



New South Wales

Mining and Petroleum Legislation Amendment Act 2000 No 90

Contents

| | Page |
|--|------|
| 1 Name of Act | 2 |
| 2 Commencement | 2 |
| 3 Amendment of Mining Act 1992 No 29 and Petroleum (Onshore) Act 1991 No 84 | 2 |
| 4 Consequential amendment of Criminal Procedure Act 1986 No 209 | 2 |
| | |
| Schedules | |
| 1 Amendments relating to penalties | 3 |
| 2 Amendments relating to mining and petroleum titles | 10 |
| 3 Amendments relating to native title | 28 |
| 4 Further amendment of Petroleum (Onshore) Act 1991 | 33 |
| 5 Consequential amendment of Criminal Procedure Act 1986 | 38 |



New South Wales

Mining and Petroleum Legislation Amendment Act 2000 No 90

Act No 90, 2000

An Act to amend the *Mining Act 1992* and the *Petroleum (Onshore) Act 1991* with respect to the penalties for offences, the administration of mining and petroleum titles and other matters; to amend the *Criminal Procedure Act 1986* consequentially; and for other purposes. [Assented to 8 December 2000]

The Legislature of New South Wales enacts:**1 Name of Act**

This Act is the *Mining and Petroleum Legislation Amendment Act 2000*.

2 Commencement

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

3 Amendment of Mining Act 1992 No 29 and Petroleum (Onshore) Act 1991 No 84

- (1) The *Mining Act 1992* and the *Petroleum (Onshore) Act 1991* are amended as set out in Schedules 1–3.
- (2) The *Petroleum (Onshore) Act 1991* is further amended as set out in Schedule 4.

4 Consequential amendment of Criminal Procedure Act 1986 No 209

The *Criminal Procedure Act 1986* is amended as set out in Schedule 5.

Schedule 1 Amendments relating to penalties

(Section 3)

1.1 Mining Act 1992

[1] Sections 5 and 9

Omit “Maximum penalty: 100 penalty units or imprisonment for 6 months, or both.” wherever occurring.

Insert instead:

Maximum penalty for prospecting in contravention of this section: 200 penalty units.

Maximum penalty for mining in contravention of this section:

- (a) 1,000 penalty units or imprisonment for 5 years, or both, in the case of an offence dealt with on indictment, or
- (b) 200 penalty units or imprisonment for 2 years, or both, in the case of an offence dealt with summarily.

[2] Sections 6 (1), 7 (1) and 8 (1)

Omit “Maximum penalty: 100 penalty units or imprisonment for 6 months, or both.” wherever occurring.

Insert instead:

Maximum penalty for prospecting in contravention of this subsection: 200 penalty units.

Maximum penalty for mining in contravention of this subsection:

- (a) 1,000 penalty units or imprisonment for 5 years, or both, in the case of an offence dealt with on indictment, or
- (b) 200 penalty units or imprisonment for 2 years, or both, in the case of an offence dealt with summarily.

[3] Section 12 Fossicking

Omit “20 penalty units or imprisonment for 6 months, or both” from section 12 (4).

Insert instead “50 penalty units”.

[4] Section 12E Proceedings for offences under Division 2

Omit the section.

[5] Sections 75, 289, 290 and 365

Omit “50 penalty units” wherever occurring.

Insert instead “100 penalty units”.

[6] Sections 170, 217, 247, 247A, 257, 372 and 373

Omit “20 penalty units” wherever occurring.

Insert instead “100 penalty units”.

[7] Section 175A Unlawful entry to site of mineral claim

Omit “10 penalty units” from section 175A (1) (a).

Insert instead “50 penalty units”.

[8] Section 175A (1) (b)

Omit “20 penalty units”. Insert instead “100 penalty units”.

[9] Section 240 Direction to comply with conditions of authority or mineral claim

Omit “20 penalty units” from section 240 (2).

Insert instead “200 penalty units”.

[10] Section 311 Warden may order deposit of mineral etc

Omit “Maximum penalty: 20 penalty units.”.

Insert instead:

Maximum penalty:

- (a) 100 penalty units, in the case of an offence committed by a corporation, or

- (b) 50 penalty units, in the case of an offence committed by an individual.

[11] Section 315 Contravention of injunction

Omit “Maximum penalty: 50 penalty units.”. Insert instead:

Maximum penalty:

- (a) 200 penalty units, in the case of an offence committed by a corporation, or
- (b) 100 penalty units, in the case of an offence committed by an individual.

[12] Section 330 Contempt of court and penalties

Omit “a penalty not exceeding 5 penalty units” from section 330 (1).

Insert instead “a penalty not exceeding the maximum penalty prescribed by subsection (1A)”.

[13] Section 330 (1A)

Insert after section 330 (1):

- (1A) The maximum monetary penalty that may be imposed under subsection (1) is:
 - (a) 100 penalty units, in the case of a corporation, or
 - (b) 50 penalty units, in the case of an individual.

[14] Section 338 Witness neglecting to appear

Omit “Maximum penalty: 5 penalty units.”. Insert instead:

Maximum penalty:

- (a) 100 penalty units, in the case of an offence committed by a corporation, or
- (b) 50 penalty units, in the case of an offence committed by an individual.

[15] Sections 339 and 340

Omit “Maximum penalty: 10 penalty units.” wherever occurring.

Insert instead:

Maximum penalty:

- (a) 100 penalty units, in the case of an offence committed by a corporation, or
- (b) 50 penalty units, in the case of an offence committed by an individual.

[16] Section 374 False or misleading information etc

Omit “10 penalty units”. Insert instead “100 penalty units”.

[17] Section 374A Contravention of conditions of mining title

Omit “Maximum penalty: 100 penalty units.” from section 374A (1).

Insert instead:

Maximum penalty:

- (a) if the condition of the lease, licence or claim is identified in the lease, licence or claim as a condition related to environmental management:
 - (i) 1,000 penalty units, in case of an offence dealt with on indictment, or
 - (ii) 200 penalty units, in case of an offence dealt with summarily, or
- (b) in any other case—200 penalty units.

[18] Section 375

Omit the section. Insert instead:

375 Proceedings for offences

- (1) Proceedings for an offence against this Act or the regulations are to be dealt with summarily before a Warden’s Court or before a Local Court constituted by a Magistrate sitting alone, except as provided by this section.

- (2) If an appropriate election is made in accordance with Division 3 of Part 2 of the *Criminal Procedure Act 1986*, any of the following offences may be dealt with on indictment:
- (a) an offence of mining in contravention of a provision of Division 1 of Part 2,
 - (b) an offence under Division 2 of Part 2,
 - (c) an offence, under section 374A, of contravening a condition of a lease, licence or mineral claim under this Act that is identified in the lease, licence or claim as a condition related to environmental management.
- (3) For the purposes of dealing with an offence in accordance with Division 3 of Part 2 of the *Criminal Procedure Act 1986*, a Warden's Court has the functions of, and is taken to be, a Local Court.

[19] Section 375A Penalty notices for offences under section 374A

Omit section 375A (7). Insert instead:

- (7) The amount of penalty prescribed under this section for an offence may not exceed:
- (a) 100 penalty units, in the case of an offence committed by a corporation, or
 - (b) 50 penalty units, in the case of an offence committed by an individual.

[20] Section 388 Regulations

Omit section 388 (2). Insert instead:

- (2) A regulation may create an offence punishable by a penalty not exceeding:
- (a) 100 penalty units, in the case of an offence committed by a corporation, or
 - (b) 50 penalty units, in the case of an offence committed by an individual.

1.2 Petroleum (Onshore) Act 1991

[1] Section 7 Offence of prospecting or mining without authority

Omit “Maximum penalty: 1,000 penalty units.” from section 7 (1).

Insert instead:

Maximum penalty for prospecting in contravention of this section: 200 penalty units.

Maximum penalty for mining in contravention of this section:

- (a) 1,000 penalty units or imprisonment for 5 years, or both, in case of an offence dealt with on indictment, or
- (b) 200 penalty units or imprisonment for 2 years, or both, in case of an offence dealt with summarily.

[2] Section 77 Direction to comply with conditions of petroleum title

Omit “20 penalty units”. Insert instead “100 penalty units”.

[3] Sections 127, 133 and 135

Omit “100 penalty units” wherever occurring.

Insert instead “200 penalty units”.

[4] Section 136 Other offences

Omit “20 penalty units” wherever occurring in section 136 (1)–(3).

Insert instead “100 penalty units”.

[5] Section 137

Omit the section. Insert instead:

137 Proceedings for offences

- (1) Proceedings for an offence against this Act or the regulations are to be dealt with summarily before a Warden’s Court or before a Local Court constituted by a Magistrate sitting alone, except as provided by this section.

- (2) If an appropriate election is made in accordance with Division 3 of Part 2 of the *Criminal Procedure Act 1986*, any of the following offences may be dealt with on indictment:
 - (a) an offence of mining in contravention of section 7,
 - (b) an offence, under section 136A, of contravening a condition of a petroleum title that is identified in the title as a condition related to environmental management.
- (3) For the purposes of dealing with an offence in accordance with Division 3 of Part 2 of the *Criminal Procedure Act 1986*, a Warden's Court has the functions of, and is taken to be, a Local Court.

[6] Section 138 Regulations

Omit "20 penalty units" from section 138 (4).

Insert instead "100 penalty units".

Schedule 2 Amendments relating to mining and petroleum titles

(Section 3)

2.1 Mining Act 1992

[1] Section 31 Dwelling-houses, gardens and improvements

Insert “the surface of” after “over” in section 31 (1).

[2] Section 47 Rights under assessment lease

Insert at the end of the section:

Note. An assessment lease is designed to allow retention of rights over an area in which a significant mineral deposit has been identified, if mining the deposit is not commercially viable in the short term but there is a reasonable prospect that it will be in the longer term. The holder is allowed to continue prospecting operations and to recover minerals in the course of assessing the viability of commercial mining.

[3] Section 49 Dwelling-houses, gardens and improvements

Insert “the surface of” after “over” in section 49 (1).

[4] Section 62 Dwelling-houses, gardens and improvements

Insert “the surface of” after “over” in section 62 (1).

[5] Section 111 Directions affecting range of minerals

Omit the section.

[6] Part 7, Division 3, heading and Part 9, Division 6, heading

Insert “or operational suspension” after “Cancellation” and after “cancellation” wherever occurring.

[7] Section 125 Grounds of cancellation or operational suspension

Insert at the end of section 125 (1) (e):

, or

- (f) if the holder of the authority fails to use the land comprised in the authority in good faith for the purposes for which the authority has been granted, or uses the land for a purpose other than that for which the authority has been granted.

[8] Section 125 (3)

Insert after section 125 (2):

- (3) The Minister may suspend all or any specified operations under an authority until further notice if the holder of the authority contravenes:
 - (a) a requirement under this Act to pay royalty, or to give or maintain security for the performance of the holder's obligations under the authority, or
 - (b) any condition of the authority that is identified in the authority as a condition related to environmental management.

[9] Section 126 Cancellations and operational suspensions

Omit "(b), (c) or (d)" from section 126 (1).

Insert instead "(b), (c), (d) or (f), or suspending operations under an authority".

[10] Section 126 (1)–(3)

Insert "or suspension" after "cancellation" wherever occurring.

[11] Section 126 (2) and (3)

Insert "or suspension of operations under" after "Cancellation of" wherever occurring.

[12] Section 126 (4) and (5)

Insert after section 126 (3):

- (4) A suspension of operations under an authority is revoked on the date on which written notice from the Minister is served on the holder of the authority or on such later date as is specified in the notice.
- (5) While any operations under an authority are suspended, the authority confers no right on its holder to carry out the operations concerned.

[13] Section 127 Compensation for cancellation or suspension of operations

Insert “or operations under it are suspended” after “cancelled” in section 127 (1).

[14] Section 128 Appeals against decisions concerning cancellation or suspension of operations

Insert “, or suspend operations under,” after “cancel” in section 128 (1).

[15] Section 128 (1)

Omit “the cancellation”. Insert instead “its cancellation”.

[16] Section 128 (1A)

Insert “or suspension” after “cancellation”.

[17] Section 188 Dwelling-houses, gardens and improvements

Insert “the surface of” after “over” in section 188 (1).

[18] Section 203 Grounds of cancellation or operational suspension

Insert at the end of section 203 (1) (g):

- , or
- (h) if the holder of the claim fails to use the land comprised in the claim in good faith for the purposes for which the claim has been granted, or uses the land for a purpose other than that for which the claim has been granted.

[19] Section 203 (4)

Insert after section 203 (3):

- (4) A mining registrar may suspend all or any specified operations under a mineral claim until further notice if the holder of the claim contravenes:
 - (a) a requirement under this Act to pay royalty, or to give or maintain security for the performance of the holder's obligations under the claim, or
 - (b) any condition of the claim that is identified in the claim as a condition related to environmental management.

[20] Section 204 Cancellations and suspensions

Omit "(c), (d) or (e)" from section 204 (1).

Insert instead "(c), (d), (e) or (h), or suspending operations under a claim".

[21] Section 204 (1)–(3)

Insert "or suspension" after "cancellation" wherever occurring.

[22] Section 204 (2) and (3)

Insert "or suspension of operations under" after "Cancellation of" wherever occurring.

[23] Section 204 (4) and (5)

Insert after section 204 (3):

- (4) A suspension of operations under a mineral claim is revoked on the date on which written notice from the mining registrar is served on the holder of the claim or on such later date as is specified in the notice.
- (5) While any operations under a mineral claim are suspended, the claim confers no right on its holder to carry out the operations concerned.

[24] Section 205 Compensation for cancellation or suspension of operations

Insert “or operations under it are suspended” after “cancelled” in section 205 (1).

[25] Section 206 Review of decisions concerning cancellation or suspension of operations

Insert “, or suspend operations under,” after “cancel” in section 206 (1).

[26] Section 206 (1)

Omit “the cancellation”. Insert instead “its cancellation”.

[27] Section 227 Restrictions on grant of licence

Insert at the end of section 227:

- (2) An opal prospecting licence may not be granted over any part of an opal prospecting block in respect of which an application for a mineral claim is pending.

[28] Section 228 Power of mining registrar in relation to applications

Insert after section 228 (3):

- (4) Before granting an opal prospecting licence, the mining registrar may require the applicant to give and maintain security, in such amount and form as the mining registrar may (in accordance with the regulations) require, for the fulfilment of the obligations arising under this Act in relation to the licence.
- (5) A condition requiring security to be given and maintained by the holder of an opal prospecting licence (*the new licence*) may be expressed so as to require the security given and maintained in relation to some other opal prospecting licence or licences, whether under this section or under section 232A, to be extended to the new licence.
- (6) If the mining registrar proposes to grant an opal prospecting licence to a person on the condition that the person gives and maintains security, the mining registrar may cause a written

notice to be served on the person requiring the person to lodge the security with the mining registrar on or before the date specified in the notice.

[29] Section 232A

Insert after section 232:

232A Amendment of opal prospecting licence in respect of certain conditions

- (1) A mining registrar may amend an opal prospecting licence that does not contain a condition requiring the holder to give and maintain security for the fulfilment of the obligations of the holder arising under this Act so as to include such a condition.
- (2) A mining registrar may amend an opal prospecting licence that contains such a condition so as to vary the amount and form of the security that is required to be given and maintained.
- (3) A mining registrar may amend any 2 or more opal prospecting licences held by the same holder that contain such a condition so as to require a single security to be given and maintained.
- (4) The amendment of an opal prospecting licence takes effect on the date on which written notice of the amendment is served on the holder of the licence or on such later date as may be specified in the notice.

[30] Section 235B

Insert after section 235A:

235B Retention and forfeiture of security deposit

- (1) A security in relation to an opal prospecting licence may be retained by the Director-General until the Director-General is satisfied that the holder of the licence has fulfilled the obligations arising under this Act in relation to the licence, whether the obligations concerned are required to be fulfilled during or after the period for which the licence remains in force.

- (2) Obligations required to be fulfilled after the period for which the opal prospecting licence remains in force do not cease merely because the licence has ceased to be in force, and the relevant security may be retained under subsection (1) even though the licence is no longer in force.
- (3) Such part of any security in relation to an opal prospecting licence as the Director-General may determine is to be forfeited to the Crown if the holder of the licence fails to fulfil the obligations arising under this Act in relation to the licence.
- (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 opal prospecting licence concerned has failed to fulfil any obligations arising under this Act in relation to the licence.

[31] Section 240 Direction to comply with conditions

Omit “or mineral claim” from section 240 (1).
Insert instead “, mineral claim or opal prospecting licence”.

[32] Section 240 (1)

Omit “or claim”. Insert instead “, claim or licence”.

[33] Section 247A Powers of royalty officers

Omit section 247A (1) (a). Insert instead:

- (a) may enter:
 - (i) any premises occupied by the holder of an authority or mineral claim, or
 - (ii) any premises where the royalty officer reasonably believes documents, of the kind referred to in paragraph (b), of or relating to the holder are kept, and

[34] Section 286 Royalty payable on petroleum recovered under mining lease for coal

Insert after section 286 (3):

- (4) This section does not apply to methane recovered in conjunction with coal mining operations.

[35] Section 313 Granting of injunctions in cases of urgency

Omit “one month” from section 313 (1). Insert instead “2 months”.

[36] Part 16 The Geological and Mining Museum

Omit the Part.

[37] Section 390

Insert after section 389:

390 References to certain officers in mining titles

- (1) The regulations may provide that a reference in any authority, mineral claim or opal prospecting licence to the holder of a specified office within the Department is, for the purposes of the performance of any specified function in connection with the authority, claim or licence, to be read as a reference to the Minister, and the authority, claim or licence is to be construed accordingly.
- (2) Nothing in this section affects the Minister’s power of delegation under section 363.

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

Insert at the end of clause 20:

- (2) References in this Division to:

- (a) land, and
(b) a landholder,

are references only to land to whose surface the lease is proposed to extend, and the landholder of any such land, respectively.

[39] Schedule 1, clause 23A (2)

Insert “, identifying the nature and location of the work or structure,” after “writing”.

[40] Schedule 1, clause 24 (2) (c) and (4) (c)

Omit each paragraph. Insert instead:

- (c) must state that objections to the granting of the lease may be made in writing to the Minister and must explain (having regard to the provisions of clause 28) what persons are entitled to object, and

[41] Schedule 6 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

Mining and Petroleum Legislation Amendment Act 2000

[42] Schedule 6, Part 7

Insert after Part 6:

Part 7 Provisions consequent on the enactment of the Mining and Petroleum Legislation Amendment Act 2000

74 Definition

In this Part, *amending Act* means the *Mining and Petroleum Legislation Amendment Act 2000*.

75 Authorities and claims over land in proximity to improvements

- (1) Rights exercised under an exploration licence:
 - (a) at a time before the amendment made by the amending Act to section 31 took effect, and

- (b) the exercise of which contravened that section, but would not have done if that amendment had been in force at the time,

are taken to have been exercised without contravention of that section, as in force at the time.

- (2) Rights exercised under an assessment lease:

- (a) at a time before the amendment made by the amending Act to section 49 took effect, and

- (b) the exercise of which contravened that section, but would not have done if that amendment had been in force at the time,

are taken to have been exercised without contravention of that section, as in force at the time.

- (3) A mining lease:

- (a) that was granted at a time before the amendment made by the amending Act to section 62 took effect, and

- (b) the grant of which contravened that section, but would not have done if that amendment had been in force at the time,

is taken to have been granted without contravention of that section, as in force at the time.

- (4) A mineral claim:

- (a) that was granted at a time before the amendment made by the amending Act to section 188 took effect, and

- (b) the grant of which contravened that section, but would not have done if that amendment had been in force at the time,

is taken to have been granted without contravention of that section, as in force at the time.

- (5) Subclauses (3) and (4) apply to a renewal of a mining lease or mineral claim in the same way as to its grant.

76 Conditions of mining titles

The Minister may, by instrument in writing served on the holder of an authority, mineral claim or opal prospecting licence in force at the commencement of this clause, vary the

conditions of the authority, claim or licence so as to identify those conditions of the authority, claim or licence that are related to environmental management.

77 Direction affecting consolidated mining lease

The repeal by the amending Act of section 111 does not affect the operation of a condition that, immediately before the repeal of that section, continued to have effect by reason of that section.

2.2 Petroleum (Onshore) Act 1991

[1] Section 3 Definitions

Omit the definition of *prospect* from section 3 (1). Insert instead:

prospect means to carry out works on, or to remove samples from, land for the purpose of testing the quality and quantity of petroleum in the land and the potential to recover petroleum from the land, but does not include any activity declared by the regulations not to constitute prospecting.

[2] Section 22 Cancellation or operational suspension of titles

Insert after section 22 (3):

- (3A) The Minister may suspend all or any specified operations under a petroleum title until further notice if the holder of the title contravenes:
- (a) a requirement under this Act to pay royalty, or to give or maintain security for the performance of the holder's obligations under the title, or
 - (b) any condition of the title that is identified in the title as a condition related to environmental management.

[3] Section 22 (4A)

Insert after section 22 (4):

- (4A) A suspension under this section takes effect on the date on which written notice of the suspension is served on the holder of the title or on such later date as is specified in the notice.

[4] Section 22 (5)

Insert “, or a suspension of operations under,” after “cancellation of”.

[5] Section 22 (6)–(8)

Insert after section 22 (5):

- (6) Before cancelling a title on a ground referred to in subsection (1), or suspending operations under a title, the Minister:
- (a) must cause written notice of the proposed cancellation or suspension, and of the grounds of the proposed cancellation or suspension, to be served on the holder of the title, and
 - (b) must give the holder of the title a reasonable opportunity to make representations with respect to the proposed cancellation or suspension, and
 - (c) must take any such representations into consideration.
- (7) A suspension under this section is revoked on the date on which written notice from the Minister is served on the holder of the affected petroleum title or on such later date as is specified in the notice.
- (8) While any operations under a petroleum title are suspended, the title confers no right on its holder to carry out the operations concerned.

[6] Section 28A

Insert after section 28:

28A Right to explore for natural reservoirs

- (1) In addition to the other rights conferred by the title, every petroleum title confers on its holder the right to carry on such operations as are necessary to explore the land comprised in the title for the existence and availability of natural reservoirs.
- (2) The right conferred by operation of subsection (1) is subject to any order of the Minister served on the holder of the title.
- (3) By order under this section, the Minister may prohibit, or direct the holder of the title to desist from, carrying on operations of a kind specified in the order.
- (4) Contravention of an order under this section is taken to be a breach of the conditions of the title.

[7] Section 29

Omit the section. Insert instead:

29 Rights of holders of exploration licences

The holder of an exploration licence has the exclusive right, in accordance with the conditions of the licence, to prospect for petroleum on the land comprised in the licence.

[8] Section 30 Area of exploration licence

Insert at the end of section 30:

- (2) The size of the area over which the renewal of an exploration licence is granted must not exceed 75 per cent of the size of:
 - (a) the area over which the licence was originally granted, in the case of a first renewal of the licence, or
 - (b) the area over which its last previous renewal was granted, in any other case,unless the Minister, being satisfied that special circumstances exist, otherwise determines.

[9] Section 31 Term of exploration licence

Omit section 31 (2).

[10] Section 33 Rights of holders of assessment leases

Omit “explore”. Insert instead “prospect”.

[11] Section 33

Insert at the end of the section:

Note. An assessment lease is designed to allow retention of rights over an area in which a significant petroleum deposit has been identified, if mining the deposit is not commercially viable in the short term but there is a reasonable prospect that it will be in the longer term. The holder is allowed to continue prospecting operations and to recover petroleum in the course of assessing the viability of commercial mining.

[12] Section 36 Notice to be given of application for assessment lease

Insert “both in a newspaper circulating in the vicinity of the area over which the lease is sought and” after “published”.

[13] Section 36 (2)–(4)

Insert at the end of section 36:

- (2) Within 21 days after receipt from an applicant, or a person intending to apply, for an assessment lease of a written request:
 - (a) that is expressed to be made for the purposes of this section, and
 - (b) that is accompanied by particulars of the kind referred to in subsection (1) (b) in relation to the proposed lease, the council for a local government area that includes the area over which the lease is sought may furnish the holder of the lease with the names and addresses of landholders whose lands lie wholly or partly within that area.
- (3) An assessment lease is not to be granted unless the Minister is satisfied that notice has been published as required by subsection (1) and that:
 - (a) a copy of that notice, accompanied by the particulars mentioned in subsection (4), has been served on all landholders whose names and addresses have been

- furnished, in connection with the proposed lease, under subsection (2), or
- (b) 21 days have elapsed since a request under subsection (2) was made and the council concerned has not complied with the request.
- (4) The particulars referred to in subsection (3) (a) are the following:
- (a) the duration of the term of the proposed lease, and
 - (b) contact details of the applicant or intended applicant, and
 - (c) any other particulars prescribed by the regulations.

[14] Section 72

Omit the section. Insert instead:

72 Restrictions on rights of holders of titles over other land

- (1) The holder of a petroleum title must not carry on any prospecting or mining operations or erect any works on the surface of any land:
- (a) on which, or within 200 metres of which, is situated a dwelling-house that is a principal place of residence of the person occupying it, or
 - (b) on which, or within 50 metres of which, is situated any garden, vineyard or orchard, 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 or prospecting operations,
- except with the written consent of the owner of the dwelling-house, garden, vineyard, orchard or improvement (and, in the case of the dwelling-house, the written consent of its occupant).
- (2) A consent under this section is irrevocable.

- (3) If need be, the Minister is to determine whether any improvement referred to in subsection (1) (c) is substantial or valuable, and may define an area adjoining any such improvement on the surface of which no prospecting or mining operations are to be carried out, or works erected, without the consent of the owner of the improvement.

[15] Section 85 Royalty

Insert after section 85 (3):

- (4) This section does not apply to methane recovered in conjunction with coal mining operations.

[16] Section 113 Officers

Insert after section 113 (1):

- (1A) Other inspectors, having such powers, authorities, duties and functions as may be conferred or imposed on them by or under this or any other Act, may be employed under Part 2 of the *Public Sector Management Act 1988* or engaged under contract.

[17] Section 136A

Insert after section 136:

136A Contravention of conditions of title

- (1) The holder of any petroleum title must not, without reasonable excuse, contravene or fail to comply with any conditions of the title.

Maximum penalty:

- (a) if the condition of the title is identified in the title as a condition related to environmental management:
- (i) 1,000 penalty units, in the case of an offence dealt with on indictment, or
 - (ii) 200 penalty units, in the case of an offence dealt with summarily, or
- (b) in any other case—200 penalty units.

- (2) If the conditions of a petroleum title 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.

[18] Section 137A

Insert after section 137:

137A Penalty notices for offences under section 136A

- (1) The Minister may serve a penalty notice on the holder of a petroleum title if it appears to the Minister that the person has committed an offence under section 136A.
- (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 136A 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 100 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.

[19] Section 138B

Insert after section 138A:

138B References to certain officers in petroleum titles

- (1) The regulations may provide that a reference in any petroleum title to the holder of a specified office within the Department is, for the purposes of the performance of any specified function in connection with the title, to be read as a reference to the Minister, and the petroleum title is to be construed accordingly.
- (2) Nothing in this section affects the Minister's power of delegation under section 126.

[20] Schedule 1 Savings and transitional provisions

Insert at the end of clause 2 (1) (b):

Mining and Petroleum Legislation Amendment Act 2000

[21] Schedule 1, Part 5

Insert after Part 4:

**Part 5 Provisions consequent on enactment of
Mining and Petroleum Legislation
Amendment Act 2000**

21 Conditions of petroleum titles

The Minister may, by instrument in writing served on the holder of a petroleum title in force at the commencement of this clause, vary the conditions of the title so as to identify those conditions of the title that are related to environmental management.

Schedule 3 Amendments relating to native title

(Section 3)

3.1 Mining Act 1992

[1] Section 12 Fossicking

Insert after section 12 (5):

- (6) A person must not carry out fossicking on any land that is, or in waters that are, the subject of an approved determination of native title under the Commonwealth Native Title Act to the effect that native title exists, except with the consent of the relevant registered native title body corporate with respect to that native title.

Maximum penalty: 50 penalty units.

[2] Section 139 Arbitration Panel

Omit “the Minister for Agriculture and Rural Affairs” from section 139 (2).
Insert instead “the Minister for Aboriginal Affairs and the Minister for Agriculture”.

[3] Section 144 Appointment of arbitrator in default of agreement

Omit “the Director-General of the Department of Agriculture” from section 144 (3).

Insert instead “the Heads of the Departments of Aboriginal Affairs and Agriculture”.

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

Omit “effected” from section 383A (2) (a). Insert instead “served”.

[5] Section 383B Consent of landholders and others

Omit section 383B (3) and (4). Insert instead:

- (3) For the purposes of subsection (2), a landholder who is a native title holder is taken to have been unable, after diligent inquiry, to be identified if:
- (a) where the purpose for which the landholder's consent or agreement is required to be obtained is an act to which Subdivision P of Division 3 of Part 2 of the Commonwealth Native Title Act applies:
 - (i) notice of an intention to carry out that purpose is given by the Government party under section 29 of that Act, and
 - (ii) at the expiration of the prescribed period, the landholder is neither a registered native title claimant nor a registered native title body corporate in relation to the land concerned, or
 - (b) where the purpose for which the landholder's consent or agreement is required to be obtained is not such an act:
 - (i) notice of an intention to carry out that purpose is served in the manner authorised by section 383 (1) and (4), on any representative Aboriginal/Torres Strait Islander bodies for an area that includes the land concerned, and
 - (ii) at the expiration of the prescribed period, the landholder is neither a registered native title claimant nor a registered native title body corporate in relation to the land concerned.

(4) In this section:

Government party has the same meaning as it has in the Commonwealth Native Title Act.

prescribed period means:

- (a) in relation to a notice referred to in subsection (3) (a)—the period of 4 months referred to in section 30 of the Commonwealth Native Title Act, or
- (b) in relation to a notice referred to in subsection (3) (b)—the period of 4 months commencing on service of the notice.

3.2 Petroleum (Onshore) Act 1991

[1] Section 69A Application of Part

Insert after section 69A (2) (and before the note at the end of the section):

- (3) This Part applies, in the case of a prospecting title that is a low-impact exploration licence or a low-impact special prospecting authority, as though a reference in this Part 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.

[2] Section 69G Appointment of arbitrator in default of agreement

Omit “the Director-General of the Department of Agriculture” from section 69G (3).

Insert instead “the Heads of the Departments of Aboriginal Affairs and Agriculture”.

[3] Section 134A Service of documents on native title holders

Omit section 134A (2). 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 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 served in the manner prescribed by section 134 (2).
- (3) Such a document may, however, be served on a landholder referred to in subsection (2) by serving it, in a manner authorised by section 134 (1) and (3)–(5), on:
 - (a) any representative Aboriginal/Torres Strait Islander bodies for an area that includes the land concerned, and
 - (b) any registered native title claimants in relation to the land concerned.

- (4) In this section, *registered native title body corporate* and *registered native title claimant* have the same meanings as in the Commonwealth Native Title Act.

[4] Section 134B Consents of landholders

Omit section 134B (3) and (4). Insert instead:

- (3) For the purposes of subsection (2), a landholder who is a native title holder is taken to have been unable, after diligent inquiry, to be identified if:
- (a) where the purpose for which the landholder's consent or agreement is required to be obtained is an act to which Subdivision P of Division 3 of Part 2 of the Commonwealth Native Title Act applies:
 - (i) notice of an intention to carry out that purpose is given by the Government party under section 29 of that Act, and
 - (ii) at the expiration of the prescribed period, the landholder is neither a registered native title claimant nor a registered native title body corporate in relation to the land concerned, or
 - (b) where the purpose for which the landholder's consent or agreement is required to be obtained is not such an act:
 - (i) notice of an intention to carry out that purpose is served, in a manner authorised by section 134 (1) and (3)–(5), on any representative Aboriginal/Torres Strait Islander bodies for an area that includes the land concerned, and
 - (ii) at the expiration of the prescribed period, the landholder is neither a registered native title claimant nor a registered native title body corporate in relation to the land concerned.
- (4) In this section:
Government party, registered native title body corporate and *registered native title claimant* have the same meaning as in the Commonwealth Native Title Act.

prescribed period means:

- (a) in relation to a notice referred to in subsection (3)
(a)—the period of 4 months referred to in section 30 of the Commonwealth Native Title Act, or
- (b) in relation to a notice referred to in subsection (3)
(b)—the period of 4 months commencing on service of the notice.

Schedule 4 Further amendment of Petroleum (Onshore) Act 1991

(Section 3)

[1] Section 3 Definitions

Omit the definitions of *Crown land*, *lease for pastoral purposes*, *owner* and *private land* from section 3 (1).

[2] Section 3 (1)

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.

[3] Section 9 Grant of petroleum titles

Omit section 9 (3). Insert instead:

- (3) A petroleum title may be granted over land of any title or tenure.

[4] Section 45F Access arrangement required for prospecting operations under low-impact prospecting titles

Omit “owners or occupiers” from section 45F (4).

Insert instead “landholders”.

[5] Section 69A Application of Part

Omit “on private land or on land held under a lease for pastoral purposes” from section 69A (1).

[6] Sections 69A (2) and 134 (2)

Omit “an owner or occupier of land” wherever occurring.

Insert instead “a landholder”.

[7] Section 69A (2)

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

[8] Sections 69C (a), 69F (1) and (2), 69G (1), 69H (2), 69I (1), 69M (3) and 71 (1)

Omit “owner and occupier of the land” wherever occurring.

Insert instead “landholder”.

[9] Section 69D Matters for which access arrangement to provide

Omit “owner or occupier of the land” wherever occurring in section 69D (1) (f) and (4).

Insert instead “landholder”.

[10] Sections 69D (2) and (4) (b) and 101 (1) (b)

Omit “owner or occupier” wherever occurring.

Insert instead “landholder”.

[11] Sections 69E (1) and (3) and 134B (1) (b)

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

[12] Section 69F Appointment of arbitrator by agreement

Insert “title” before “holder’s” in section 69F (1).

[13] Sections 69F (1) and 69G (1)

Insert “title” before “holder and” wherever occurring.

[14] Section 69F (1)

Insert “title” before “holder may”.

[15] Section 69F (1)

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

[16] Sections 69H (1) (b) and 69M (2) (b)

Omit “each owner and occupier of that land” wherever occurring.
Insert instead “each landholder”.

[17] Section 69U Duration of access arrangements

Omit “an owner or occupier of the land” where firstly occurring in section 69U (a).
Insert instead “a landholder”.

[18] Section 69U (a)

Omit “an owner or occupier of the land” where secondly occurring.
Insert instead “a landholder of the land concerned”.

[19] Section 69U (b)

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

[20] Section 101 Notice to landholder

Omit “owner and occupier of the land” from section 101 (1) (a).
Insert instead “landholder”.

[21] Section 106 Rights of way over land

Omit “Crown land or private” from section 106 (1).

[22] Section 109 Measure of compensation

Omit “owner or occupier of that land” from section 109 (1) (c).
Insert instead “landholder”.

[23] Section 115 Jurisdiction of court

Omit “owners or occupiers of private lands or occupiers of Crown lands”
from section 115 (1) (n) (ii).
Insert instead “landholders”.

[24] Section 134A Service of documents on native title holders

Omit “an owner of land” from section 134A (1).
Insert instead “a landholder”.

[25] Section 134B Consents of landholders

Omit “the owner and occupier of the land concerned” from section 134B (1)
(a).
Insert instead “a landholder or other person”.

[26] Section 134B (2)

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

[27] Section 134B (2) (a)

Omit “owner or occupier of the land concerned” from section 134B (2) (a).
Insert instead “landholder or other person”.

[28] Section 134B (2) (b)

Omit “owners and occupiers”. Insert instead “landholders”.

[29] Section 134B (2) (b)

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

[30] Section 136 Other offences

Omit “Any owner or occupier of private land or any occupier of Crown land or” from section 136 (3).

Insert instead “A landholder of any land or”.

Schedule 5 Consequential amendment of Criminal Procedure Act 1986

(Section 4)

[1] Schedule 1, Table 1, Part 7

Insert after Part 6:

Part 7 Offences relating to mining

31 Mining Act 1992

- (1) An offence of mining in contravention of a provision of Division 1 of Part 2 of the *Mining Act 1992*, where the value of the minerals to which the alleged offence relates is \$5,000 or more.
- (2) An offence under Division 2 of Part 2 of the *Mining Act 1992*, where the value of the minerals to which the alleged offence relates is \$5,000 or more.

[2] Schedule 1, Table 2

Insert after Part 8:

Part 9 Offences relating to mining

17 Mining Act 1992

- (1) An offence of mining in contravention of a provision of Division 1 of Part 2 of the *Mining Act 1992*, where the value of the minerals to which the alleged offence relates is less than \$5,000.
- (2) An offence under Division 2 of Part 2 of the *Mining Act 1992*, where the value of the minerals to which the alleged offence relates is less than \$5,000.

- (3) An offence, under section 374A of the *Mining Act 1992*, of contravening a condition of a lease, licence or mineral claim under that Act that is identified in the lease, licence or claim as a condition related to environmental management.

18 Petroleum (Onshore) Act 1991

- (1) An offence of mining petroleum in contravention of section 7 of the *Petroleum (Onshore) Act 1991*, where the value of the petroleum to which the alleged offence relates is less than \$5,000.
- (2) An offence, under section 136A of the *Petroleum (Onshore) Act 1991*, of contravening a condition of a petroleum title that is identified in the title as a condition related to environmental management.

[Minister's second reading speech made in—
Legislative Council on 16 November 2000
Legislative Assembly on 30 November 2000]