

MINING BILL 1992*

NEW SOUTH WALES



EXPLANATORY NOTE

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

The object of this Bill is to repeal and re-enact the Mining Act 1973 and the Coal Mining Act 1973 so as to consolidate the provisions of those Acts into one Act. The proposed Act is based on the Mining Act 1973, modified in various respects, but includes also such of the provisions of the Coal Mining Act 1973 as need to be preserved in relation to coal. The modifications to the current law include:

- (a) the extension of the current tendering process for exploration permits and coal leases to exploration licences and mining leases for minerals other than coal; and
- (b) the extension (from a maximum of 2 years to a maximum of 5 years) of the duration of exploration licences; and
- (c) the creation of a new mining title (to be known as an “assessment lease”) that will allow a person to develop an area of land prior to applying for a mining lease over that land; and
- (d) the abolition of mining purposes leases; and
- (e) the establishment of “mineral claims districts” for the purpose of streamlining the procedures for granting mineral claims; and
- (f) the extension (from 50 square metres to a maximum of 2 hectares) of the area of land over which a mineral claim may be registered, and the extension (from 1 year to a maximum of 5 years) of the duration of a mineral claim; and
- (g) the extension of the provisions concerning royalty to minerals recovered under an exploration licence, an assessment lease or a mineral claim; and
- (h) the determination of royalty by regulation rather than, as is currently the case, by administrative determination; and

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

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- (i) the abolition of the current requirements for the payment of rent by the holder of a mining lease; and
- (i) the abolition of fossicking areas and fossicking licences; and
- (k) other matters of a minor, consequential or ancillary nature.

The Bill also contains consequential amendments to other Acts and provisions of a savings or transitional nature consequent on the enactment of the proposed Act.

PART 1—PRELIMINARY

This Part (clauses 1–4) contains provisions of a machinery nature dealing with the citation and commencement of the proposed Act, the effect of the proposed Act on the Crown and the definition of words and expressions used in the proposed Act.

PART 2—PROSPECTING AND MINING GENERALLY

This Part (clauses 5–12) contains provisions prohibiting the conduct of prospecting or mining of publicly owned or privately owned minerals otherwise than in accordance with the proposed Act. It also contains a provision declaring that the property in a lawfully mined mineral passes to the person on whose behalf it is mined when the material from which it is recovered is severed from the land from which it is mined. It also contains a provision declaring that fossicking is a lawful activity.

PART 3—EXPLORATION LICENCES

Applications and tenders (Division 1—clauses 13–17)

These provisions enable an exploration licence to be obtained in two ways: by tender in the case of land within a mineral allocation area or by application in any other case. The required forms of tender or application for an exploration licence are set out. An application must specify the group or groups of minerals in respect of which the application is made. A tender or application must include certain particulars (for example, the financial resources and technical advice available to the tenderer or applicant). The Minister may require an applicant or tenderer who is a corporation to supply the Minister with information to enable the Minister to determine the extent to which the corporation's affairs are directed by a foreign company or recognised company and may amend the application or tender.

Restrictions on the grant of exploration licences (Division 2—clauses 18–21)

These provisions set out the restrictions on the grant of an exploration licence. An exploration licence may not be granted over land in an opal prospecting area or in a reserve in respect of which an order has been made prohibiting the grant of a licence. A licence may not be granted over land already subject to an exploration licence, mineral claim, assessment lease or mining lease (or in respect of which an application for such a licence, claim or lease has been made) without the consent of the holder of, or applicant for, the licence, claim or lease. A licence may not be granted over private land in relation to a mineral not reserved to, or vested in, the Crown if certain mining operations are already being carried out and must not be granted over land in a colliery holding unless prospecting operations can be carried out without detriment to the colliery or the safety of persons employed in it.

Granting of exploration licences (Division 3—clauses 22–28)

These provisions restrict the size of the area of land over which an exploration licence may be granted. A licence must include particulars as to the description of the land over which it is granted, the group or groups of minerals in respect of which it is granted, the period for which it is to have effect (which must not exceed 5 years) and the conditions to which it is subject. The conditions may include a requirement that the holder of the licence give security for fulfilment of the obligations arising under the Act in respect of the licence.

Rights and duties under an exploration licence (Division 4—clauses 29–32)

An exploration licence confers on the holder of the licence the right to carry out prospecting operations in the exploration area for the group or groups of minerals to which it relates. The exercise of these rights in exempted areas is limited by the requirement that the holder may do so only with the consent of the Minister. The consent of the occupier of the land must also be obtained before the holder exercises any right on certain other land (for example, land on which there is a dwelling-house, garden or dam).

PART 4—ASSESSMENT LEASES**Applications** (Division 1—clauses 33–35)

These provisions set out the required form of application for an assessment lease. In addition to describing the land over which it is sought, it must include certain other particulars (for example, the financial resources and technical advice available to the applicant). The Minister may require an applicant which is a corporation to supply the Minister with information to enable the Minister to determine the extent to which the corporation's affairs are directed by a foreign company or recognised company and may amend the application.

Restrictions on the grant of assessment leases (Division 2—clauses 36–40)

These provisions set out the restrictions on the grant of an assessment lease. An assessment lease may not be granted over land in an opal prospecting area or in a reserve in respect of which an order has been made prohibiting the grant of a lease. An assessment lease may not be granted over land that is subject to an exploration licence, mineral claim, assessment lease or mining lease (or in respect of which an application for such a claim or lease has been made) without the consent of the holder of, or applicant for, the claim or lease. An assessment lease may not be granted over private land in relation to a mineral not reserved to, or vested in, the Crown if certain mining operations are already being carried out and must not be granted over land in a colliery holding unless prospecting operations can be carried out without detriment to the colliery or the safety of persons employed in it.

Granting of assessment leases (Division 3—clauses 41–46)

These provisions prevent the grant of an assessment lease if an objection made to its grant has not been withdrawn or otherwise resolved or rejected by the Premier. An assessment lease may be granted only over land over which it was sought although the land over which the lease is granted may differ in size or shape from the land over

which it was sought. The lease must include particulars as to the description of the land over which it is granted, the period for which it is to have effect (which must not exceed 5 years) and the conditions to which it is subject. The conditions may include a requirement that the holder of the lease give security for fulfilment of the obligations arising under the Act in respect of the lease.

Rights and duties under an assessment lease (Division 4—clauses 47–50)

An assessment lease confers on the holder of the lease the right to prospect in the assessment area. The exercise of these rights in exempted areas is limited by the requirement that the holder may do so only with the consent of the Minister. The consent of the occupier of the land must also be obtained before the holder exercises any right on certain other land (for example, land on which there is a dwelling-house, garden or dam).

PART 5—MINING LEASES

Applications and tenders (Division 1—clauses 51–56)

These provisions enable a mining lease to be obtained in two ways: by tender in the case of land in a mineral allocation area or by application in any other case. The required forms of tender or application for a mining lease are set out. An application must specify the mineral or minerals in respect of which it is made. A tender or application must include certain particulars (for example, the financial resources and technical advice available to the tenderer or applicant). A tender may include particulars of the amount of the tender including the amount or royalty that the tenderer will pay in addition to the cash reserve price specified in the invitation for the tender. The Minister may require an applicant or tenderer which is a corporation to supply the Minister with information to enable the Minister to determine the extent to which the corporation's affairs are directed by a foreign company or recognised company and may amend the application or tender. The Minister may, at the request of the applicant, direct that the application be dealt with as an application for an exploration licence or assessment lease.

Restrictions on the grant of mining leases (Division 2—clauses 57–62)

These provisions set out the restrictions on the grant of a mining lease. A mining lease may not be granted over land that is in an opal prospecting area or in a reserve in respect of which an order has been made prohibiting the grant of a mining lease. A mining lease may not be granted over land already subject to an exploration licence, mineral claim, assessment lease or mining lease (or in respect of which an application for such a licence, claim or lease has been made) without the consent of the holder of, or applicant for, the licence, claim or lease. A lease may not be granted over private land in relation to a mineral not reserved to or vested in the Crown if certain mining operations are already being carried out and must not be granted over land in a colliery holding unless prospecting operations can be carried out without detriment to the colliery or the safety of persons employed in it. The Minister is required to notify the holder of any exploration licence over land in respect of which an application for a mining lease is lodged of the fact that such an application has been lodged. The holder of the exploration licence may object to the grant of the mining lease. The consent of the occupier of the land is required before a mining lease is granted over certain other land (for example, land on which there is a dwelling-house, garden or dam).

Granting of mining leases (Division 3—clauses 63–72)

The Director-General must ensure that the land over which a mining lease is sought has been surveyed before the lease is granted. A mining lease may be granted only over land over which it was sought although the land over which the lease is granted may differ in size or shape from the land over which it was sought. The lease must include particulars as to the description of the land for which it is granted, the mineral or minerals in respect of which it is granted, the period for which it is to have effect (which, in general, must not exceed 21 years) and the conditions to which it is subject. The conditions may include conditions related to, for example, the transporting of any mineral or disposal of material discarded from mining operations even if the conditions do not relate to a matter to be carried out on or in the vicinity of the land subject to the lease. If public money has been expended in testing land to determine its mineral bearing capacity or carrying out any environmental impact study or research program necessary to assess whether the lease should be granted, the applicant for the lease may be required to pay an amount to the Minister to cover the costs incurred.

Rights and duties under a mining lease (Division 4—clauses 73–83)

A mining lease is to confer on the holder of the lease the right to carry out prospecting and mining operations in the mining area. The holder may carry out any mining purpose in the mining area. However, the Minister may order that the purpose be carried out in accordance with a condition or that operations be discontinued. The holder may fence the surface of any land if this is included in the mining area and may be required to fence any shaft, machinery or other works. Provision is also made for the addition of a mineral to the lease and, in the case of a mining lease granted in respect of coal, for the inclusion in the lease of petroleum. The Minister is authorised to amend a mining lease to substitute conditions relating to expenditure for conditions relating to labour. Such an amendment may require the holder to give security for the fulfilment of obligations under the lease. The provisions also make it clear that the resumption or appropriation of land the subject of a lease does not affect the rights granted under the lease.

PART 6—CONSOLIDATION OF MINING LEASES

This Part (clauses 84–112) re-enacts Part 5A of the Mining Act 1973. It makes provision for the consolidation of mining leases and consolidated mining leases. Two or more leases may be consolidated if they are held by the same person and are contiguous or separated only by a road, stream or railway. Provision is made for preparation of a draft consolidated mining lease and for grant of the lease only after any objections made by the Director of Planning and the Dams Safety Committee have been dealt with and any representations made by the holder of any existing leases to be consolidated are taken into account. Provision is made to preserve various elements of the existing leases in the consolidated lease (for example, the conditions to which the leases were subject) and instruments affecting those leases.

PART 7—RENEWAL, TRANSFER AND CANCELLATION OF AUTHORITIES

This Part (clauses 113–128) provides for the manner of renewing or transferring authorities. It limits the period for which an authority may be renewed on any one occasion (5 years in the case of an exploration licence or assessment lease and,

normally, 21 years in the case of a mining lease). The Minister may cancel an authority if, for example, the holder contravenes the conditions of the authority. The Minister may also do so if the land is required for a public purpose. Cancellation of an authority is subject to a right of appeal to the District Court. The holder of an authority cancelled for this reason is to be entitled to compensation for mining improvements made to the land.

PART 8—AUTHORITIES GENERALLY

General procedures (Division 1—clauses 129–137)

This Division deals with matters concerning the withdrawal of applications, the priority between applications, the waiver of minor procedural requirements, the Gazettal of certain matters and the limitation of the right to challenge technical defects in authorities that have been granted.

Access arrangements for prospecting titles (Division 2—clauses 138–158)

This Division re-enacts Division 4A of Part 5 of the Mining Act 1973. It makes provision for the rights of access that may be exercised by holders of prospecting titles (that is, exploration licences and assessment leases) over land to which those titles relate. Access arrangements may be made between the owners and occupiers of those lands and the holders of prospecting titles in order to define the rights of access that may be exercised in relation to those lands. Provision is made for arbitration of the question whether the holder of a prospecting title should have access over land where an access arrangement has not been agreed to by the parties concerned.

Records and registration (Division 3—clauses 159–163)

This Division provides for the keeping of certain records, the establishment of a register of interests, the transfer and devolution of certain interests and the maintenance of a register of colliery holdings.

Miscellaneous (Division 4—clauses 164–172)

This Division deals with certain matters ancillary to the rights conferred by an authority. It contains provisions concerning rights of way, rights of access to water, use of water, timber and pasturage, provisions concerning the suspension of conditions of an authority, the forfeiture of security deposits and the settlement of disputes by the Minister and provisions requiring the holder of an authority to provide certain indemnities. It also provides for the issue of evidentiary certificates.

PART 9—MINERAL CLAIMS

Mineral claims districts (Division 1—clauses 173–175)

This Division provides for the constitution of mineral claims districts by order of the Governor. Such an order may not be made over land that is within a reserve in respect of which the granting of a mineral claim is prohibited or over land in exempted areas (for example, land reserved for public purposes or vested in the Crown for the purpose of a park) without the consent of the body controlling the land. Before the order is made, the Minister must notify the council for the local government area in which the land is situated and any Government agency that may be affected by the proposed order.

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The order may set out the “special” conditions to which mineral claims granted over land in the district are to be subject. These may include conditions as to the minerals in respect of which a mineral claim may be granted, the term for which a mineral claim may be granted and the nature and extent of the mining and prospecting operations that may be carried out in the area.

Applications (Division 2—clauses 176–179)

This Division sets out the procedures that must be followed in making an application for a mineral claim. It requires a potential applicant to mark out a claim area and serve notice of the proposed application on the occupier of the land if it is Crown land. The form the application must take is specified. Provision is made for the occupier of Crown land to object to the granting of a mineral claim on the basis that the land concerned is agricultural land.

Restrictions on the grant of mineral claims (Division 3—clauses 180–189)

This Division sets out the restrictions on the granting of mineral claims. Mineral claims may not be granted over land having an area of more than 2 hectares. Mineral claims may be granted only over land in an opal prospecting area in the name of the holder of an opal prospecting licence. Mineral claims may not be granted over agricultural land, over land within a reserve in which the granting of a mineral claim is prohibited by order or over land within a mineral allocation area for opal. Mineral claims over land in certain areas (for example, land on which there is a dwelling-house, garden or dam) may be granted only with the consent of the owner or occupier of the land concerned.

Granting of mineral claims (Division 4—clauses 190–194)

This Division requires a mineral claim to include particulars as to the description of the land to which the claim relates, a list of the mineral or minerals in respect of which the claim is granted, the conditions to which the claim is subject and the period for which the claim is to have effect. If the claim is granted over land in a mineral claims district it will be subject to the conditions set out in the order constituting the district. In any other case, it will be subject to any conditions imposed by the mining registrar in accordance with the regulations. A mineral claim may be granted for a term of not more than 5 years.

Rights and duties under a mineral claim (Division 5—clauses 195, 196)

A mineral claim confers on the holder of the claim the right to carry out prospecting or mining operations in the claim area. It also authorises the holder to erect buildings and structures, exercise rights in the nature of easements, carry out works and remove timber, stone or gravel in connection with prospecting and mining operations.

Renewal, transfer and cancellation of mineral claims (Division 6—clauses 197–206)

This Division provides for the manner of renewing or transferring a mineral claim. A mining registrar may cancel a mineral claim at the request of the holder, if ordered to do so by the Minister or a warden’s court or if (following an objection to the granting of the claim by the occupier of Crown land) the land is determined to be agricultural land. The holder of the mineral claim is not, in general, entitled to compensation on cancellation of the claim.

Miscellaneous (Division 7—clauses 207–219)

This Division includes miscellaneous provisions relating to evidentiary matters, withdrawal of applications for mineral claims, settlement of disputes involving holders of mineral claims and similar matters. It provides for the forfeiture of security lodged in connection with mineral claims if the holder fails to fulfil his or her obligations and for money so forfeited to be used to rehabilitate land affected by prospecting or mining operations.

PART 10—OPAL PROSPECTING LICENCES

This Part (clauses 220–236) re-enacts Part 3A of the Mining Act 1973 in relation to opal prospecting, but omits the provisions of that Part in relation to fossicking areas and fossicking licences. The provisions relating to opal prospecting licences are retained in recast form. The holder of an opal prospecting licence will continue to have the right to prospect for opals in an area (an opal prospecting area) specially set aside for the purpose.

PART 11—PROTECTION OF THE ENVIRONMENT

This Part (clauses 237–246) re-enacts Part 7 of the Mining Act 1973. The Minister is to take into account the need to protect natural resources before granting an authority. Provision is made to require the holder of an authority to rehabilitate land damaged by mining and to include conditions in an authority for the protection of the environment.

PART 12—POWERS OF ENTRY**Entry by inspectors** (Division 1—clauses 247, 248)

This Division empowers inspectors to enter land in an opal prospecting area, or subject to an authority or a mineral claim, or to an application for an authority or mineral claim, and to inspect the land and structures on it and to remove samples of ore and other deposits.

Entry by other persons (Division 2—clauses 249–254)

This Division empowers the Minister to issue permits to enable persons to carry out rehabilitation work, to make surveys and to collect samples of mineral ores and empowers a warden to issue permits to enable persons to enter land for the purpose of carrying out certain environmental studies, to inspect land for the purpose of ascertaining whether a mining work is encroaching on other land or to mark out land for the purposes of a mineral claim.

Exercise of power of entry (Division 3—clauses 255–257)

This Division regulates the exercise of the rights of entry conferred by a permit and makes it an offence for a person to obstruct the holder of a permit in the exercise of the powers conferred by the permit.

Miscellaneous (Division 4—clauses 258–261)

This Division contains provisions with respect to the conditions on which a permit may be granted, the term of a permit, the form of a permit and the cancellation of a permit.

PART 13—COMPENSATION**Prospecting and mining** (Division 1—clauses 262–268)

This Division defines “compensable loss” for the purposes of the Division and specifies the circumstances under which compensation for compensable loss becomes payable in respect of the exercise of the rights conferred by the Act in relation to authorities, mineral claims and opal prospecting licences.

Environmental assessment (Division 2—clauses 269, 270)

This Division defines “compensable loss” for the purposes of the Division and specifies the circumstances under which compensation for compensable loss becomes payable in respect of the exercise of the rights conferred by the Act in relation to environmental assessment permits.

Procedure for assessing compensation (Division 3—clauses 271–278)

This Division provides for the assessment of Compensation by a warden’s court, for the payment into and out of court of compensation so assessed, for the making of additional assessments of compensation and for the making of appeals from assessments.

Consolidated mining leases (Division 4—clauses 279–281)

This Division ensures that further compensation does not become payable merely because of the consolidation of mining leases, that existing rights to compensation are unaffected by the consolidation of mining leases but that additional compensation may nevertheless be assessed in respect of a consolidated mining lease.

PART 14—ROYALTY**Publicly owned minerals** (Division 1—clauses 282, 283)

This Division provides for the payment of royalty on publicly owned minerals and for the fixing, by regulation, of royalty rates.

Privately owned minerals (Division 2—clauses 284, 285)

This Division provides for the payment of royalty on privately owned minerals and for the fixing, by regulation, of royalty rates in cases where rates are not fixed by agreement.

Petroleum (Division 3—clause 286)

This Division provides for the payment of royalty, at the rate fixed under the Petroleum Act 1955, on petroleum that is recovered under a mining lease.

Miscellaneous (Division 4—clauses 287–292)

This Division provides that the holder of a mineral claim or mining lease may be exempt from liability to pay royalty if the value of minerals won in a 12 month period is less than \$2,000. The Division makes provision to secure the payment of royalty

through the establishment of a trust fund for that purpose. It includes ancillary provisions relating to matters such as the returns that must be made and the information that may be required to be furnished to establish the amount of royalty payable.

PART 15—WARDENS AND WARDENS' COURTS

Appointment of wardens and establishment of wardens' courts (Division 1—clauses 293–297)

This Division provides for the appointment of a chief warden and other wardens and for the establishment of wardens' courts. It provides that mining registrars are to be the registrars of the wardens' courts. It specifies the jurisdiction of a warden's court and provides that a decision of a warden's court is binding on the parties to the proceedings in which it is given.

Practice and procedure in wardens' courts (Division 2—clauses 298–320)

This Division deals generally with matters relating to the practice and procedure of wardens' courts.

Appeals to the District Court (Division 3—clauses 321–324)

This Division provides for a general right of appeal to the District Court from the decision of a warden's court.

Appeals to the Supreme Court (Division 4—clauses 325–328)

This Division provides for a right of appeal to the Supreme Court by way of case stated from proceedings in a warden's court.

Administrative matters (Division 5—clauses 329–331)

This Division makes provision with respect to documents and affidavits used in proceedings before a warden's court, with respect to contempt of court and with respect to interpleader.

Rules and practice directions (Division 6—clauses 332, 333)

This Division enables the Governor to make rules with respect to the practice and procedure of wardens' courts and enables the chief warden to supplement these rules with practice directions.

Other functions of wardens (Division 7—clauses 334–337)

This Division provides for the conduct of inquiries by wardens and specifies that the decision of a warden on an administrative matter is not subject to a right of appeal.

Miscellaneous (Division 8—clauses 338–340)

This Division makes it an offence for a witness to refuse to attend proceedings when required to do so, for a person to fail to comply with an order made by a warden's court or for a person to take certain action inconsistent with the effect of an order made by a warden's court.

PART 16—THE GEOLOGICAL AND MINING MUSEUM

This Part (clauses 341–358) re-enacts Part 9A of the Mining Act 1973. The Part creates the Geological and Mining Museum Trust as the body responsible for the control and management of the Geological and Mining Museum and specifies the functions of that Trust. The objects of the Trust include promoting the responsible development and use of mineral and energy resources in New South Wales. The Part includes provisions relating to Trust property, administration of the Museum and financial provisions relating to matters such as the manner in which the Trust may invest funds.

PART 17—ADMINISTRATION**Administration** (Division 1—clauses 359–365)

This Division provides for the establishment of boards of management and for the appointment of mining registrars, inspectors and other staff. It excludes such persons from personal liability for acts and omissions occurring in the administration of the proposed Act, it provides for the delegation of certain functions and it prohibits the unlawful disclosure of information gained in the administration of the proposed Act.

Classification of lands (Division 2—clauses 366–371)

This Division provides for the constitution of mining divisions, reserves, mineral allocation areas and notification areas and for the graticulation of the surface of the land into blocks and units by reference to the Australian Geodetic Datum.

Offences (Division 3—clauses 372–376)

This Division creates offences of obstruction and the giving of false or misleading information and provides for the taking of proceedings for offences against the proposed Act and the regulations under it. It also deals with offences by corporations.

Miscellaneous (Division 4—clauses 377, 378)

This Division provides for the establishment of museums and laboratories and the purchase, by the Minister, of coal bearing lands.

PART 18—SUPPLEMENTARY

This Part (clauses 379–391) contains provisions of a miscellaneous nature including provisions preserving the Royal prerogative in gold and silver, provisions preserving the operation of other Acts and provisions allowing prospecting to be carried out regardless of the operation of the Environmental Planning and Assessment Act 1979. It enables the making of regulations and contains other formal machinery provisions.

SCHEDULE 1—PUBLIC CONSULTATION WITH RESPECT TO THE GRANTING OF ASSESSMENT LEASES AND MINING LEASES

This Schedule describes the procedure to be followed in relation to the advertising of notices of intention to grant, and of applications for, assessment leases and mining leases, in relation to the lodging of objections to the granting of assessment leases and mining leases and in relation to the resolution of objections.

SCHEDULE 2—AGRICULTURAL LAND

This Schedule describes the procedures to be followed by the Director-General of the Department of Agriculture in determining whether land is agricultural land for the purposes of dealing with certain objections under the proposed Act.

SCHEDULE 3—THE GEOLOGICAL AND MINING MUSEUM

This Schedule contains provisions relating to the Trustees and procedure of the Geological and Mining Museum Trust.

SCHEDULE 4—REGULATION MAKING POWERS

This Schedule lists the regulation making powers of the Governor under the proposed Act.

SCHEDULE 5—AMENDMENT OF OTHER ACTS

This Schedule contains amendments to other Acts consequential on the enactment of the proposed Act.

SCHEDULE 6—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS

This Schedule contains provisions of a savings or transitional nature. It also enables regulations of a savings or transitional nature to be made to supplement the other provisions of the Schedule.

DICTIONARY OF WORDS AND EXPRESSIONS

The Dictionary defines certain words and expressions used in the proposed Act.
