

[Act 1999 No 43]



New South Wales

## Mining Amendment Bill 1999

### Explanatory note

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

#### Overview of Bill

The object of this Bill is to amend the *Mining Act 1992*:

- (a) to provide for Crown landholdings and privately held lands to be dealt with on an equal basis in respect of certain rights and requirements under the Act, such as those relating to the giving of notice or the obtaining of consents in relation to mining titles, and
- (b) to make further provision with respect to compensation to the holders of land over which mineral claims or opal prospecting licences are granted, and
- (c) with respect to fossicking and the rights of fossickers, and
- (d) with respect to the retention and appropriation of security deposits lodged by the holders of mining titles, and
- (e) with respect to penalty notices for certain offences, and
- (f) to make minor, consequential or ancillary amendments.

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

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## 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* set out in Schedules 1–3.

## **Schedule 1 Amendment of Mining Act 1992 in relation to rights of landholders**

The object of most of the amendments in Schedule 1 is to abolish the distinction, currently maintained in the Act, between private landholdings and Crown landholdings in respect of:

- (a) rights to be given notice of applications lodged for certain mining titles in respect of the land, and
- (b) rights to object to proposals to grant exploration or mining titles over the land, and
- (c) rights to compensation for loss arising out of the grant of a mining or exploration title over the land, and
- (d) miscellaneous other rights of landholders against holders of mining titles, such as the right to insist on construction of fences, water access rights and timber rights.

Rights in relation to dwellings or improvements on land subject to certain mining titles are also affected by amendments contained in this Schedule.

The amendments are described below in relation to the various rights affected.

### **Access to land near dwellings, gardens and improvements**

Currently the holder of an exploration licence, assessment lease, mining lease or mineral claim must obtain the consent of the occupier of the land (and, in the case of private land, the owner) before exercising any rights under the licence, lease or claim in respect of a portion of the land that is within the prescribed distance of a dwelling-house that is a principal residence, or within the prescribed distance of a garden or improvement (sections 31, 49, 62 and 188 of the Act). **Schedule 1 [2], [3], [43] and [44]** amend the sections 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) in the case of both private land and any other land, and (in the case of a dwelling-house) to require the consent of the occupier also.

### **Notice of applications**

Currently the holder of a mining lease, when applying for approval of the inclusion of an additional mineral in the terms of the lease, is required to notify owners and occupiers of the relevant land only if the land is private land or is Crown land held under a pastoral lease (section 77 of the Act). The amendment made by **Schedule 1 [8]** extends to all landholders the right to be given such notice.

Similarly, a person may not apply for a mineral claim over Crown land unless notice has been given to the occupier of the land (section 177 of the Act). The amendment made by **Schedule 1 [37]** extends to all landholders the right to be given such notice.

Similarly, before constituting any occupied Crown land as an opal prospecting area, notice must be given to any occupier of the land (section 221 of the Act). The amendments made by **Schedule 1 [55]** extends to all landholders the right to be given such notice, together with rights of objection.

### **Access arrangements for prospecting operations under exploration licences and assessment leases**

Division 2 of Part 8 of the Act provides for access arrangements for prospecting operations under exploration licences and assessment leases over private land or pastoral leaseholds. **Schedule 1 [10]** amends section 138 of the Act to apply the provisions in respect of all land.

### **Access to water and other rights**

The right to grant access to surface water, and to the use of trees and timber, is retained by owners or occupiers of private land or pastoral leaseholds even though a mining title has been granted in respect of the land (sections 165, 166, 212 and 213 of the Act). The amendments made by **Schedule 1 [31], [34], [35], [48]** and **[51]** extend these rights to landholders of any land who are entitled to the surface water, trees or timber.

### **Consent to grant or transfer of mineral claim**

Sections 180 and 200 currently afford the owner and, in some cases, the occupier, of private land an absolute right to prohibit the grant of a mineral claim over the land or the transfer of a mineral claim in force over it. The amendments made by **Schedule 1 [42]** and **[45]** dispense with that right, which is not available in respect of Crown land (or in respect of Crown or private land, in the case of other mining

titles). The amendments provide for a landholder to be notified of the intended transfer of a mineral claim.

### **Compensation**

The amendments made by **Schedule 1 [67], [69], [71] and [77]** abolish the distinction between private landholdings and Crown landholdings in connection with compensation rights arising under Part 13 of the Act.

### **Service of notices on native title holders**

Section 383A of the Act provides for the manner of service of certain notices required by the Act to be served on owners of land, in the case of owners who are native title holders. **Schedule 1 [84]** amends the section so as to specify the means of service of all such notices. **Schedule 1 [100]** makes a consequential amendment.

### **Definitions**

**Schedule 1 [107]** dispenses with the definitions of *Crown land* and *private land* and related definitions and the definitions of *owner* and *occupier*.

### **Meaning of “landholder”**

**Schedule 1 [108]** inserts a definition of *landholder* and other definitions for the purposes of the Act. The term “landholder” is widely defined for the purposes of the Act so as to include Crown land leasehold interests and the interests of other lawful occupiers, as well as the interests of native title holders. (Consequently references in the Act to “owner” and “occupier” are for the most part removed, as their meaning is included in the word “landholder”.)

### **Consequential amendments**

The amendments made by the other provisions of Schedule 1 are consequential and result from the abolition, by Schedule 1 [107] and the other amendments in the Schedule, of the distinction between private and Crown land for the purposes of the Act.

## **Schedule 2 Amendment of Mining Act 1992 in relation to compensation rights**

**Schedule 2 [1]** repeals and replaces sections 266 and 267 of the Act, which provide for compensation rights for owners or occupiers of land affected by mineral claims or opal prospecting licences. The sections currently provide for compensation in an amount to be agreed between the landholder and the holder of the mineral claim or

opal prospecting licence (or, in default of agreement, in an amount to be determined by the mining warden). Rights are not exercisable under the mining title until the compensation is paid to the Warden's Court or to the person entitled to be compensated. The amendments provide that a further amount of compensation, determined in accordance with the regulations, is to be paid into a Warden's Court for the payment of compensation to landholders who, at the time other landholders are compensated, are not identifiable or are for some other reason unable to make out an entitlement to compensation. Section 278 of the Act is amended consequentially by **Schedule 2 [2]**, which at the same time effects a minor change by way of statute law revision.

## **Schedule 3 Miscellaneous amendments of Mining Act 1992**

### **Notes in text of Act**

**Schedule 3 [1]** inserts a new section 4B which provides that notes inserted in the text of the Act are not part of the Act.

### **Fossicking**

Section 12 of the Act declares fossicking to be a lawful activity. **Schedule 3 [2]** amends the section so that it states clearly that the section is not a warrant to enter land without the consent of the landholder, except in the case of specified Crown lands identified by a provision inserted by **Schedule 3 [3]**.

### **Access arrangements**

**Schedule 3 [4]** makes a minor amendment as a consequence of the enactment of section 32F of the Act. The amendments make it clear that the provisions of Division 2 of Part 8 of the Act (Access arrangements for prospecting titles) apply so as to require, in relation to low-impact exploration licences, access arrangements to be entered into between the holder of the licence and any registered native title body corporate or registered native title claimant. **Schedule 3 [5]** replaces an explanatory note.

### **Security deposits**

When an exploration licence, assessment lease, mining lease or mineral claim is granted under the Act, a condition may be attached to it that requires the holder to give security, in a form determined by the Director-General of the Department of Mineral Resources, for the performance by the holder of the holder's obligations

under the Act. Sections 169 and 216 of the Act provide that these securities are forfeit to the Crown in the event that the relevant obligations are not discharged. **Schedule 3 [6]** and **[7]** repeal and replace the sections to make it clear that the obligations whose performance is secured by the securities include obligations (such as a duty to rehabilitate the land) subsisting after all activities under the relevant mining title have ceased. They also make clear that the securities may be retained after the relevant mining title has ceased to be in force, and may be appropriated with or without the benefit of a judgment of any court or tribunal to the effect that the relevant obligations have not been performed.

#### **Contraventions of conditions of mining title**

**Schedule 3 [9]** and **[10]** insert new sections 374A and 375A into the Act, which provide that it is an offence to contravene, without reasonable excuse, the conditions of a mining title and provide for the issue of penalty notices for such contraventions. The amendment made by **Schedule 3 [8]** is consequential.

#### **Public consultation with respect to grant of assessment leases and mining leases**

**Schedule 3 [11]** makes a minor amendment to clause 28 of Schedule 1 to the Act so as to preclude persons who have a right to make submissions in respect of a development consent relating to the use of land for mining purposes from being able to make an objection under Division 5 of that Schedule.

#### **Savings and transitional provisions**

**Schedule 3 [12]** and **[13]** amend Schedule 6 to the Act to provide for the transitional application of amendments made by the proposed Act and to allow any necessary regulations to be made as a consequence of those amendments.