

Passed by both Houses



New South Wales

Mining Amendment (ICAC Operations Jasper and Acacia) Bill 2014

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I certify that this PUBLIC BILL, which originated in the LEGISLATIVE COUNCIL, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.

*Legislative Council
2014*

Clerk of the Parliaments



New South Wales

Mining Amendment (ICAC Operations Jasper and Acacia) Bill 2014

Act No , 2014

An Act to amend the *Mining Act 1992* to cancel certain exploration licences; and for other purposes.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Mining Amendment (ICAC Operations Jasper and Acacia) Act 2014*.

2 Commencement

This Act commences on the date of assent to this Act.

Schedule 1 Principal amendment of Mining Act 1992 No 29

Schedule 6A

Insert after Schedule 6:

Schedule 6A Cancellation of certain authorities

Part 1 Preliminary

1 Application

This Schedule has effect despite any other provision of this Act or the Planning Act.

2 Definitions

In this Schedule:

cancellation date means the date of assent to the *Mining Amendment (ICAC Operations Jasper and Acacia) Act 2014*.

conduct includes any statement, or any act or omission:

- (a) whether unconscionable, negligent, false, misleading, deceptive or otherwise, and
- (b) whether constituting an offence, tort, breach of contract, breach of statute or otherwise.

EL 7270 means the exploration licence referred to in clause 4 (1) (a).

EL 7405 means the exploration licence referred to in clause 4 (1) (b).

EL 7406 means the exploration licence referred to in clause 4 (1) (c).

Planning Act means the *Environmental Planning and Assessment Act 1979*.

relevant land means the exploration area of a relevant licence or any part of the exploration area of a relevant licence.

relevant licence means an exploration licence referred to in clause 4 (1) (a), (b) or (c).

statement includes a representation of any kind, whether made orally or in writing.

3 Purposes and objects

- (1) The Parliament, being satisfied because of information that has come to light as a result of investigations and proceedings of the Independent Commission Against Corruption known as Operation Jasper and Operation Acacia, that the grant of the relevant licences, and the decisions and processes that culminated in the grant of the relevant licences, were tainted by serious corruption (the **tainted processes**), and recognising the exceptional nature of the circumstances, enacts the *Mining Amendment (ICAC Operations Jasper and Acacia) Act 2014* for the following purposes:
 - (a) restoring public confidence in the allocation of the State's valuable mineral resources,
 - (b) promoting integrity in public administration above all other considerations, including financial considerations, and deterring future corruption,
 - (c) placing the State, as nearly as possible, in the same position as it would have been had those relevant licences not been granted, recognising that

it is not practicable in the circumstances to achieve, through financial adjustments or otherwise, an alternative outcome in relation to the relevant licences based on what would have happened had the relevant licences been granted pursuant to processes other than the tainted processes.

- (2) To those ends, the specific objects of the *Mining Amendment (ICAC Operations Jasper and Acacia) Act 2014* are as follows:
- (a) to cancel the relevant licences and ensure that the tainted processes have no continuing impact and cannot affect any future processes (such as for the grant of further authorities) in respect of the relevant land,
 - (b) to ensure that the State has the opportunity, if considered appropriate in the future, to allocate mining and prospecting rights in respect of the relevant land according to proper processes in the public interest,
 - (c) to ensure that no person (whether or not personally implicated in any wrongdoing) may derive any further direct or indirect financial benefit from the tainted processes,
 - (d) to protect the State against the potential for further loss or damage and claims for compensation, without precluding actions for personal liability against individuals, including public officials, who have been implicated in the tainted processes and have not acted honestly and in good faith.

Note. The *Mining Amendment (ICAC Operations Jasper and Acacia) Act 2014* inserted this Schedule into this Act.

Part 2 Cancellation of exploration licences and related matters

4 Cancellation of certain exploration licences

- (1) The following exploration licences are cancelled by this Schedule:
- (a) exploration licence number 7270 dated 15 December 2008,
 - (b) exploration licence number 7405 dated 21 October 2009,
 - (c) exploration licence number 7406 dated 21 October 2009.

Note. EL 7270 was granted over certain land at Doyles Creek. EL 7405 was granted over certain land at Glendon Brook. EL 7406 was granted over certain land at Mount Penny.

- (2) The cancellation takes effect on the cancellation date.
- (3) The cancellation of an exploration licence by this Schedule does not affect any liability incurred before the cancellation date by or on behalf of a holder of a relevant licence or by or on behalf of a director or person involved in the management of a holder of a relevant licence.

5 Associated applications and actions expunged

- (1) Any associated application lodged or made under this Act or the Planning Act before the cancellation date that was not finally disposed of before the cancellation date is, on the cancellation date, void and of no effect.
- (2) Accordingly, any such associated application is not to be dealt with any further under this Act or the Planning Act.

- (3) In this clause, ***associated application*** means:
- (a) any application under this Act for the grant of an authorisation, or for the renewal or transfer of an authorisation, made:
 - (i) in connection with a relevant licence, or
 - (ii) in respect of relevant land by any person other than an excluded person, or
 - (b) a Part 3A project or concept plan application (within the meaning of Schedule 6A to the Planning Act) made by Mount Penny Coal Pty Ltd (reference number MP 10_0234), or
 - (c) any application under the Planning Act for consent or approval to carry out development on relevant land for any of the following purposes made by any person other than an excluded person:
 - (i) mining,
 - (ii) prospecting.
- (4) An application for environmental assessment requirements made by NuCoal Resources Ltd under Part 2 of Schedule 2 to the *Environmental Planning and Assessment Regulation 2000* before the cancellation date (reference number SSD 5177) is, on the cancellation date, void and of no effect.
- (5) Any environmental assessment requirements that have been notified by the Director-General (within the meaning of the Planning Act) as a consequence of an application made void by this clause are, on the cancellation date, void and of no effect.
- (6) On the cancellation date, the Mount Penny Coal Project, being the project of that name that was, before the cancellation date, a transitional Part 3A project, ceases to be a transitional Part 3A project.
- (7) To avoid doubt, ***mining*** and ***prospecting*** have the meanings given by this Act.
- (8) In this clause:
- environmental assessment requirements*** has the meaning given by Schedule 2 to the *Environmental Planning and Assessment Regulation 2000*.
- excluded person*** means a person who is the holder of an authorisation in relation to relevant land that is in force (other than a relevant licence).
- transitional Part 3A project*** has the same meaning as in Schedule 6A to the Planning Act.

6 Refund of fees paid in connection with relevant licences and associated applications

- (1) The following fees are refundable:
- (a) any application fee under section 13 (4) (c) paid for an application for a relevant licence,
 - (b) any application fee under section 33 (4) (c) for an application for an assessment lease, being an application fee paid for an application made void by this Schedule,
 - (c) any application fee paid under this Act for an application for a permit under section 252, being an application fee paid for an application made void by this Schedule,
 - (d) any fee paid in accordance with condition 56 (a) of EL 7270,

- (e) any annual rental fee or administrative levy payable under Part 14A of this Act for the privilege of being the holder of a relevant licence, being a fee that has been paid or, but for this clause, would be payable,
 - (f) any amount the Minister required an applicant for a relevant licence to pay under section 67, where that requirement was made in connection with an application for a relevant licence,
 - (g) any fee an applicant for EL 7405 or EL 7406 was required to pay to the Department in the expression of interest process for that exploration licence, being a fee described as an assessment fee or a contribution to the Department's coal development fund,
 - (h) any other fee paid or payable to a public authority that is declared by the regulations to be refundable under this clause.
- (2) A fee that is refundable under this clause:
- (a) ceases to be payable, and
 - (b) if already paid, is to be refunded to the former holder of the relevant licence in connection with which it was paid, subject to subclause (3).
- (3) A refund is to be paid from money to be appropriated by Parliament or otherwise legally available for that purpose.
- (4) In this clause:
fee includes a charge or other amount.

7 Compensation not payable

- (1) Compensation is not payable by or on behalf of the State:
- (a) because of the enactment or operation of this Schedule, the *Mining Amendment (ICAC Operations Jasper and Acacia) Act 2014* or any Act that amends this Schedule, or
 - (b) because of any direct or indirect consequence of any such enactment or operation (including any conduct under the authority of any such enactment), or
 - (c) because of any conduct relating to any such enactment or operation.
- (2) This clause extends to conduct and any other matter occurring before the commencement of this clause.
- (3) This clause does not exclude or limit any personal liability of a person for conduct occurring before the grant of a relevant licence.
Note. However, clause 8 absolves the State and certain employees of the State from liability for such conduct.
- (4) In this clause:
compensation includes damages or any other form of compensation.
the State means the Crown within the meaning of the *Crown Proceedings Act 1988* or an officer, employee or agent of the Crown.

8 State not liable for certain conduct

- (1) The State is not liable, and is taken never to have been liable, whether vicariously or otherwise, for any conduct (*relevant conduct*) before the cancellation date in relation to a relevant licence or mining on relevant land (whether occurring before or after the grant of a relevant licence).

- (2) In addition, the State is not liable, and is taken never to have been liable, whether under any contract, policy or other arrangement for self-insurance or otherwise, to indemnify any person against any personal liability of the person for relevant conduct.
- (3) To remove doubt, this clause extends to the following conduct as relevant conduct:
 - (a) conduct that facilitated the grant of an authority in respect of relevant land or that facilitated mining on relevant land,
 - (b) conduct relating to the provision of assistance, advice or information (including mining information) in relation to relevant land or an authority for relevant land,
 - (c) conduct relating to the licensing process in connection with relevant land,
 - (d) any conduct occurring in the course of events that culminated in the grant of a relevant licence.
- (4) This clause extends to all types of civil liability, whether at law or in equity, and whether arising in tort or contract, or under an enactment or otherwise.
- (5) An employee (or former employee) of the State acting honestly and in good faith in the performance or purported performance of his or her functions as an employee of the State has the same protections and immunities as the State under this clause.
- (6) This clause does not apply in respect of any liability arising solely in respect of an authority granted before the cancellation date that is not a relevant licence.
- (7) This clause applies despite the *Law Reform (Vicarious Liability) Act 1983* and the *Civil Liability Act 2002*.
- (8) In this clause:

employee of the State means a person employed under the *Public Sector Employment and Management Act 2002*.

licensing process means any practice, process or procedure relating to the obtaining of or grant of an authority, including in relation to expressions of interest, tenders, applications, investigations, inquiries or consents, and whether or not provided for by this Act.

mining includes prospecting.

mining information includes information about:

 - (a) the mineral bearing capacity of land, or
 - (b) the licensing process.

the State means the Crown in right of New South Wales and includes a statutory body representing the Crown.

Part 3 Information gathering, disclosure and use

9 Continuing obligation to provide reports

- (1) The obligation of the holder of a relevant licence to provide a report under section 163C continues despite the cancellation of the licence under this Schedule.

- (2) A reference in section 163C:
 - (a) to an authorisation includes a reference to a relevant licence cancelled by this Schedule, or
 - (b) to the holder of an authorisation includes a reference to a former holder of such a relevant licence.

10 Obtaining exploration information

- (1) For the purposes of Part 12 (Powers of entry and inspection) of this Act, the obtaining of exploration information or any record of exploration information is considered to be for purposes connected with the administration of this Act.
- (2) Accordingly, section 248B (Requirement to provide information and records) extends to authorise an inspector to require a person to furnish exploration information or any record of exploration information.
- (3) Any core or sample that is exploration information furnished under section 248B becomes the property of the State.
- (4) In this clause, *exploration information* means information obtained from, used for the purposes of or in connection with, or comprising the results of, any test, study, survey, analysis or research conducted by or on behalf of the holder of a relevant licence in respect of relevant land or a relevant licence and includes any core or sample taken on or from relevant land under a relevant licence.

11 Disclosure and use of information for future mining purposes

- (1) The appropriate official may use or disclose any information obtained in connection with the administration or execution of this Act or the Planning Act in respect of a relevant licence or relevant land if the use or disclosure is in connection with any application or tender (or proposed application or tender) under this Act or any application under the Planning Act (whether or not in respect of relevant land) or is for any other purpose approved by the Minister.
- (2) The *appropriate official* is:
 - (a) the Director-General under this Act in the case of information obtained in connection with the administration or execution of this Act, or
 - (b) the Director-General under the Planning Act in the case of information obtained in connection with the administration or execution of the Planning Act.
- (3) No intellectual property right or duty of confidentiality (whether arising by agreement, under a relevant licence or otherwise) prevents the use or disclosure of information by the appropriate official as authorised by this clause or the use or disclosure of that information by or on behalf of a person to whom it has been disclosed as authorised by this clause.
- (4) No liability attaches to the State or any other person in connection with the use or disclosure of information as authorised by this clause.
- (5) Clause 58 (Confidentiality of reports) of the *Mining Regulation 2010* does not prevent the disclosure of information under this clause even if the information is contained in a report lodged with the Director-General before the commencement of this clause.
- (6) The disclosure of information under this clause is taken to be in connection with the administration or execution of this Act and the Planning Act.

- (7) In this clause:
disclose includes publish or communicate.
use includes reproduce.

Part 4 Miscellaneous

12 Clearing away of mining plant

To avoid doubt, a reference in section 245 to the holder of an authority includes a reference to a former holder of relevant licence.

13 Continuation of certain conditions of relevant licences

- (1) The preserved conditions of a relevant licence continue to have effect despite the cancellation of the licence by this Schedule. Accordingly, any obligation imposed on the holder of a relevant licence under the preserved conditions continues to have effect.
- (2) The *preserved conditions* are conditions 16 (f)–(h), 18 (c), 19 (d), 20 (g), 23 (b) (vii), 27, 28, 29, 32 and 44 of each relevant licence, and condition 54 of EL 7270, as in force immediately before the cancellation date.
- (3) A reference in section 240 or 378D to a condition of an authorisation includes a reference to a preserved condition of a relevant licence.
- (4) A reference in section 378D:
 - (a) to an authorisation includes a reference to a relevant licence cancelled by this Schedule, or
 - (b) to the holder of an authorisation includes a reference to a former holder of such a relevant licence.

14 Security requirements

- (1) The requirement to give and maintain security under condition 29 of a relevant licence lapses when the Minister determines that the requirements of any directions under section 240 or obligations under the relevant licence (non-compliance with which would authorise a claim on or realisation of the deposit) have been fulfilled to a satisfactory extent and in a satisfactory manner.
- (2) The Minister is not required to make a determination under subclause (1) until the Minister is satisfied that no directions or further directions under section 240 are required.
- (3) The Minister must, if practicable, give written notice of a determination under subclause (1) to the former holder of the relevant licence.
- (4) For the purposes of section 378D, and sections 378H and 378I and Schedule 7 to this Act (as they apply to contraventions of section 378D), condition 29 of a relevant licence is taken to be a condition of a kind referred to in Part 1 of Schedule 7 to this Act.
- (5) Subclause (4) applies only to a contravention of section 378D that occurs on or after the cancellation date.

15 Access arrangements

- (1) The cancellation of a relevant licence by this Schedule does not affect any liabilities of a holder or former holder of the relevant licence under an access arrangement.

- (2) The cancellation of a relevant licence by this Schedule operates, for the purposes of any access arrangement relating to the relevant licence:
 - (a) as an occasion of the holder of the relevant licence ceasing to hold an authority over the exploration area, and
 - (b) as a cancellation of the relevant licence for the purpose of any provision of the access arrangement that deals with the cancellation of an authority (including any provision that refers to cancellation under Division 3 of Part 7 of this Act).
- (3) The regulations may make provision for the termination of any access arrangements relating to a relevant licence.

16 Further Planning Act applications prohibited

- (1) An application under the Planning Act for consent or approval to carry out development on relevant land for any of the following purposes cannot be made except by a person who is the holder of an authority that is in force in relation to that land:
 - (a) mining,
 - (b) prospecting.
- (2) To avoid doubt, *mining* and *prospecting* have the meanings given by this Act.

Schedule 2 Further amendment of Mining Act 1992 No 29

[1] Section 163C Reports

Omit section 163C (3). Insert instead:

- (3) A person who fails, without reasonable excuse, to prepare or lodge a report in accordance with this section or the regulations is guilty of an offence.

Maximum penalty:

- (a) in the case of a corporation—10,000 penalty units, and, in the case of a continuing offence, a further penalty of 1,000 penalty units for each day that the offence continues, or
- (b) in the case of a natural person—2,000 penalty units, and, in the case of a continuing offence, a further penalty of 200 penalty units for each day that the offence continues.

[2] Section 244 Definitions

Omit the definition of *former holder*.

[3] Section 378H Proceedings for offences

Omit “Part 2 or” from section 378H (1) (a).

Insert instead “Part 2, section 163C,”.

[4] Schedule 6 Savings, transitional and other provisions

Insert at the end of the Schedule with appropriate Part and clause numbering:

Part Provisions consequent on enactment of Mining Amendment (ICAC Operations Jasper and Acacia) Act 2014

Increased penalty for failure to report

- (1) The amendment of section 163C (Reports) by the *Mining Amendment (ICAC Operations Jasper and Acacia) Act 2014* extends to a failure occurring after the commencement of the amendment to prepare or lodge a report in respect of matters occurring before that commencement.
- (2) The amendment of section 378H by the *Mining Amendment (ICAC Operations Jasper and Acacia) Act 2014* does not apply to an offence under section 163C (3) as in force before its substitution by that Act.

[5] Dictionary

Insert in alphabetical order:

former holder, in relation to an authorisation that has ceased to apply to land (including because it has been cancelled, expired or has otherwise ceased to have effect), means the person who was the holder of the authorisation immediately before it ceased to apply to the land.