

[Act 2000 No 90]



New South Wales

Mining and Petroleum Legislation Amendment Bill 2000

Explanatory note

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

Overview of Bill

The objects of this Bill are:

- (a) to amend the *Mining Act 1992* and the *Petroleum (Onshore) Act 1991*:
 - (i) to vary the penalties for certain offences, and
 - (ii) to allow the Minister for Mineral Resources (and in some cases a mining registrar) to direct a suspension of operations under a mining or petroleum title and to prescribe the circumstances in which this may be done, and
 - (iii) to clarify certain procedural provisions concerning native title landholders, and
 - (iv) to make other minor amendments for the better administration of mining and petroleum titles, and

* Amended in committee—see table at end of volume.

- (b) to amend the *Mining Act 1992*:
 - (i) to make further provision with respect to opal prospecting licences, and
 - (ii) to repeal provisions relating to the Geological and Mining Museum, and
 - (iii) to clarify the operation of provisions concerning the rights of landholders where the surface of land is affected by mining authorities and claims, and
- (c) to amend the *Petroleum (Onshore) Act 1991* to abolish the distinction currently drawn by that Act between the rights of landholders of private and Crown land, and
- (d) to amend the *Criminal Procedure Act 1986* as a consequence of the amendments to the *Mining Act 1992* and the *Petroleum (Onshore) Act 1991* contained in Schedule 1.

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 a day or days to be appointed by proclamation.

Clause 3 is a formal provision giving effect to the amendments to the *Mining Act 1992* and the *Petroleum (Onshore) Act 1991* set out in Schedules 1–4.

Clause 4 is a formal provision giving effect to the amendments to the *Criminal Procedure Act 1986* set out in Schedule 5.

Schedule 1 Amendments relating to penalties

Schedule 1 amends provisions of the *Mining Act 1992* and the *Petroleum (Onshore) Act 1991* that create offences, so as:

- (a) to increase most maximum monetary penalties, and
- (b) to abolish imprisonment as a penalty for unlawful fossicking or prospecting, and
- (c) (in the case of the *Mining Act 1992*) to prescribe different penalties, in certain cases, for offences committed by individuals and offences committed by corporations.

As a consequence of increasing the penalties for offences concerning unlawful mining, or concerning contravention of title conditions imposed for the protection of the environment, provision is made for proceedings for these offences to be taken on indictment, unless dealt with summarily in accordance with the *Criminal Procedure Act 1986*. **Schedule 1.1 [18]** and **1.2 [5]** and **Schedule 5** make the necessary amendments, and **Schedule 1.1 [4]** repeals section 12E of the *Mining Act 1992* as a consequence.

Schedule 2 Amendments relating to mining and petroleum titles

Surface mining in proximity to improvements

Sections 31 and 49 of the Act prohibit the holder of an exploration licence or assessment lease from exercising rights under the licence or lease within the prescribed distance of a dwelling or other improvement erected or installed on land over which the licence or lease is granted, unless certain consents are first obtained. Sections 62 and 188 prohibit the grant of a mining lease or mineral claim within such a distance without those consents. **Schedule 2.1 [1], [3], [4]** and **[17]** amend these sections to make it clear that the prohibition in each case only relates to mining operations and mining titles that affect the surface of the land in proximity to the improvement.

Assessment leases

Part 4 of the *Mining Act 1992* and Division 3 of Part 3 of the *Petroleum (Onshore) Act 1991* relate to the assessment lease, which is a title that enables the holder to retain an interest in land that contains a valuable deposit of a mineral or of petroleum that is not commercially viable to be mined for the time being. **Schedule 2.1 [2]** and **2.2 [11]** insert explanatory notes at the end of relevant provisions in each Act that better describe the advantages and purposes of an assessment lease.

Conditions of consolidated leases

Schedule 2.1 [5] repeals section 111 of the *Mining Act 1992*, which provided that, where mining leases are consolidated, a direction under section 77 of the Act that pertained to one of the existing leases and that allowed additional minerals to be mined only allowed mining for the additional mineral, after consolidation of the

leases, in the area to which that existing lease applied. The practice has been to redetermine the conditions of the consolidated lease at the time of consolidation, which makes the section unnecessary.

Cancellation of authorities and mineral claims

Division 3 of Part 7 of the *Mining Act 1992* provides for the cancellation of a mining authority and prescribes the relevant grounds and procedures. **Schedule 2.1 [7]** amends section 125 of the Act to provide that, in addition to other available grounds, an authority may be cancelled because the holder has failed to use the land comprised in the authority in good faith for the purposes for which it has been granted, or has used the land for a purpose other than that for which the authority was granted. (Provision to that effect is already made in the *Petroleum (Onshore) Act 1991*.)

Schedule 2.1 [18] effects a similar amendment in relation to mineral claims.

Suspension of operations under mining and petroleum titles

Schedule 2.1 [8] amends section 125 of the *Mining Act 1992* in order to permit all or any operations under an authority to be suspended by the Minister (as an alternative to cancellation), where the holder has failed to pay royalty or maintain a security deposit in accordance with the Act or has breached a condition of the authority that was imposed for the protection of the environment. **Schedule 2.1 [6]** and **[9]–[16]** make consequential amendments to other provisions of Division 3 of Part 7 of the Act.

Schedule 2.1 [19]–[26] effect similar amendments in relation to mineral claims.

Schedule 2.2 [2]–[5] effect similar amendments to the *Petroleum (Onshore) Act 1991* in relation to petroleum titles.

Opal prospecting licences

Section 227 of the *Mining Act 1992* prohibits the grant of opal prospecting licences over certain areas of land. **Schedule 2.1 [27]** amends the section to make it clear that such a licence cannot be granted over land in respect of which an application for a mineral claim is pending.

In addition, a number of amendments are made to the Act so as to make opal prospecting licences subject to conditions similar to those applying to other mining titles. In particular:

- (a) **Schedule 2.1 [28]** amends section 228 of the Act to provide that, before granting an opal prospecting licence, the applicant for the licence may be required to lodge a security deposit to guarantee performance of the conditions of the licence. **Schedule 2.1 [29]** inserts a new section 232A into the Act which provides that an opal prospecting licence currently in force may be amended to include provision for such a condition. **Schedule 2.1 [30]** inserts a new section 235B into the Act which prescribes the circumstances in which such a security deposit may be appropriated and the manner in which it may be applied.
- (b) **Schedule 2.1 [31]** and **[32]** amend section 240 of the Act to provide that the holder of an opal prospecting licence must comply with any direction given by the Minister to carry out rehabilitation work on land over which the licence was granted.

Powers of royalty officers

For the protection of the revenue, section 247A of the *Mining Act 1992* currently permits royalty officers to enter premises occupied by holders of authorities or mineral claims to inspect financial and other documents relating to mining activities. **Schedule 2.1 [33]** amends the section to permit entry by officers of premises occupied by other persons (such as an accountant) if there is reason to believe that such documents are kept there.

Royalty exemption

Schedule 2.1 [34] amends section 286 of the *Mining Act 1992* to provide that methane gas obtained in conjunction with coal mining operations is exempt from royalty. **Schedule 2.2 [13]** makes a corresponding amendment to the *Petroleum (Onshore) Act 1991*.

Interim injunctions granted by a mining warden

Schedule 2.1 [35] amends section 313 of the *Mining Act 1992* so as to extend, from one month to two months, the period for which an injunction granted by a mining warden in cases of emergency remains in force.

Mining museum

Schedule 2.1 [36] repeals provisions of the *Mining Act 1992* that established and regulated the Geological and Mining Museum Trust, which no longer functions.

Departmental officers exercising functions under mining and petroleum titles

Schedule 2.1 [37] inserts a new section 390 into the *Mining Act 1992*, which enables the regulations to provide that a reference in any mining title to the holder of an office within the Department is to be construed as a reference to the Minister (who has power to delegate any function to an appropriate officer or person).

Schedule 2.2 [17] makes a corresponding amendment to the *Petroleum (Onshore) Act 1991*.

Public consultation concerning mining leases

Schedule 2.1 [38] amends Schedule 1 to the Act, which deals with consultation of persons affected by assessment leases and mining leases, to make it clear that where a mining lease affects the surface of any land, a provision of Division 4 of Part 2 of the Schedule requiring notification of landholders only requires notification of landholders whose land surfaces are affected.

Schedule 2.1 [39] amends Schedule 1 to the Act to require a person who objects to the grant of a mining lease on the ground that it would interfere with a valuable work or structure to notify the nature and location of the work or structure.

Schedule 2.1 [40] further amends Schedule 1 to the Act to require a notice issued to the general public advising of an intention to invite tenders for a mining lease or to grant a mining lease (otherwise than by way of tender) to indicate more clearly the persons who are eligible to object to the granting of the lease.

Natural reservoirs

Schedule 2.2 [6] inserts a new section 28A into the *Petroleum (Onshore) Act 1991*, to provide every petroleum title holder with a right to explore for natural reservoirs (which are natural geological formations with the capacity to store significant quantities of petroleum).

Petroleum exploration licences

Section 29 of the *Petroleum (Onshore) Act 1991* sets out the rights conferred by an exploration licence. **Schedule 2.2 [7]** repeals and replaces the section to express the rights in terms of “prospecting”, the definition of which is repealed and replaced by **Schedule 2.2 [1]**. The effect of these amendments is to allow assessment and testing of petroleum deposits discovered in the course of operations under the licence, and to allow the regulations to declare that certain operations may not be carried on

under the licence, reflecting similar provision already made in the *Mining Act 1992*. **Schedule 2.2 [10]** makes a consequential amendment.

Schedule 2.2 [8] amends section 30 of the Act to provide that the area over which a renewal of an exploration licence is granted cannot be more than 75 per cent of the area over which it was originally granted or last renewed, as the case may be. **Schedule 2.2 [9]** amends section 31 of the Act (which currently provides for a 25 per cent reduction only on first renewal) as a consequence.

Access to land near dwellings, gardens and improvements

Section 72 of the *Petroleum (Onshore) Act 1991* requires the holder of a petroleum title to obtain the consent of the owner and occupier of land before carrying out prospecting or mining operations on a portion of the land that is within 200 metres of a principal residence or within 50 metres of a garden, vineyard or orchard, or on which an improvement has been constructed. **Schedule 2.2 [12]** repeals and replaces the section to require the consent of the owner of the improvement (whether or not that person is a landholder, or the sole landholder, of the land) and (in the case of a dwelling-house) to require the consent of the occupier also. The requirements of the new provision are similar to those in corresponding provisions of the *Mining Act 1992*.

Petroleum (Onshore) Act inspectors

Schedule 2.2 [14] amends section 113 of the *Petroleum (Onshore) Act 1991* to make it clear that the section, in addition to conferring inspectors' powers, for the purposes of the Act, on inspectors appointed under other Acts, authorises the direct appointment of other inspectors. The amendment also provides that inspectors may be engaged under contract instead of being appointed as public servants.

Contraventions of conditions of petroleum title

Schedule 2.2 [15] and **[16]** insert new sections 136A and 137A into the *Petroleum (Onshore) Act 1991*, which provide that it is an offence to contravene, without reasonable excuse, the conditions of a petroleum title and provide for the issue of penalty notices for such contraventions. (Provision to this effect is already made in the *Mining Act 1992*.)

Savings and transitional provisions

Schedule 2.1 [41] and [42] and 2.2 [18] and [19] provide for savings and transitional provisions in relation to the amendments proposed by the Bill.

Schedule 3 Amendments relating to native title

Fossicking

Section 12 of the *Mining Act 1992* sets out the rights of persons to fossick for minerals. **Schedule 3.1 [1]** amends the section to require a person who seeks to fossick on land in which native title has been determined to exist to obtain the consent of the registered native title body corporate for the land.

Access arrangements

Part 4A of the *Petroleum (Onshore) Act 1991* provides for access arrangements in connection with petroleum titles that authorise prospecting. **Schedule 3.2 [1]** amends section 69A of the Act to provide that a reference in the provisions of the Part to a landholder includes a reference to registered native title bodies corporate and registered native title claimants.

Arbitration Panel

The access arrangement provisions of the *Mining Act 1992* and the *Petroleum (Onshore) Act 1991* establish a panel of arbitrators whose functions are to settle the arrangements where the parties fail to agree on them. **Schedule 3.1 [2] and [3] and 3.2 [2]** amend the relevant provisions of each Act to require the Minister for Aboriginal Affairs to be consulted in relation to the appointment of members of the panel and to require the head of the Department of Aboriginal Affairs to be consulted in relation to the selection of arbitrators to assist in settlement of particular cases.

Compensation

Part 13 of the *Mining Act 1992* and Part 11 of the *Petroleum (Onshore) Act 1991* deal with compensation issues arising out of mining activities and, for the purposes of those provisions, the meaning of “compensable loss” is defined in each Act. **Schedule 3.1 [4] and 3.2 [3]** amend the definition to make it abundantly clear that the loss by a native title holder of possession or use of the surface of land is a compensable loss.

Service of notices on native title landholders

Schedule 3.1 [5] makes a minor amendment to section 383A of the *Mining Act 1992* by way of statute law revision.

Consent of landholders to mining operations

Both the *Mining Act 1992* and the *Petroleum (Onshore) Act 1991* require the consent of affected landholders (or their identification for compensation purposes) as a condition precedent to the grant of a title or the carrying on of mining or prospecting operations. Each Act also, however, authorises the grant of a title or the carrying on of operations without a landholder's consent if the landholder cannot be found or identified after proper efforts have been made to do so. **Schedule 3.1 [6]** and **3.2 [5]** amend the relevant provisions in relation to the efforts required to find and identify native title holders. The effect of the amendments is that if, in the period of 4 months after the prescribed notice has been given of the intention to grant the title or carry on the mining or prospecting operation concerned, a native title landholder does not come forward to make a native title claim, that landholder is taken to be unable to be identified.

In addition, **Schedule 3.2 [4]** amends section 134A of the *Petroleum (Onshore) Act 1991* to provide for service of documents where the Act requires them to be served on landholders. The amendment provides for the case of a landholder who is a native title holder whose claim to the land concerned has not been confirmed by an approved determination under Commonwealth legislation. (Provision to this effect is already made in the *Mining Act 1992*).

Schedule 4 Further amendment of Petroleum (Onshore) Act 1991

The object of the amendments contained in **Schedule 4** is to abolish the distinction, currently maintained in the *Petroleum (Onshore) Act 1991*, between private landholdings and Crown landholdings in respect of:

- (a) rights to be given notice of applications lodged for certain petroleum titles in respect of the land, and
- (b) rights to object to proposals to grant petroleum titles over the land, and
- (c) rights to compensation for loss arising out of the grant of a petroleum title over the land, and
- (d) miscellaneous other rights of landholders against holders of petroleum titles.

Schedule 5 Consequential amendment of Criminal Procedure Act 1986

The amendments contained in **Schedule 5** relate to offences under the *Mining Act 1992* and the *Petroleum (Onshore) Act 1991* that, as a result of the amendments contained in Schedule 1, may be dealt with on indictment. The offences concern unlawful mining (for minerals or for petroleum, respectively) or contravention of a condition imposed on the mining or petroleum title in relation to environmental management.

The amendments in this Schedule provide, in relation to unlawful mining, that the offences are to be dealt with in a summary manner unless dealt with on indictment:

- (a) at the option of the prosecutor or the person accused, if the amount of minerals or petroleum involved in the alleged offence is \$5,000 or more, or
- (b) at the option of the prosecutor, if the amount of minerals or petroleum involved in the alleged offence is less than \$5,000.

Similar provision is currently made in section 12E of the *Mining Act 1992* in relation to existing offences under Division 2 of Part 2 of that Act concerning stealing of minerals.

In relation to contraventions of title conditions, the amendments provide that the offence may be dealt with on indictment at the option of the prosecutor, but is otherwise to be dealt with in a summary manner.

Provisions currently contained in section 12E of the *Mining Act 1992* that relate to existing indictable offences in that Act (and which are repealed by Schedule 1) are, to the extent necessary, re-enacted by this Schedule in the *Criminal Procedure Act 1986*.