



New South Wales

Mining Amendment (Improvements on Land) Act 2008 No 68

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New South Wales

Mining Amendment (Improvements on Land) Act 2008 No 68

Act No 68, 2008

An Act to amend the *Mining Act 1992* to clarify the circumstances in which consent is required to the granting of a mining lease over land on which an improvement is situated; and for other purposes. [Assented to 25 September 2008]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Mining Amendment (Improvements on Land) Act 2008*.

2 Commencement

This Act commences on the date of assent to this Act.

3 Amendment of Mining Act 1992 No 29

The *Mining Act 1992* is amended as set out in Schedule 1.

4 Amendment of Mining Amendment Act 2008 No 19

The *Mining Amendment Act 2008* is amended by omitting Schedule 1 [56].

5 Repeal of Act

- (1) This Act is repealed on the day following the day on which this Act commences.
- (2) The repeal of this Act does not, because of the operation of section 30 of the *Interpretation Act 1987*, affect any amendment made by this Act.

Schedule 1 Amendments

(Section 3)

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

Omit section 31 (1) (c). Insert instead:

- (c) on which is situated any significant improvement other than an improvement constructed or used for mining purposes only,

[2] Sections 31 (4) and (5), 49 (4) and (5), 62 (4) and 188 (4) and (5)

Insert “significant” before “improvement” wherever occurring.

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

Omit section 49 (1) (c). Insert instead:

- (c) on which is situated any significant improvement other than an improvement constructed or used for mining purposes only,

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

Omit section 62 (1) (c). Insert instead:

- (c) on which is situated anything that is taken to be a significant improvement under clause 23A of Schedule 1,

[5] Section 62 (6) and (6A)

Omit section 62 (6). Insert instead:

- (6) This section does not apply with respect to a dwelling-house, garden or significant improvement owned by the applicant for the mining lease or, if the applicant is a corporation, by a related corporation.
- (6A) If a dispute arises as to whether or not subsection (1) (a) or (b) applies in any particular case, the applicant for the lease, the owner of the dwelling-house or garden or the occupier of the dwelling-house may apply to a Warden’s Court for a determination on the matter.

[6] Section 62 (8)

Omit the subsection.

[7] Section 188 Dwelling-houses, gardens and significant improvements

Omit section 188 (1) (c). Insert instead:

- (c) on which is situated any significant improvement other than an improvement constructed or used for mining purposes only,

[8] Section 254 Permit to enter land

Omit section 254 (3) (c). Insert instead:

- (c) on which is situated any significant improvement other than an improvement constructed or used for mining purposes only.

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

Omit “valuable works and structures” wherever occurring in clause 21 (2) (c) and (4) (c).

Insert instead “significant improvements”.

[10] Schedule 1, clauses 23A (1) and (6) and 23B (3)

Omit “valuable work or structure” wherever occurring.

Insert instead “significant improvement”.

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

Omit “work or structure”. Insert instead “improvement”.

[12] Schedule 6 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

Mining Amendment (Improvements on Land) Act 2008

[13] Schedule 6, Part 11

Insert after Part 10 with appropriate clause numbering:

Part 11 Provisions consequent on enactment of Mining Amendment (Improvements on Land) Act 2008

Consent to mining leases and application of amending Act to pending applications

- (1) If, in relation to an application for a mining lease that was lodged before the commencement of this clause:

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- (a) the owner of any improvement situated on the land to which the application relates was notified of the application in accordance with clause 21 (3) and (4) of Schedule 1, and
- (b) the 28-day period (as referred to in clause 21 (4) (c) of that Schedule) ended on or at any time before 7 August 2008, and
- (c) the owner did not, within that 28-day period, make a claim under clause 23A of that Schedule in relation to the improvement,
- the owner of the improvement is, to the extent that the owner's consent to the granting of the lease was required because of section 62 (1) (c) of this Act (as in force immediately before the commencement of this clause), taken to have given that consent.
- (2) Subclause (1) applies regardless of whether the mining lease the subject of the application was granted before the commencement of this clause.
- (3) Any mining lease granted before the commencement of this clause that would have been validly granted if subclause (1) had been in force when it was granted is validated. To remove doubt, this subclause extends to any mining lease that may otherwise be invalid because of the decision of the New South Wales Court of Appeal in *Ulan Coal Mines v Minister for Mineral Resources & Anor* [2008] NSWCA 174 or any order resulting from that decision.
- (4) If, in relation to an application for a mining lease that was lodged, but not determined, before the commencement of this clause:
- (a) the owner of any improvement situated on the land to which the application relates was notified of the application in accordance with clause 21 (3) and (4) of Schedule 1, and
- (b) the 28-day period (as referred to in clause 21 (4) (c) of that Schedule) did not end before 8 August 2008,
- the amendments made by the *Mining Amendment (Improvements on Land) Act 2008* are taken to apply to and in respect of the application.
- (5) In the case of any such pending application as referred to in subclause (4), the 28-day period within which a claim may be made under clause 23A of Schedule 1 is, despite the date on which the notice was served, taken to start on the commencement of this clause.

- (6) Except to the extent as otherwise provided by this clause, the amendments made by the *Mining Amendment (Improvements on Land) Act 2008* extend to an application for a mining lease that was lodged, but not determined, before the commencement of this clause.

[14] Dictionary

Insert in alphabetical order:

significant improvement means any substantial building, dam, reservoir, contour bank, graded bank, levee, water disposal area, soil conservation work or other valuable work or structure.

[Agreement in principle speech made in Legislative Assembly on 23 September 2008
Second reading speech made in Legislative Council on 24 September 2008]

BY AUTHORITY