



New South Wales

Mining Amendment (Improvements on Land) Bill 2008

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

At present under section 62 of the *Mining Act 1992* (***the Act***), a mining lease may not be granted over the surface of any land on which is situated any improvement (which covers things such as substantial buildings or dams or other valuable works or structures) except with the consent of the owner of the improvement. Section 63 of the Act also provides that a mining lease may not be granted otherwise than in accordance with Part 2 of Schedule 1 to the Act (which contains provisions requiring the relevant landholder to be notified about the application for the lease). Once notified of the application, the landholder may claim that a work or structure on the land is an improvement for the purposes of section 62 of the Act. Anything identified in such a claim is taken to be an improvement unless the applicant for the mining lease objects (in which case the dispute as to whether the thing is an improvement is to be decided by a mining warden).

In *Ulan Coal Mines v Minister for Mineral Resources and Anor* [2008] NSWCA 174, the NSW Court of Appeal held that the claim process is optional for landholders and the fact that a claim is not made within the required 28-day period after the landholder is notified is not determinative as to whether the owner of the improvement has consented to the granting of the mining lease.

The object of this Bill is to amend the *Mining Act 1992* to clarify the circumstances in which consent is required under section 62 of the Act to a mining lease over land on which an improvement is situated. As a result of the proposed Act, the consent of the owner of an improvement will only be required if the improvement is one that is taken to be an improvement in accordance with the existing notification and claims procedures set out in Part 2 of Schedule 1 to the Act.

The Bill also makes a number of minor and consequential amendments, including transitional provisions that deal with pending applications for mining leases and that validate existing mining leases granted on the basis that the consent of the owner of an improvement was given because the owner did not make a claim.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.

Clause 3 is a formal provision that gives effect to the amendments to the *Mining Act 1992* set out in Schedule 1.

Clause 4 amends the *Mining Amendment Act 2008* to repeal an uncommenced amendment to section 62 of the *Mining Act 1992*. The amendment is to be re-inserted in a modified form as a consequence of the amendments made by the proposed Act (see Schedule 1 [5]).

Clause 5 provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced. Once the amendments have commenced the proposed Act will be spent and section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by that Act.

Schedule 1 Amendments

Schedule 1 [4] and [6] amend section 62 of the Act so that the consent of the owner of an improvement on land to a mining lease being granted over the land will only be required if the improvement has been identified by the landholder in a claim made in accordance with the existing notification and claims procedures. If the improvement is declared not to be an improvement for the purposes of section 62 by a mining warden as the result of an objection by the applicant for the mining lease, the consent of the owner will not be required.

Schedule 1 [5] replicates an uncommenced amendment in the *Mining Amendment Act 2008* which makes it clear that an applicant for a mining lease (or a related corporation of the applicant) who is the owner of a dwelling-house, garden or improvement situated on land over which the lease is sought is not required to consent to the lease. The amendment also confers on the Warden's Court, rather than a warden and the Minister, jurisdiction relating to disputes under section 62 of the Act, but only in relation to matters concerning the consent of owners of dwelling-houses or gardens. Disputes relating to improvements on land will be dealt

with in accordance with the existing notification and claims procedures which enable the applicant for the mining lease to object to the landholder's claim that something on the land is a significant improvement.

Schedule 1 [14] inserts a new definition of *significant improvement* in the Dictionary to the Act. The definition uses essentially the same wording that is currently used in various provisions of the Act (including section 62) to define those things that are improvements on land for the purposes of the Act. The amendments made by **Schedule 1 [1]–[3] and [7]–[11]** are consequential on the consolidation of these various provisions into the new definition.

Schedule 1 [12] enables savings and transitional regulations to be made as a consequence of the enactment of the proposed Act.

Schedule 1 [13] inserts savings and transitional provisions as a consequence of the enactment of the proposed Act. The amendments made by the proposed Act will extend to applications for mining leases lodged, but not determined, before the commencement of the proposed Act. Special provision is also made in the case of any application lodged before the commencement of the proposed Act where the 28-day period in which the owner was entitled to make a claim ended on or before 7 August 2008 (the day before the decision in *Ulan*). Regardless of whether the mining lease has been granted, the owner's consent will be taken to have been given to the lease if a claim was not made within the 28-day period. Any existing mining lease granted on this basis (including any lease that was the subject of the decision in *Ulan*) is validated by the proposed Act. In the case of other pending applications, the 28-day period in which the owner can make a claim will run from the commencement of the proposed Act.

First print



New South Wales

Mining Amendment (Improvements on Land) Bill 2008

Contents

	Page
1 Name of Act	2
2 Commencement	2
3 Amendment of Mining Act 1992 No 29	2
4 Amendment of Mining Amendment Act 2008 No 19	2
5 Repeal of Act	2
Schedule 1 Amendments	3



New South Wales

Mining Amendment (Improvements on Land) Bill 2008

No. , 2008

A Bill for

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.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Mining Amendment (Improvements on Land) Act 2008</i> .	3
2 Commencement	4
This Act commences on the date of assent to this Act.	5
3 Amendment of Mining Act 1992 No 29	6
The <i>Mining Act 1992</i> is amended as set out in Schedule 1.	7
4 Amendment of Mining Amendment Act 2008 No 19	8
The <i>Mining Amendment Act 2008</i> is amended by omitting Schedule 1 [56].	9 10
5 Repeal of Act	11
(1) This Act is repealed on the day following the day on which this Act commences.	12 13
(2) The repeal of this Act does not, because of the operation of section 30 of the <i>Interpretation Act 1987</i> , affect any amendment made by this Act.	14 15

Schedule 1	Amendments	1
	(Section 3)	2
[1]	Section 31 Dwelling-houses, gardens and significant improvements	3
	Omit section 31 (1) (c). Insert instead:	4
	(c) on which is situated any significant improvement other than an improvement constructed or used for mining purposes only,	5 6 7
[2]	Sections 31 (4) and (5), 49 (4) and (5), 62 (4) and 188 (4) and (5)	8
	Insert “significant” before “improvement” wherever occurring.	9
[3]	Section 49 Dwelling-houses, gardens and significant improvements	10
	Omit section 49 (1) (c). Insert instead:	11
	(c) on which is situated any significant improvement other than an improvement constructed or used for mining purposes only,	12 13 14
[4]	Section 62 Dwelling-houses, gardens and significant improvements	15
	Omit section 62 (1) (c). Insert instead:	16
	(c) on which is situated anything that is taken to be a significant improvement under clause 23A of Schedule 1,	17 18
[5]	Section 62 (6) and (6A)	19
	Omit section 62 (6). Insert instead:	20
	(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.	21 22 23 24
	(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.	25 26 27 28 29
[6]	Section 62 (8)	30
	Omit the subsection.	31

[7] Section 188 Dwelling-houses, gardens and significant improvements	1
Omit section 188 (1) (c). Insert instead:	2
(c) on which is situated any significant improvement other than an improvement constructed or used for mining purposes only,	3 4 5
[8] Section 254 Permit to enter land	6
Omit section 254 (3) (c). Insert instead:	7
(c) on which is situated any significant improvement other than an improvement constructed or used for mining purposes only.	8 9 10
[9] Schedule 1 Public consultation with respect to the granting of assessment leases and mining leases	11 12
Omit “valuable works and structures” wherever occurring in clause 21 (2) (c) and (4) (c).	13 14
Insert instead “significant improvements”.	15
[10] Schedule 1, clauses 23A (1) and (6) and 23B (3)	16
Omit “valuable work or structure” wherever occurring.	17
Insert instead “significant improvement”.	18
[11] Schedule 1, clause 23A (2)	19
Omit “work or structure”. Insert instead “improvement”.	20
[12] Schedule 6 Savings, transitional and other provisions	21
Insert at the end of clause 1 (1):	22
<i>Mining Amendment (Improvements on Land) Act 2008</i>	23
[13] Schedule 6, Part 11	24
Insert after Part 10 with appropriate clause numbering:	25
Part 11 Provisions consequent on enactment of Mining Amendment (Improvements on Land) Act 2008	26 27 28
Consent to mining leases and application of amending Act to pending applications	29 30
(1) If, in relation to an application for a mining lease that was lodged before the commencement of this clause:	31 32

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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 | 1
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| (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 | 5
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| (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. | 8
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| (2) | Subclause (1) applies regardless of whether the mining lease the subject of the application was granted before the commencement of this clause. | 15
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| (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 <i>Ulan Coal Mines v Minister for Mineral Resources & Anor</i> [2008] NSWCA 174 or any order resulting from that decision. | 18
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| (4) | If, in relation to an application for a mining lease that was lodged, but not determined, before the commencement of this clause: | 26
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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 | 28
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| (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 <i>Mining Amendment (Improvements on Land) Act 2008</i> are taken to apply to and in respect of the application. | 32
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| (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. | 37
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Mining Amendment (Improvements on Land) Bill 2008

Schedule 1 Amendments

- (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. 1
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[14] Dictionary 6

Insert in alphabetical order: 7

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. 8
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