serve it in the manner prescribed by the regulations.
- (7) The regulations may, in a particular case or class of cases, dispense with service on the Crown pursuant to a requirement referred to in subsection (6).

**[83] Section 383A Service of documents on native title holders**

Omit “an owner of land” from section 383A (1).  
Insert instead “a landholder”.

**[84] Section 383A (2)**

Omit section 383A (2)–(5). Insert instead:

- (2) If no approved determination of native title (within the meaning of the *Commonwealth Native Title Act*) exists in relation to the land concerned:
  - (a) a document authorised or required under this Act to be served on a landholder cannot, for the purposes of serving it on a landholder who is a native title holder who cannot be identified, be effected in the manner prescribed by section 383 (2), and
  - (b) such a document may, however, be served on any such landholder by serving it, in a manner authorised by section 383 (1) and (4), on:



- (i) any representative Aboriginal/Torres Strait Islander bodies for an area that includes the land concerned, and
- (ii) any registered native title claimants in relation to the land concerned.

**[85] Section 383B Consent of landholders and others**

Omit “the occupier and, in the case of private land, the owner of the land concerned” from section 383B (1) (a).

Insert instead “a person or persons specified in the relevant section”.

**[86] Section 383B (1) (b)**

Omit “the owner and (if the owner is not the occupier) the occupier of the land concerned”.

Insert instead “the landholder”.

**[87] Section 383B (1) (c)**

Omit “each owner and occupier of the land concerned”.

Insert instead “each landholder”.

**[88] Section 383B (1) (d)**

Omit “the owner or occupier of the land concerned”.

Insert instead “the landholder”.

**[89] Section 383B (1) (e)**

Omit “the owner or occupier of the surface of the land concerned”.

Insert instead “the landholder”.

**[90] Section 383B (1) (f) and (g) and (2) (f)**

Omit the paragraphs.

**[91] Section 383B (1) (h)**

Omit “an owner or occupier”. Insert instead “a landholder”.

**[92] Section 383B (2)**

Omit “an owner or occupier of land”.

Insert instead “a landholder or other person”.

**[93] Section 383B (2)**

Omit “subsection (1) (a)–(g)”. Insert instead “subsection (1) (a)–(e)”.

**[94] Section 383B (2) (a)**

Omit “the owner or occupier of the land”.

Insert instead “the landholder or person”.

**[95] Section 383B (2) (b), (d) and (e)**

Omit “the owner or occupier of the land concerned” wherever occurring.

Insert instead “the landholder”.

**[96] Section 383B (2) (c)**

Omit “those owners and occupiers (if any) of the land concerned”.

Insert instead “those landholders (if any)”.

**[97] Section 383B (2) (c)**

Omit “an owner or occupier of the land”. Insert instead “a landholder”.

**[98] Section 383B (3)**

Omit “an owner”. Insert instead “a landholder”.

**[99] Section 383B (3) (a)**

Omit “, to grant the lease or mineral claim or to deal with the transfer of the mineral claim”.

Insert instead “or to grant the lease”.

**[100] Section 383B (3) (b)**

Omit the paragraph. Insert instead:

- (b) if notice of the intention to exercise the rights, to grant the lease, to carry out the operations, to make an

agreement as to an access arrangement or to utilise the resources is served in the manner prescribed by section 383A and, at the expiration of the period of 4 months starting when the notice is served, no person becomes a registered native title claimant or a registered native title body corporate in relation to the land concerned.

**[101] Schedule 1, clause 20**

Omit the clause. Insert instead:

**20 Application of Division**

This Division applies to a mining lease that is proposed to extend to the surface of any land.

**[102] Schedule 1, clause 21 Notification of landholders**

Omit “owner or occupier” wherever occurring in clause 21 (1), (3) and (5).  
Insert instead “landholder”.

**[103] Schedule 1, clause 22**

Omit “An owner or occupier of private land, or of Crown land held under a pastoral lease,” from clause 22 (1).  
Insert instead “A landholder of any land”.

**[104] Schedule 1, clause 22 (3)**

Omit the subclause. Insert instead:

- (3) Subclause (1) does not apply if the landholder consents in writing to the granting of the mining lease over the land or if the applicant for the mining lease consents in writing to the surface of the land being excluded from the application.

**[105] Schedule 1, clause 23**

Omit “the occupier (and, in the case of private land, the owner) of the land” from clause 23 (1).  
Insert instead “the landholder”.

**[106] Schedule 1, clause 23A**

Omit “An owner or occupier” from clause 23A (1).  
Insert instead “A landholder”.

**[107] Dictionary**

Omit the definitions of *Crown land*, *Crown lease for pastoral purposes*, *occupier*, *owner*, *pastoral lease*, *private land*, *special lease for pastoral purposes* and *Western lands lease for pastoral purposes*.

**[108] Dictionary**

Insert in alphabetical order:

*landholder* means, in relation to any land:

- (a) the owner of an estate in fee simple in the land, or
- (b) a native title holder of the land, or
- (c) the holder of a lease or licence granted under the *Crown Lands Act 1989* over the land, or
- (d) the holder of a tenure referred to in Part 1 or 2 of Schedule 1 to the *Crown Lands (Continued Tenures) Act 1989* in the land, or
- (e) the holder of a permissive occupancy granted over the land, or
- (f) the holder of a lease granted under the *Western Lands Act 1901* over the land, or
- (g) a person identified in any register or record kept by the Registrar-General as a person having an interest in the land, or
- (h) a person of a class prescribed by or determined in accordance with the regulations to be landholders for the purposes of this definition,

but does not include a person of a class prescribed as outside the scope of this definition.

*permissive occupancy* has the same meaning as in the *Crown Lands (Continued Tenures) Act 1989*.

*registered native title body corporate* has the same meaning as in the *Commonwealth Native Title Act*.

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*registered native title claimant* has the same meaning as in the  
*Commonwealth Native Title Act*.

**[109] Dictionary, definition of “party”**

Omit “an owner or occupier” from paragraph (b).  
Insert instead “a landholder”.

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## **Schedule 2 Amendment of Mining Act 1992 in relation to compensation rights**

(Section 3)

### **[1] Sections 266 and 267**

Omit the sections. Insert instead:

#### **266 Compensation arising under mineral claim**

- (1) On the granting of a mineral claim, a landholder becomes entitled to compensation for any compensable loss suffered, or likely to be suffered, by the landholder as a result of the exercise of the rights conferred by the claim.
- (2) The compensation payable under this section consists of:
  - (a) such amounts as may be determined by agreement between the holder of the mineral claim and any landholder (other than a landholder referred to in subsection (5)), and
  - (b) such amounts as, in default of such an agreement, may be assessed by a warden on application made by the holder of the mineral claim or any landholder (other than a landholder referred to in subsection (5)), and
  - (c) such amounts as may be payable according to an order referred to in subsection (5).
- (3) Instead of assessing compensation in relation to a particular mineral claim, a warden may assess compensation in relation to:
  - (a) all mineral claims within a mining division, or
  - (b) any particular group of mineral claims within a mining division,

and, in that event, may assess compensation as a fixed amount per mineral claim or as an amount per mineral claim to be calculated at a fixed rate.

- (4) The holder of a mineral claim must not exercise any right conferred by the claim unless:
  - (a) the holder has served notice of the holder's intention to exercise such rights on any person entitled to compensation under this section, and
  - (b) in respect of every landholder (other than a landholder referred to in subsection (5)):
    - (i) there is in place an agreement referred to in subsection (2) (a), or
    - (ii) any amounts referred to in subsection (2) (a) and (b) have been paid into a Warden's Court or to the person entitled to them, and
  - (c) the holder has paid into a Warden's Court an amount prescribed by or determined in accordance with the regulations.
- (5) An amount paid into court as referred to in subsection (4) (c) is to be held by the court for payment of compensation, at the order of the court, to any landholder who (whether because he or she could not then be identified, or for any other reason) could not, at the time the holder of the mineral claim began to exercise any rights under the claim, establish an entitlement to compensation under this section, but who subsequently does so.
- (6) Section 274 applies to an amount paid as referred to in subsection (4) (c):
  - (a) as if it were an amount assessed by the warden, and
  - (b) as if the reference, in section 274 (2), to the expiration of 6 months were a reference to the expiration of 5 years, and
  - (c) as if a reference, in section 274 (2) or (3), to the expiration of 12 months were a reference to the expiration of 5 years and 6 months.

**267 Compensation arising under opal prospecting licence**

- (1) On the granting of an opal prospecting licence, a landholder becomes entitled to compensation for any compensable loss suffered, or likely to be suffered, by the landholder as a result of the exercise of the rights conferred by the licence.

- (2) The compensation payable under this section consists of:
- (a) such amounts as may be determined by agreement between the holder of the opal prospecting licence and any landholder (other than a landholder referred to in subsection (5)), and
  - (b) such amounts as, in default of such an agreement, may be assessed by a warden on application made by the holder of the opal prospecting licence or any landholder (other than a landholder referred to in subsection (5)), and
  - (c) such amounts as may be payable according to an order referred to in subsection (5).
- (3) Instead of assessing compensation in relation to a particular opal prospecting licence, a warden may assess compensation in relation to:
- (a) all opal prospecting licences within a mining division, or
  - (b) any particular group of opal prospecting licences within a mining division,
- and, in that event, may assess compensation as a fixed amount per licence or as an amount per licence to be calculated at a fixed rate.
- (4) The holder of an opal prospecting licence must not exercise any right conferred by the licence unless:
- (a) the holder has served notice of the holder's intention to exercise such rights on any person entitled to compensation under this section, and
  - (b) in respect of every landholder (other than a landholder referred to in subsection (5)):
    - (i) there is in place an agreement referred to in subsection (2) (a), or
    - (ii) any amounts referred to in subsection (2) (a) and (b) have been paid into a Warden's Court or to the person entitled to them, and
  - (c) the holder has paid into a Warden's Court an amount prescribed by or determined in accordance with the regulations.



- (5) An amount paid into court as referred to in subsection (4) (c) is to be held by the court for payment of compensation, at the order of the court, to any landholder who (whether because he or she could not then be identified, or for any other reason) could not, at the time the holder of the opal prospecting licence began to exercise any rights under the licence, establish an entitlement to compensation under this section, but who subsequently does so.
- (6) Section 274 applies to an amount paid as referred to in subsection (4) (c):
  - (a) as if it were an amount assessed by the warden, and
  - (b) as if the reference, in section 274 (2), to the expiration of 6 months were a reference to the expiration of 5 years, and
  - (c) as if a reference, in section 274 (2) or (3), to the expiration of 12 months were a reference to the expiration of 5 years and 6 months.

**[2] Section 278 Appeals**

Omit “claims, as referred to in section 266 (4) or 267 (4)” wherever occurring in section 278 (2) and (3).

Insert instead “claims or opal prospecting licences, as referred to in section 266 (3) or 267 (3)”.

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## **Schedule 3 Miscellaneous amendments of Mining Act 1992**

(Section 3)

### **[1] Section 4A**

Insert at the end of Part 1:

#### **4B Notes**

Notes included in this Act are explanatory notes and do not form part of this Act.

### **[2] Section 12 Fossicking**

Omit section 12 (2) (b). Insert instead:

- (b) does not confer on any person a right of entry on to land (other than land prescribed by subsection (2A)) for fossicking purposes.

### **[3] Section 12 (2A)**

Insert after section 12 (2):

(2A) For the purposes of subsection (2) (b), the prescribed land is Crown land (within the meaning of the *Crown Lands Act 1989*):

- (a) that is not held under a lease, licence or permissive occupancy under the *Crown Lands Act 1989*, the *Crown Lands (Continued Tenures) Act 1989* or the *Western Lands Act 1901*, unless it is so held for grazing purposes, and
- (b) that is not under the management or control of a trustee or a public or local authority.

### **[4] Section 138 Application of Division**

Insert after section 138 (2):

- (3) This Division applies, in the case of a prospecting title that is a low-impact exploration licence, as though a reference in this Division to a landholder included a reference to:

- (a) any registered native title body corporate, and
  - (b) any registered native title claimant,
- in relation to the land over which the licence is granted.

**[5] Section 138, note**

Omit the note appearing at the end of the section. Insert instead:

**Note.** Section 32F imposes a condition on low-impact exploration licences that requires an access arrangement to be entered into under this Division between the holder of the licence and each registered native title body corporate and registered native title claimant.

**[6] Section 169 Forfeiture of security deposit**

Omit the section. Insert instead:

**169 Retention and forfeiture of security deposit**

- (1) A security in relation to an authority may be retained by the Minister until the Minister is satisfied that the holder of the authority has fulfilled the obligations arising under this Act in relation to the authority, whether the obligations concerned are required to be fulfilled during or after the period for which the authority remains in force.
- (2) Obligations required to be fulfilled after the period for which the authority remains in force do not cease merely because the authority has ceased to be in force, and the relevant security may be retained under subsection (1) even though the authority is no longer in force.
- (3) Such part of any security in relation to an authority as the Minister may determine is to be forfeited to the Crown if the holder of the authority fails to fulfil the obligations arising under this Act in relation to the authority.
- (4) Money realised from the forfeiture of any such security is to be applied for the purpose of fulfilling the obligations arising under this Act in relation to the authority.

- (5) The functions of the Minister under this section may be exercised with or without the benefit of a finding by a court or tribunal that the holder of the authority concerned has failed to fulfil any obligations arising under this Act in relation to the authority.

**[7] Section 216 Forfeiture of security deposit**

Omit the section. Insert instead:

**216 Retention and forfeiture of security deposit**

- (1) A security in relation to a mineral claim may be retained by the Director-General until the Director-General is satisfied that the holder of the claim has fulfilled the obligations arising under this Act in relation to the claim, whether the obligations concerned are required to be fulfilled during or after the period for which the claim remains in force.
- (2) Obligations required to be fulfilled after the period for which the mineral claim remains in force do not cease merely because the claim has ceased to be in force, and the relevant security may be retained under subsection (1) even though the claim is no longer in force.
- (3) Such part of any security in relation to a mineral claim as the Director-General may determine is to be forfeited to the Crown if the holder of the claim fails to fulfil the obligations arising under this Act in relation to the claim.
- (4) Money realised from the forfeiture of any such security may be applied for the purpose of rehabilitating any land in the State affected by prospecting or mining operations.
- (5) The functions of the Director-General under this section may be exercised with or without the benefit of a finding by a court or tribunal that the holder of the mineral claim concerned has failed to fulfil any obligations arising under this Act in relation to the claim.

**[8] 296 Jurisdiction of Warden's Courts**

Insert after section 296 (u):

- (v) an offence under section 374A.

**[9] Section 374A**

Insert after section 374:

**374A Contravention of conditions of mining title**

- (1) The holder of any lease, licence or mineral claim under this Act must not, without reasonable excuse, contravene or fail to comply with any conditions of the lease, licence or claim.

Maximum penalty: 100 penalty units.

- (2) If the conditions of a lease, licence or mineral claim held by more than one person are contravened, each holder who knowingly authorised or permitted the contravention is guilty of an offence under this section.

**[10] Section 375A**

Insert after section 375:

**375A Penalty notices for offences under section 374A**

- (1) The Minister may serve a penalty notice on the holder of a lease, licence or mineral claim under this Act if it appears to the Minister that the person has committed an offence under section 374A.
- (2) A penalty notice is a notice to the effect that, if the person served does not wish to have the matter determined by a court, the person may pay, within the time and to the person specified in the notice, the penalty prescribed by the regulations for the offence if dealt with under this section.
- (3) A penalty notice may be served personally or by post.
- (4) If the amount of the penalty prescribed for an alleged offence is paid under this section, no person is liable to any further proceedings for the alleged offence.

- (5) Payment under this section is not an admission of liability for the purposes of, and does not affect or prejudice, any civil claim, action or proceeding arising out of the same occurrence.
- (6) The regulations may:
  - (a) prescribe the amount of penalty for an offence under section 374A if dealt with under this section, and
  - (b) prescribe different amounts of penalty for different offences or classes of offences under that section.
- (7) The amount of penalty prescribed under this section for an offence may not exceed 50 penalty units.
- (8) This section does not limit the operation of any provision made by or under this or any other Act relating to proceedings that may be taken in respect of offences.

**[11] Schedule 1 Public consultation with respect to the granting of assessment leases and mining leases**

Insert “or for one or more mining purposes” after “minerals” in clause 28 (b).

**[12] Schedule 6 Savings, transitional and other provisions**

Insert at the end of clause 1 (1):

*Mining Amendment Act 1999*

**[13] Schedule 6, Part 5**

Insert after Part 4:

**Part 5 Provisions consequent on the enactment of the Mining Amendment Act 1999**

**64 Definition**

In this Part, *amending Act* means the *Mining Amendment Act 1999*.

**65 Certain persons taken to be landholders**

Except in so far as the regulations otherwise provide, a class of persons that, immediately before the repeal of the definition of *occupier*, was prescribed for the purposes of that definition is taken to be a class of persons prescribed by or determined in accordance with the regulations to be landholders for the purposes of the definition of *landholder*.

**66 Consents enabling the exercise of rights under mining titles**

- (1) In this clause, *consent provision* means section 31, 49, 62 or 188.
- (2) Rights referred to in a consent provision that were the subject of a written consent given under the consent provision before the date on which amendments made by the amending Act to the consent provision took effect may be exercised without the need to obtain consent under the consent provision as amended by the amending Act.

**67 Notification of application for mineral claim**

- (1) A person:
  - (a) who, before the date on which amendments made by the amending Act to section 177 took effect, applied for a mineral claim over any land other than Crown land (within the meaning of that section, as in force immediately before that date), and
  - (b) whose application was not determined before that date, must serve notice on any person entitled, under that section as amended by the amending Act, to be notified of a proposed application.
- (2) Such a mineral claim is not to be granted unless a copy of a notice served as required by subclause (1) has been lodged in the same manner as the application.
- (3) The notice is taken, for the purposes of section 179, as amended by the amending Act, to be a notice under section 177, as so amended.

**68 Compensation arising under mineral claim or opal prospecting licence**

The holder of a mineral claim or opal prospecting licence who, before the date on which amendments made by the amending Act to section 266 or 267, as the case may be, had met the requirements of the relevant section in order to be entitled to exercise the rights conferred by the claim or licence is taken to have met the requirements of the relevant section, as amended by the amending Act, to exercise those rights.

[Minister's second reading speech made in—  
Legislative Council on 23 June 1999  
Legislative Assembly on 2 July 1999 pm]