



New South Wales

Mining Legislation Amendment (Harmonisation) Regulation 2016

under the

Mining Act 1992

His Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Mining Act 1992*.

ANTHONY ROBERTS, MP
Minister for Industry, Resources and Energy

Explanatory note

The object of this Regulation is to make the following amendments, which are consequential on the enactment of the *Mining and Petroleum Legislation Amendment (Harmonisation) Act 2015*:

- (a) amendments to savings and transitional provisions inserted in the *Mining Act 1992* by that Act:
 - (i) to ensure that environmental information provided by holders of authorities can be disclosed to or exchanged with other agencies, and
 - (ii) to ensure that existing activity approval conditions in assessment leases are taken to be activity approvals issued under new provisions requiring such approvals for assessable prospecting operations,
- (b) amendments to the *Mining Regulation 2010*:
 - (i) to specify the information required to accompany applications for renewal of exploration licences, assessment leases and mining leases, and
 - (ii) to provide for the content of work programs required to accompany applications for exploration licences and assessment leases, and
 - (iii) to specify the reports required to be prepared by the holder of an authority and to omit provisions requiring reports on operations to be in accordance with the agenda provided, and
 - (iv) to require the collection, labelling and preservation of certain cores and samples, and
 - (v) to specify matters relating to the disclosure or use of information and protected documents that are otherwise required to be kept confidential, and
 - (vi) to provide for the notification of agents of certain holders of authorisations, and
 - (vii) to prescribe the offences under the *Mining Act 1992* that can be dealt with by penalty notice and the penalty if they are dealt with that way, and
 - (viii) to omit redundant provisions and update terminology and cross-references as a consequence of amendments to the *Mining Act 1992*.

This Regulation is made under the *Mining Act 1992*, including sections 113, 120, 129A, 163, 163C, 163F, 163G, 246T, 246W, 365, 378K and 388 (the general regulation-making power), Schedule 4 and clause 1 of Schedule 6.

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1 Name of Regulation

This Regulation is the *Mining Legislation Amendment (Harmonisation) Regulation 2016*.

2 Commencement

This Regulation commences on 1 March 2016 and is required to be published on the NSW legislation website.

Schedule 1 Amendment of Mining Act 1992 No 29

[1] Schedule 6 Savings, transitional and other provisions

Omit the clause headed “Existing “activity approval” conditions in exploration licences” from the Part headed “Provisions consequent on enactment of *Mining and Petroleum Legislation Amendment (Harmonisation) Act 2015*”.

Insert instead, with appropriate clause numbering:

Existing “activity approval” conditions in exploration licences and assessment leases

- (1) Any condition to which an exploration licence was subject immediately before the commencement of section 23A, as inserted by the 2015 amending Act, that requires approval to carry out operations and that is identified in the licence using 1 of the following phrases is void:
 - (a) Category 1 prospecting operations,
 - (b) Category 2 prospecting operations,
 - (c) Category 3 prospecting operations,
 - (d) assessable prospecting operations.
- (2) However, an approval granted pursuant to a condition referred to in subclause (1) that was in force immediately before the commencement of this clause is taken to be an activity approval granted under section 23A and can be varied or voluntarily cancelled accordingly.
- (3) An application for approval to carry out prospecting operations made in compliance with a condition referred to in subclause (1), being an application that had not been dealt with before the commencement of section 23A (as inserted by the 2015 amending Act), is to be dealt with in accordance with section 23A, as if it had been made under that section.
- (4) Any condition to which an assessment lease was subject immediately before the commencement of section 44A, as inserted by the 2015 amending Act, that requires approval to carry out operations and that is identified in the licence using 1 of the following phrases is void:
 - (a) Category 1 prospecting operations,
 - (b) Category 2 prospecting operations,
 - (c) Category 3 prospecting operations,
 - (d) assessable prospecting operations.
- (5) However, an approval granted pursuant to a condition referred to in subclause (4) that was in force immediately before the commencement of this clause is taken to be an activity approval granted under section 44A and can be varied or voluntarily cancelled accordingly.
- (6) An application for approval to carry out prospecting operations made in compliance with a condition referred to in subclause (4), being an application that had not been dealt with before the commencement of section 44A (as inserted by the 2015 amending Act), is to be dealt with in accordance with section 44A, as if it had been made under that section.
- (7) For the avoidance of doubt, compliance with section 23A or 44A is required in respect of any assessable prospecting operation (within the meaning of the section concerned) carried out after the commencement of the section, even if it began before the commencement of the section.

[2] Schedule 6

Omit the clause headed “Environmental information” from the Part headed “Provisions consequent on enactment of *Mining and Petroleum Legislation Amendment (Harmonisation) Act 2015*”.

Schedule 2 Amendment of Mining Regulation 2010

[1] Clause 3 Definitions

Omit the definitions of *annual exploration report* and *renewal justification statement* from clause 3 (1).

[2] Clause 4 Meaning of “environmental performance record”

Omit “environmental protection legislation” wherever occurring in clause 4 (1) (a) and (b).
Insert instead “environment protection legislation”.

[3] Clause 18 Renewal of exploration licence

Omit clause 18 (1) (d). Insert instead:

- (d) particulars of the financial resources and relevant technical advice available to the applicant,
- (e) a renewal justification statement, that is, a statement that contains the following information:
 - (i) details of the operations carried out on the land comprised in the licence during the current term of the authority, including the following:
 - (A) the types of operations carried out,
 - (B) a map showing the location of operations carried out,
 - (C) any expenditure incurred in relation to those operations,
 - (ii) a summary of the results of such operations and the conclusions reached in relation to the potential resources of the land comprised in the licence,
 - (iii) a statement giving the reasons that the applicant considers the renewal to be justified,
- (f) a work program for the proposed term of renewal that complies with the requirements of section 129A of the Act.

[4] Clause 20 Application for assessment lease

Omit “a legal practitioner” from clause 20 (2).
Insert instead “an Australian legal practitioner”.

[5] Clause 22 Renewal of assessment lease

Omit clause 22 (1) (d). Insert instead:

- (d) particulars of the financial resources and relevant technical advice available to the applicant,
- (e) a renewal justification statement, that is, a statement that contains the following information:
 - (i) details of the operations carried out on the land comprised in the lease during the current term of the lease, including the following:
 - (A) the types of operations carried out,
 - (B) a map showing the location of operations carried out,
 - (C) any expenditure incurred in relation to those operations,
 - (ii) a summary of the potential resources on the land comprised in the lease,

- (iii) a summary of the potential for the development of resources on the land comprised in the lease,
- (iv) a statement giving the reasons that the applicant considers the renewal to be justified,
- (f) a work program for the proposed term of renewal that complies with the requirements of section 129A of the Act.

[6] Clause 24 Application for mining lease

Omit “a legal practitioner” from clause 24 (2).

Insert instead “an Australian legal practitioner”.

[7] Clause 27 Renewal of mining lease

Omit clause 27 (1) (d). Insert instead:

- (d) a renewal justification statement, that is, a statement that contains the following information:
 - (i) details of the operations carried out on the land comprised in the lease during the current term of the lease, including the following:
 - (A) the types of operations carried out,
 - (B) a map showing the location of operations carried out,
 - (C) any expenditure incurred in relation to those operations,
 - (ii) a summary of the resources on the land comprised in the lease,
 - (iii) a statement giving the reasons that the applicant considers the renewal to be justified,
- (e) a work program for the proposed term of renewal that complies with the requirements of section 129A of the Act.

[8] Clause 32 Transfer of authorities

Omit “program of work” from clause 32 (1) (g). Insert instead “work program”.

[9] Clause 32 (1) (j)

Omit the paragraph.

[10] Clause 33A

Insert after clause 33:

33A Work programs accompanying applications for exploration licences or assessment leases

For the purposes of section 129A (1) (d) of the Act, a work program for an exploration licence or an assessment lease must include particulars of the estimated amount of money that the applicant proposes to spend on carrying out operations and activities on the land comprised in the licence or lease.

[11] Part 5, heading

Omit “Exploration reports”. Insert instead “Reports”.

[12] Clauses 57–58E

Omit clauses 57 and 58. Insert instead:

57 Annual reports

- (1) For the purposes of section 163C (2) (a) of the Act, the holder of an authority must prepare and lodge with the Secretary an annual report that complies with this clause.
- (2) An annual report must be lodged within 1 calendar month of the grant anniversary date (within the meaning of section 292B of the Act) or such other date notified by the Secretary in writing, regardless of whether an application to renew the authority area has been lodged and not yet determined.
- (3) An annual report must contain the following:
 - (a) full particulars of all surveys and other operations or activities, including details of expenditure on operations carried out by or on behalf of the holder of the authority during the preceding 12-month period within which the authority had effect,
 - (b) the results and conclusions of such surveys and any other operations,
 - (c) the operations proposed to be conducted during the next 12-month period.

58 Partial relinquishment reports

- (1) For the purposes of section 163C (2) (a) of the Act, the holder of an authority must prepare and lodge with the Secretary a partial relinquishment report that complies with this clause when the holder's authority has been:
 - (a) partially cancelled, or
 - (b) renewed over an area of land that is less than the area over which the authority applied prior to its renewal.
- (2) A partial relinquishment report must be lodged with the Secretary within 1 calendar month after the Secretary gives notice of the cancellation or renewal of a kind referred to in subclause (1).
- (3) A partial relinquishment report is only required in relation to the area of land which formed part of the authority before the cancellation or renewal of the kind referred to in subclause (1).
- (4) A partial relinquishment report must contain the following:
 - (a) a summary of all surveys and other operations carried out by or on behalf of the holder of the authority during the period within which the land that has been relinquished was subject to the authority,
 - (b) detailed data of all surveys and other operations,
 - (c) the results and conclusions of such surveys and any other operations.

58A Final reports

- (1) For the purposes of section 163C (2) (a) of the Act, the holder of an authority must prepare and lodge with the Secretary a final report that complies with this clause.
- (2) A final report must be lodged with the Secretary within 1 calendar month after the expiry or cancellation of the authority.

- (3) A final report must contain the following:
 - (a) a summary of all surveys and other operations carried out by or on behalf of the holder of the authority during the period within which the land that has been relinquished was subject to the authority,
 - (b) detailed data of all surveys and other operations not previously provided,
 - (c) the results and conclusions of such surveys and any other operations not previously provided.

58B Requirements of reports

- (1) The Secretary may issue further requirements relating to reports under clause 57, 58 or 58A. Any such requirements must be published in the Gazette.
- (2) A report under clause 57, 58 or 58A must be prepared and lodged in accordance with any requirements issued by the Secretary.

58C Maps, plans and data in reports

A report under clause 57, 58 or 58A must contain all maps, plans and data that are necessary to satisfactorily interpret and evaluate the report.

58D Confidentiality of reports

- (1) For the purposes of section 163C (2) (c) of the Act, reports lodged with the Secretary under clause 57 must not be disclosed (except as authorised by the Act) during the period for which the authority to which the report relates is in force unless:
 - (a) in the case of a report lodged on or after 1 June 2016—5 years have passed since the lodgment of the report, or
 - (b) in the case of a report lodged before 1 June 2016—5 years have passed since that date.
- (2) Subclause (1) continues to apply to a report if the relevant authority in relation to which a report was made is subsequently transferred to another person.
- (3) This clause does not prevent:
 - (a) any disclosure or publication of a summary of a work program, or
 - (b) the disclosure of reports lodged with the Secretary under clause 57 after the authority to which the report relates ceases to be in force.

58E Collection of cores and samples

For the purposes of section 163G of the Act, the holder of an authority must:

- (a) so far as is reasonably practicable collect, retain and preserve:
 - (i) all drill cores remaining after sampling, including any material obtained under previous authorities, and
 - (ii) all characteristic samples of the rock or strata encountered on any drill hole on the land comprised in the authority, including any material obtained under previous authorities, and
- (b) collect, retain and preserve samples of any water discovered in any drill hole on the land comprised in the authority, where requested to do so by written notice from the Secretary, and
- (c) label any such drill cores or samples for reference, and
- (d) so far as is reasonably practicable, preserve the integrity of any such drill core or sample for the life of the authority, and

- (e) if the holder of the authority intends to dispose of any of the drill cores or samples:
 - (i) offer those drill cores or samples to the Secretary for preservation, and
 - (ii) if requested to do so, provide them to the Secretary for preservation in such manner as the Secretary determines.

[13] Part 6

Omit the Part. Insert instead:

Part 6 Use of information and protected documents

61 Use of information

For the purposes of the definition of *relevant agency* in section 246T (3) of the Act, the following legislation is prescribed:

- (a) the *Crimes Act 1900*,
- (b) the *Electricity Supply Act 1995*,
- (c) the *Explosives Act 2003*,
- (d) the *Forestry Act 2012*,
- (e) the *Hunter Water Act 1991*,
- (f) the *Pipelines Act 1967*,
- (g) the *Sydney Water Act 1994*,
- (h) the *Water Act 1912*,
- (i) the *Water Management Act 2000*,
- (j) the *Work Health and Safety (Mines and Petroleum Sites) Act 2013*.

61AA Protected documents not admissible in certain proceedings or otherwise protected

- (1) For the purposes of section 246W (1) (a) of the Act, the following legislation is prescribed:
 - (a) the *Crimes Act 1900*,
 - (b) the *Electricity Supply Act 1995*,
 - (c) the *Explosives Act 2003*,
 - (d) the *Forestry Act 2012*,
 - (e) the *Hunter Water Act 1991*,
 - (f) the *Pipelines Act 1967*,
 - (g) the *Sydney Water Act 1994*,
 - (h) the work health and safety legislation.
- (2) For the purposes of section 246W (1) (b) of the Act, the following agencies, departments and authorities are prescribed authorities:
 - (a) Dams Safety NSW,
 - (b) the Department of Finance, Services and Innovation,
 - (c) the Independent Commission Against Corruption,
 - (d) a local council,
 - (e) Local Land Services,

- (f) the Mine Subsidence Board,
- (g) the NSW Police Force or the police force of any other State or Territory,
- (h) the Regulatory Authority (within the meaning of the *Water NSW Act 2014*),
- (i) Roads and Maritime Services,
- (j) SafeWork NSW,
- (k) the Sydney Harbour Foreshore Authority,
- (l) the Western Lands Commissioner,
- (m) any other agency or authority administering any environment protection legislation, or any other relevant legislation that is New South Wales legislation.

61AB Disclosure of protected documents

For the purposes of section 365 (1) (g) of the Act, the following legislation is prescribed:

- (a) the *Crimes Act 1900*,
- (b) the *Electricity Supply Act 1995*,
- (c) the *Explosives Act 2003*,
- (d) the *Forestry Act 2012*,
- (e) the *Hunter Water Act 1991*,
- (f) the *Pipelines Act 1967*,
- (g) the *Sydney Water Act 1994*,
- (h) the *Water Act 1912*,
- (i) the *Water Management Act 2000*.

[14] Clause 76 Applications

Omit clause 76 (9).

[15] Clause 78A

Insert after clause 78:

78A Notification of agents

For the purposes of section 163F of the Act, a person who has appointed an agent for the purposes of that section must provide written notice of the appointment to the Secretary.

[16] Clause 80

Omit the clause. Insert instead:

80 Penalty notice offences and penalties

- (1) For the purposes of section 378K of the Act:
 - (a) each offence created by a provision specified in Column 1 of Schedule 11 is an offence for which a penalty notice may be served, and
 - (b) the penalty prescribed for each such offence is:
 - (i) in the case of an offence committed by an individual—the amount specified opposite the provision in Column 2 of the Schedule, or

- (ii) in the case of an offence committed by a corporation—the amount specified opposite the provision in Column 3 of the Schedule.
- (2) If the reference to a provision in Column 1 of Schedule 11 is qualified by words that restrict its operation to specified kinds of offences, an offence created by the provision is a prescribed offence only if it is an offence of a kind so specified or committed in the circumstances so specified.
- (3) The following persons are declared to be *penalty notice officers* for the purposes of section 378K (9) of the Act:
 - (a) the Secretary,
 - (b) an inspector.

[17] Schedule 10 Fees

Omit “section 70 of” from item 16. Insert instead “clause 14 of Schedule 1B to”.

[18] Schedule 10, item 19

Omit “amendment of mining lease (section 79 of the Act)”.

Insert instead “variation of mining lease (clause 12 of Schedule 1B to the Act)”.

[19] Schedule 10, item 33

Omit “section 168 of”. Insert instead “clause 14 of Schedule 1B to”.

[20] Schedule 10, item 58

Omit “section 215 of”. Insert instead “clause 14 of Schedule 1B to”.

[21] Schedule 11

Omit the Schedule. Insert instead:

Schedule 11 Penalty notice offences

(Clause 80)

Column 1	Column 2	Column 3
Offence	Individual	Corporation
	\$	\$
Offences under the Act		
Section 5	2,500	5,000
Section 6 (1)	2,500	5,000
Section 12 (4) and (6)	750	—
Section 12B	2,500	—
Section 75 (3)	750	1,500
Section 76 (2)	750	1,500
Section 163 (3) or (6D)	750	1,500
Section 163C (3)	2,500	5,000
Section 164 (3)	750	1,500

Column 1	Column 2	Column 3
Offence	Individual	Corporation
	\$	\$
Section 175A	1,250	2,500
Section 211 (3)	750	1,500
Section 213 (1) or (2)	750	1,500
Section 235C (3)	750	1,500
Section 240C	2,500	5,000
Section 246R (5)	2,500	5,000
Section 248S (1) (in relation to failure to comply with requirement under section 248E (2) (i))	1,250	2,500
Section 248S (1) (in relation to failure to comply with requirement under section 248N)	500	—
Section 248S (3)	2,500	5,000
Section 257	750	1,500
Section 258	750	1,500
Section 288 (2)	750	1,500
Section 291 (1A)	2,500	5,000
Section 292C (3)	500	1,000
Section 365	750	—
Section 378B	2,500	5,000
Section 378C	1,250	2,500
Section 378D (1)	1,250	2,500
Section 378ZFE	2,500	5,000
Offences under this Regulation		
Clause 12 (1) or (2)	750	1,500
Clause 37 (8)	750	1,500
Clause 38	750	1,500
Clause 45 (7)	750	1,500
Clause 52 (7)	750	1,500
Clause 64	750	1,500
Clause 78	750	1,500

[22] Schedule 12 Savings and transitional provisions

Insert at the end of the Schedule:

**Part 7 Provision consequent on making of Mining
Legislation Amendment (Harmonisation)
Regulation 2016**

18 Construction of reference

In clause 61AA (2) (a), the reference to Dams Safety NSW includes a reference to the Dams Safety Committee constituted under the *Dams Safety Act 1978*, until that Act is repealed.