



New South Wales

Mining Legislation Amendment (Arbitration) 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 (Land Access Arbitration) Act 2015*:

- (a) amendments to the *Mining Regulation 2016*:
 - (i) to make it clear that nothing in the *Mining Act 1992* or the *Mining Regulation 2016* requires the boundaries of an area to which an exploration licence is intended to apply to match or mirror the boundaries of 1 or more units, and
 - (ii) to prescribe the procedure to be followed by the Minister before appointing a person as a member of the Arbitration Panel, and
 - (iii) to specify the qualifications and experience that make a person eligible for appointment to the Arbitration Panel, and
 - (iv) to specify the maximum term of office of members of the Arbitration Panel, and
 - (v) to provide for the making and investigation of complaints against arbitrators who are members of the Arbitration Panel, and
 - (vi) to provide for the payment of costs concerned in negotiating access arrangements and the provision of evidence of the incurring of those costs,
- (b) an amendment to a transitional provision inserted into the *Mining Act 1992*, including for law revision purposes.

This Regulation is made under the *Mining Act 1992*, including sections 139, 142 (2F), 158B 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 (Arbitration) Regulation 2016*.

2 Commencement

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

Schedule 1 Amendment of Mining Act 1992 No 29

Schedule 6 Savings, transitional and other provisions

Omit the clause headed “**Application of amendments relating to the definition of “significant improvement”**” from the Part headed “**Provisions consequent on enactment of Mining and Petroleum Legislation Amendment (Land Access Arbitration) Act 2015**”.

Insert instead, with appropriate clause numbering:

Application of amendments relating to the definition of “significant improvement”

The substitution of the definition of *significant improvement* in the Dictionary by the 2015 amending Act does not apply in relation to the following:

- (a) any proceedings in the Land and Environment Court under section 31, 49, 62 or 188 that were commenced, but not finally determined, before the commencement of this clause,
- (b) any proceedings in that Court in relation to a dispute concerning an access arrangement, or the variation of an access arrangement, for which notice had been given under section 142 before the commencement of this clause:
 - (i) that had not commenced before the commencement of this clause, or
 - (ii) that had commenced, but had not been finally determined, before the commencement of this clause.

Schedule 2 Amendment of Mining Regulation 2016

- [1] **Clause 16 Size and shape of land subject to exploration licences** (Former clause 16 of 2010 Reg)

Insert at the end of the clause:

Note. Nothing in the Act or this Regulation requires the boundaries of an area that is intended to be comprised in an exploration licence to match or mirror the boundaries of 1 or more units.

- [2] **Part 3, Division 6**

Insert after Division 5:

Division 6 Land access arbitration

39A Procedure for appointment of person as member of Arbitration Panel

For the purposes of section 139 (2) of the Act, the Minister must, before appointing a person as a member of the Arbitration Panel:

- (a) publish a notice inviting applications for appointment to the Arbitration Panel in at least 1 newspaper circulating generally in Australia, and
- (b) give notice to at least 1 independent arbitration body recognised in New South Wales, inviting applications for appointment as a member of the Arbitration Panel, and
- (c) establish an Assessment Panel, comprising the following 3 members:
 - (i) 1 person who is an Australian legal practitioner of at least 7 years' standing who has, in the opinion of the Minister, extensive arbitration experience,
 - (ii) 1 person nominated by the Minister for Primary Industries,
 - (iii) 1 person nominated by the Minister, and
- (d) direct the Assessment Panel to:
 - (i) evaluate applications for appointment to the Arbitration Panel, having regard to the eligibility criteria specified in clause 39B, and
 - (ii) make recommendations for appointment to the Minister, and
- (e) have regard to any recommendations made by the Assessment Panel, and
- (f) consult with the Minister for Aboriginal Affairs and the Minister for Primary Industries on any proposed appointee.

39B Eligibility for appointment as member of Arbitration Panel

For the purposes of section 139 (3) of the Act, a person is eligible for appointment as a member of the Arbitration Panel if:

- (a) the person:
 - (i) is an accredited mediator under the National Mediator Accreditation System, or
 - (ii) holds practitioner membership, or advanced practitioner membership, with LEADR & IAMA (ACN 008 651 232, trading as Resolution Institute), and
- (b) the person has, in the opinion of the Minister, extensive arbitration experience, and
- (c) the person either:

- (i) has, in the opinion of the Minister, extensive agricultural or resources industry experience, or
- (ii) is an Australian legal practitioner of at least 7 years' standing who has, in the opinion of the Minister, extensive litigation experience.

39C Maximum term of office as member of Arbitration Panel

For the purposes of section 139 (4) of the Act, the maximum period prescribed for a single term of office as a member of the Arbitration Panel is 3 years.

39D Making of complaints about Arbitration Panel arbitrators

For the purposes of section 158B (3) (a) of the Act, a complaint made about an arbitrator appointed under section 144 or 145A (7) (b) of the Act:

- (a) must be made in writing to the Secretary, and
- (b) must be made within 14 days after the subject matter of the complaint first becomes known to the person making the complaint, unless the Secretary considers special circumstances exist that warrant a complaint being permitted to be made after that date.

39E Investigation by Secretary of complaints about Arbitration Panel arbitrators

- (1) For the purposes of section 158B (3) (b) of the Act:
 - (a) the Secretary must provide notice of a complaint made under section 158B (1) of the Act by a party to an arbitration to:
 - (i) the other party to the arbitration, and
 - (ii) the arbitrator who is the subject of the complaint, and
 - (b) that notice must include:
 - (i) the name and address of the party making the complaint, and
 - (ii) details about the nature of the complaint, and
 - (iii) details of any evidence provided by the party making the complaint that supports the complaint.
- (2) The Secretary must:
 - (a) provide an arbitrator the subject of a complaint under section 158B (1) of the Act with a reasonable opportunity to make any submissions about the complaint, and
 - (b) take any submissions made by the arbitrator into consideration when determining whether to remove the arbitrator under section 158B (1) of the Act.
- (3) Any determination of the Secretary in relation to a complaint against an arbitrator must:
 - (a) be in writing, and
 - (b) set out the reasons for the determination made in relation to the complaint, and
 - (c) be given to the party that made the complaint, and the arbitrator who is the subject of the complaint, as soon as practicable.

39F Costs relating to access arrangements

For the purposes of section 142 (2F) of the Act, the payment of costs is not required unless documentary evidence of the incurring of those costs

(including costs relating to time spent participating in negotiating the access arrangement) has been provided to the holder of the prospecting title.