

## MINING (ACCESS TO LANDS) AMENDMENT BILL 1989

NEW SOUTH WALES



### EXPLANATORY NOTE

**(This Explanatory Note relates to this Bill as introduced into Parliament)**

The object of this Bill is to amend the Mining Act 1973 so as—

- (a) to remove the distinction between agricultural and other lands in relation to rights of access that may be exercised by the holders of exploration licences and prospecting licences under that Act; and
- (b) to provide for "access arrangements", between the owners and occupiers of those lands and the holders of those licences, that will define the rights of access that may be exercised by the holders of those licences in relation to those lands; and
- (c) to effect statute law revision; and
- (d) to make other minor, consequential and ancillary amendments.

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**Clause 1** specifies the short title of the proposed Act.

**Clause 2** provides that the proposed Act is to commence on a day or days to be appointed by proclamation, except for Schedule 2, and clause 3 in its application to that Schedule, which are to commence on the date of assent to the proposed Act.

**Clause 3** gives effect to Schedules 1 and 2.

### SCHEDULE 1—AMENDMENTS

**Schedule 1 (1)–(3)** amend sections 46, 53A and 80 as a consequence of the proposed insertion of Division 4A into Part 5 to be effected by Schedule 1 (4).

**Schedule 1 (4)** inserts a new Division 4A into Part 5. The proposed Division contains new sections 84A–84S.

Proposed section 84A defines certain expressions (in particular, "access arrangement", "arbitrator" and "licensee") for the purposes of the proposed Division.

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- Proposed section 84B establishes an Arbitration Panel consisting of one or more members appointed by the Minister after consultation with the Minister for Agriculture and Rural Affairs.
- Proposed section 84C prohibits a licensee from prospecting in or on land to which the proposed Division applies otherwise than in accordance with an access arrangement agreed or determined in accordance with the Division.
- Proposed section 84D specifies the matters in respect of which an access arrangement may make provision and provides that such an arrangement may not override the Act, the regulations or the conditions of a licence under the Act.
- Proposed section 84E provides for the appointment of an arbitrator by agreement between a licensee and the owners and occupiers of the land to which the licensee wishes to obtain access.
- Proposed section 84F provides for the appointment of an arbitrator where such an agreement cannot be reached. In this situation, an arbitrator will be appointed by the Director-General of the Department of Minerals and Energy after consultation with the Director-General of the Department of Agriculture and Fisheries.
- Proposed section 84G requires an arbitrator—
- (a) to fix a time and place (which may be varied) for conducting a hearing into the question of the licensee's right of access to the land concerned; and
  - (b) to cause notice of his or her appointment, and of the time and place so fixed, to be given to the licensee and to each of the owners and occupiers of the land concerned; and
  - (c) to conduct a hearing, at the time and place so fixed, into the question of the licensee's right of access to the land concerned.
- Proposed section 84H entitles the licensee, and each of the owners and occupiers of the land concerned, to appear and be heard at the hearing, but precludes them from being represented by barristers or solicitors.
- Proposed section 84I requires an arbitrator to attempt to bring the parties to the hearing to a settlement acceptable to all of them and, if this can be done, to make a determination that gives effect to the terms of the settlement.
- Proposed section 84J allows an arbitrator to decide on the appropriate procedure to be followed at a hearing, and requires the arbitrator, when conducting a hearing, to act according to equity, good conscience and the substantial merits of the case without regard for technicalities or legal forms. An arbitrator will be able to conduct a hearing even though one or more of the parties may not be present.
- Proposed section 84K requires an arbitrator to make an interim determination as to whether or not a licensee should have a right of access to the land concerned and to prepare (where applicable) a draft access arrangement in respect of the land.
- Proposed section 84L enables a party to a hearing to apply to the arbitrator for reconsideration of the question of the licensee's right of access to the land concerned or for variation of any draft access arrangement prepared by the arbitrator in relation to that land. The proposed section requires the arbitrator to continue the hearing into the matter to which the application relates.
- Proposed section 84M provides for the final determination of the question of a licensee's right of access to the land concerned. Where no application has been made under proposed section 84L, the interim determination is to become the final determination.

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Proposed section 84N requires each party to a hearing to bear his or her own costs in relation to the hearing, and further requires the licensee to bear the arbitrator's costs in relation to the hearing.

Proposed section 84O entitles the parties to a hearing to terminate the hearing if the consent of all parties has been obtained. The licensee will still be required to bear the arbitrator's costs in relation to the hearing.

Proposed section 84P exempts an arbitrator from personal liability in relation to any determination or publication made, or any other act, matter or thing done, for the purposes of a hearing.

Proposed section 84Q enables a party to a hearing to apply to the warden's court for a review of a determination made as a consequence of the hearing. The effect of the determination is suspended, subject to any order of the warden's court to the contrary. The decision of the warden's court on the review of a determination is to be final and is to have effect as if it were made by an arbitrator.

Proposed section 84R specifies when an access arrangement is to take effect and provides that an access arrangement is to have effect as though it were a deed duly executed by each of the parties to it.

Proposed section 84S provides that an access arrangement determined by an arbitrator may, with the consent of all of the parties to it, be varied by the arbitrator.

**Schedule 1 (5)** repeals section 86 (2) as a consequence of the amendment to be effected by Schedule 1 (4).

**Schedule 1 (6)** repeals section 87 as a consequence of the amendment to be effected by Schedule 1 (4).

**Schedule 1 (7)** inserts a new section 121A. The proposed section provides for the compensation payable in relation to the granting of, and the exercise of the rights under, an exploration licence or a prospecting licence. The proposed section further provides that the provisions of an access arrangement under proposed Division 4A of Part 5 are, to the extent to which they relate to compensation, to have effect as an agreement for the purposes of the proposed section.

**Schedule 1 (8)** amends section 122 so as to limit the application of that section to mining leases and mining purposes leases as a consequence of the amendments to be effected by Schedule 1 (4) and (7).

**Schedule 1 (9)** amends section 124 so as to limit the application of that section to mining leases and mining purposes leases as a consequence of the amendments to be effected by Schedule 1 (4) and (7).

**Schedule 1 (10)** amends section 125 so as to ensure that the provisions of an access arrangement under proposed Division 4A of Part 5 are, to the extent to which they relate to compensation, to have effect as an agreement for the purposes of that section.

**Schedule 1 (11)** amends section 126 so as to ensure that a mining warden—

- (a) may assess compensation in respect of the exercise of rights under an exploration licence or prospecting licence in those cases where an access arrangement fails to provide for compensation; and
- (b) may assess additional compensation in respect of the exercise of rights under an exploration licence or prospecting licence in those cases where an access arrangement determined by an arbitrator fails to provide for adequate compensation.

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**Schedule 1 (12)** amends section 133 so as to extend the jurisdiction of the warden's court to include proceedings for the review of determinations made under proposed Division 4A of Part 5 and proceedings on any question or dispute as to the provisions of any access arrangement determined by an arbitrator under the proposed Division.

**Schedule 1 (13)** amends section 146 so as to ensure that the section enables a mining warden to determine questions relating to an arbitrator's costs in any proceedings arising from a determination made by an arbitrator under proposed Division 4A of Part 5.

**Schedule 1 (14)** amends section 195 so as to enable the Governor-in-Council to make regulations with respect to arbitrators' costs under proposed Division 4A of Part 5.

**Schedule 1 (15)** amends the First Schedule as a consequence of the proposed insertion of Division 4A into Part 5 to be effected by Schedule 1 (4).

**Schedule 1 (16)** amends the Second Schedule so as to enact transitional and savings provisions as a consequence of the other amendments effected by Schedule 1.

**SCHEDULE 2—FURTHER AMENDMENTS BY WAY OF  
STATUTE LAW REVISION**

**Schedule 2 (1)** repeals section 2. This section has become redundant in the light of the current practice of prefacing reprints of Acts with Tables of Provisions.

**Schedule 2 (2) (a), (d) and (e) (3), and (7)** amend various provisions as a consequence of the Department of Mineral Resources having become the Department of Minerals and Energy and the Secretary of the Department of Mineral Resources having become the Director-General of the Department of Minerals and Energy.

**Schedule 2 (2) (b)** amends the definition of "irrigation area" in section 6 (1) so as to bring up-to-date a reference to the Wentworth Irrigation Act 1890.

**Schedule 2 (2) (c)** amends the definition of "owner" in section 6 (1) as a consequence of the enactment of the Protected Estates Act 1983.

**Schedule 2 (4)** amends sections 25A, 25B, 35, 36, 46, 80 and 87 as a consequence of the Department of Agriculture having become the Department of Agriculture and Fisheries.

**Schedule 2 (5)** amends section 53 (6) as a consequence of the reconstitution of the Soil Conservation Service that resulted in the creation of a position of Commissioner of that Service to manage its affairs.

**Schedule 2 (6)** substitutes section 94A (5) (c) as a consequence of the Metropolitan Water Sewerage and Drainage Board having become the Water Board.

**Schedule 2 (8)** amends sections 111E, 111F and 113 as a consequence of the devolution of the environmental functions of the former office of Director of Environment and Planning to the office of Director of Planning.

**Schedule 2 (9)** amends section 117A as a consequence of the devolution of the environmental functions of the former office of Minister for Planning and Environment to the office of Minister for the Environment.

**Schedule 2 (10)** amends section 169 as a consequence of the enactment of the Local Courts Act 1982 which abolished courts of petty sessions and replaced them with Local Courts.

**Schedule 2 (11)** substitutes section 176 as a consequence of the enactment of the Protected Estates Act 1983.

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**Schedule 2 (12)** amends the definition of "the Director" in clause 1 (1) of the First Schedule as a consequence of the Department of Agriculture having become the Department of Agriculture and Fisheries.

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