



New South Wales

Mining Amendment (Mineral Claims—Opal) Bill 2023

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* (the *principal Act*) to validate certain mineral claims purportedly in effect since 2015 (*affected mineral claims*) and set out other related matters, including to—

- (a) make clear that an affected mineral claim is validly granted, renewed or transferred, by inserting certain proposed provisions related to—
 - (i) expired and current affected mineral claims, and
 - (ii) applications related to affected mineral claims, and
 - (iii) ensuring relevant decision-makers have adequate powers in relation to the determination or redetermination of affected mineral claims and that the process complements the existing determination process in the principal Act, and
- (b) ensure a person who had a mineral claim transferred or devolved to the person is not disadvantaged by a failure to comply with the principal Act, section 266(4) between 1 January 2015 and 13 February 2023 (the *relevant period*), and
- (c) ensure compliance action may be taken if a person failed to comply with a condition of an affected mineral claim during the relevant period, and
- (d) make clear that it was lawful for the Department of Regional NSW to collect or refund fees, levies and duties in relation to affected mineral claims before, on and after the commencement of the proposed Act, and
- (e) make clear that claims cannot be made against the State, the Minister, the Secretary or a member of staff of the Department of Regional NSW, or any other person, in relation to any

loss or harm arising from or related to the non-compliance with the principal Act, section 266(4).

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.

Schedule 1 gives effect to the object of this Bill by inserting certain proposed provisions into the *Mining Act 1992*.

Schedule 2 makes a consequential amendment to the *Native Title (New South Wales) Act 1994*.



New South Wales

Mining Amendment (Mineral Claims—Opal) Bill 2023

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New South Wales

Mining Amendment (Mineral Claims—Opal) Bill 2023

No. , 2023

A Bill for

An Act to amend the *Mining Act 1992* to provide for the validation of certain mineral claims and matters relating to the mineral claims.

The Legislature of New South Wales enacts—

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1 Name of Act

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This Act is the *Mining Amendment (Mineral Claims—Opal) Act 2023*.

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2 Commencement

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This Act is taken to have commenced on 14 February 2023.

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Schedule 1	Amendment of Mining Act 1992 No 29	1
Schedule 6	Savings, transitional and other provisions	2
	Insert in appropriate order—	3
Part 28	Validation of certain mineral claims by Mining Amendment (Mineral Claims—Opal) Act 2023 and related matters	4
196	Definitions	7
	In this part—	8
	affected mineral claim means a mineral claim—	9
	(a) purportedly granted, renewed or transferred during the relevant period, and	10
	(b) that, but for the operation of this part, would be invalid because of a failure to comply with section 266(4).	11
	amendment Act means the <i>Mining Amendment (Mineral Claims—Opal) Act 2023</i> .	12
	assent date means the date of assent to the amendment Act.	13
	commencement means the commencement of the amendment Act.	14
	Crown —	15
	(a) means the Crown within the meaning of the <i>Crown Proceedings Act 1988</i> , and	16
	(b) includes an officer, employee or agent of the Crown.	17
	current affected mineral claim —see clause 198(1).	18
	expired affected mineral claim —see clause 197(1).	19
	prescribed date , for an affected mineral claim, means the earlier of the following—	20
	(a) the date on which the application taken to have been made under clause 199(1) or 200(2) in relation to the affected mineral claim is determined by the Secretary,	21
	(b) the date on which the application taken to have been made under clause 199(1) or 200(2) in relation to the affected mineral claim is withdrawn.	22
	relevant period means the period—	23
	(a) starting on 1 January 2015, and	24
	(b) ending on 13 February 2023.	25
197	Validation of expired affected mineral claims	26
(1)	This clause applies to an affected mineral claim (an expired affected mineral claim) that, immediately before the commencement—	27
	(a) had ceased to have effect and not been renewed, or	28
	(b) had been cancelled.	29
	Example — An affected mineral claim was granted and renewed twice during the relevant period. The term of the last purported renewal of the affected mineral claim ceased to have effect before 14 February 2023 and the affected mineral claim was not renewed. The affected mineral claim is an expired affected mineral claim.	30
(2)	Despite the failure to comply with section 266(4), the expired affected mineral claim is taken to have been valid.	31

(3)	Without limiting subclause (2), the following are taken to have been valid—	1
(a)	a purported grant, renewal, variation, transfer or cancellation of the expired affected mineral claim during the relevant period,	2
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(b)	a condition to which the expired affected mineral claim was purportedly subject from time to time, including any variation or enforcement of the condition,	4
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(c)	an approval or authorisation issued by the Secretary under a condition of the expired affected mineral claim, including any enforcement of the approval or authorisation,	7
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		9
(d)	each term, including the expiry, of the expired affected mineral claim,	10
(e)	the use of land in accordance with the expired affected mineral claim,	11
(f)	the exercise of any other right in accordance with the expired affected mineral claim.	12
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198	Validation of current affected mineral claims	14
(1)	This clause applies to an affected mineral claim (a <i>current affected mineral claim</i>) that, immediately before the commencement, was purportedly in force.	15
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	Example— An affected mineral claim was granted and renewed during the relevant period. The term of the last purported renewal of the affected mineral claim was still in force immediately before 14 February 2023. The affected mineral claim is a current affected mineral claim.	17
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(2)	Despite the failure to comply with section 266(4), the current affected mineral claim—	21
		22
(a)	is taken to be, and always to have been, valid, and	23
(b)	continues to be valid and in force until the prescribed date.	24
(3)	Without limiting subclause (2)—	25
(a)	a purported grant, renewal, variation or transfer of the current affected mineral claim during the relevant period is taken to be, and always to have been, valid, and	26
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		28
(b)	a condition to which the current affected mineral claim was purportedly subject from time to time is taken to be, and always to have been, valid during the relevant period and to continue to be valid until the prescribed date, including any variation or enforcement of the condition, and	29
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(c)	an approval or authorisation issued by the Secretary under a condition of the current affected mineral claim is taken to be, and always to have been, valid during the relevant period and to continue to be valid until the prescribed date, including any enforcement of the approval or authorisation, and	34
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(d)	the use of land in accordance with the current affected mineral claim is taken to be, and always to have been, valid during the relevant period and to continue to be valid until the prescribed date, and	39
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(e)	the exercise of any other right in accordance with the current affected mineral claim is taken to be, and always to have been, valid during the relevant period and to continue to be valid until the prescribed date.	42
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199	Ability to determine affected mineral claims	45
(1)	From the commencement—	46
(a)	for an affected mineral claim that was purportedly granted during the relevant period, whether or not purportedly renewed during the relevant	47
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- period—the application for the grant of the affected mineral claim is taken to be an application for the grant of the mineral claim made on the commencement, and
- (b) for an affected mineral claim that was granted before the relevant period and purportedly renewed only once during the relevant period—the application for the renewal of the affected mineral claim during the relevant period is taken to be an application for the renewal of the mineral claim made on the commencement, and
- (c) for an affected mineral claim that was granted before the relevant period and purportedly renewed more than once during the relevant period—the application for the first renewal of the affected mineral claim during the relevant period is taken to be an application for the renewal of the mineral claim made on the commencement.
- (2) For subclause (1)(a)–(c), the applicant for the application taken to be made on the commencement is taken to be—
- (a) the person who made the application for the relevant grant or renewal during the relevant period, or
- (b) if a person is recorded as the holder of the mineral claim under section 202 before the prescribed date, that person.
- (3) To avoid doubt, sections 178(2) and 197(2) do not apply to an application taken to be made under subclause (1).
- (4) An application taken to be made under subclause (1) must be determined in accordance with this Act as in force on the date the determination is made.
- (5) In determining an application taken to be made under subclause (1), the Secretary may, by written notice given to the applicant, require the applicant to give the Secretary, by the date stated in the notice, additional information reasonably required to decide the application.
- (6) If the applicant does not give the additional information as required by the notice, including by the date stated in the notice, the application may, despite subclause (1), be rejected by the Secretary.
- (7) Also, in determining an application taken to be made under subclause (1), the Secretary may be satisfied the applicant has complied with section 266(4)(a) if the applicant or a previous holder of the affected mineral claim paid the standard compensation payable when—
- (a) the affected mineral claim was last purportedly granted or renewed before the commencement, or
- (b) the application is determined by the Secretary.
- Example—** If the standard compensation payable when an application is determined is more than the standard compensation payable when the claim was last purportedly granted or renewed, the Secretary may require the applicant to pay the difference.
- (8) Without limiting subclause (4), in granting an application taken to be made under subclause (1), a condition may be imposed or varied in accordance with this Act.
- (9) If an application for a mineral claim taken to be made under subclause (1) is granted or renewed, the mineral claim has exclusive effect from the date on which it is granted or renewed.
- (10) If an application for a mineral claim taken to be made under subclause (1) is refused or withdrawn, the applicant has no rights under the affected mineral claim from the prescribed date.

(11)	This clause does not apply to—	1
(a)	a current affected mineral claim that has purportedly been transferred or to the purported transfer of the current affected mineral claim, or	2 3
	Note— See clause 200, which provides for how affected mineral claims must be dealt with if transferred before the commencement.	4 5
(b)	an expired affected mineral claim.	6
	Note— See clause 201, which provides for how expired affected mineral claims must be dealt with.	7 8
200	Determining current affected mineral claims that have been transferred	9
(1)	This clause applies if, before the commencement, a person purported to transfer a current affected mineral claim to another person (the <i>transferee</i>).	10 11
(2)	From the commencement—	12
(a)	for a current affected mineral claim that was purportedly granted during the relevant period, whether or not purportedly renewed during the relevant period—the application for the grant of the affected mineral claim is taken to be an application for the grant of the mineral claim made on the commencement, and	13 14 15 16 17
(b)	for a current affected mineral claim that was granted before the relevant period and purportedly renewed only once during the relevant period—the application for the renewal of the affected mineral claim during the relevant period is taken to be an application for the renewal of the mineral claim made on the commencement, and	18 19 20 21 22
(c)	for a current affected mineral claim that was granted before the relevant period and purportedly renewed more than once during the relevant period—the application for the first renewal of the affected mineral claim during the relevant period is taken to be an application for the renewal of the mineral claim made on the commencement.	23 24 25 26 27
(3)	For subclause (2)(a)–(c), the applicant for the application taken to be made on the commencement is taken to be the person who first purportedly transferred the current affected mineral claim.	28 29 30
(4)	To avoid doubt, sections 178(2) and 197(2) do not apply to an application taken to be made under subclause (2).	31 32
(5)	The Secretary must, despite any other provision of this Act, refuse an application for a mineral claim over land subject to a current affected mineral claim if the applicant purported to transfer the current affected mineral claim to another person during the relevant period, including an application taken to be made under subclause (2).	33 34 35 36 37
(6)	From the commencement, the current transferee has the sole right during the prescribed period to apply for a mineral claim over land subject to the current affected mineral claim.	38 39 40
(7)	An application referred to in subclause (6) must be determined in accordance with this Act as in force on the date the determination is made.	41 42
(8)	In determining an application referred to in subclause (6), the Secretary may, by written notice given to the applicant, require the applicant to give the Secretary, by the date stated in the notice, additional information reasonably required to decide the application.	43 44 45 46
(9)	If the applicant does not give the additional information as required by the notice, including by the date stated in the notice, the application may be rejected by the Secretary.	47 48 49

(10)	Also, in determining an application referred to in subclause (6), the Secretary may be satisfied the applicant has complied with section 266(4)(a) if the applicant or a previous holder of the affected mineral claim paid the standard compensation payable when—	1 2 3 4
	(a) the affected mineral claim was last purportedly granted or renewed before the commencement, or	5 6
	(b) the application is determined by the Secretary.	7
	Example— If the standard compensation payable when an application is determined is more than the standard compensation payable when the claim was last purportedly granted or renewed, the Secretary may require the applicant to pay the difference.	8 9 10
(11)	Without limiting subclause (6), in granting an application made under that subclause, a condition may be imposed or varied in accordance with this Act.	11 12
(12)	In this clause—	13
	<i>prescribed period</i> means the period—	14
	(a) starting on the commencement, and	15
	(b) ending on 22 November 2023.	16
201	Expired etc affected mineral claims	17
(1)	This clause applies to—	18
	(a) an expired affected mineral claim, or	19
	(b) an application for the grant or renewal of an affected mineral claim that was withdrawn during the relevant period.	20 21
(2)	Section 209 does not apply in relation to the affected mineral claim, and an application to grant or renew the affected mineral claim, including an application under clause 199, is taken to have been finally disposed of on the date on which—	22 23 24 25
	(a) the affected mineral claim ceased to have effect or was cancelled, or	26
	(b) the application was withdrawn.	27
202	Devolution of rights—application made before commencement	28
(1)	This clause applies if an application under section 202 in relation to an affected mineral claim—	29 30
	(a) was purportedly made but not decided before the commencement, or	31
	(b) was purportedly decided before the commencement and the name of the applicant was recorded as the holder of the mineral claim.	32 33
(2)	For subclause (1)(a), the application may be dealt with under section 202 as if it were validly made.	34 35
(3)	For subclause (1)(b), the application is taken to have been validly made and the name of the applicant validly recorded as the holder of the mineral claim.	36 37
203	Devolution of rights—application under clause 199	38
(1)	This clause applies if—	39
	(a) under clause 199, an application for an affected mineral claim is taken to be an application for the grant or renewal of a mineral claim, and	40 41
	(b) the person who, under clause 199, would be the applicant for the application dies before the application is determined by the Secretary.	42 43

(2)	The person on whom the rights of the applicant have, or would have but for any invalidity in relation to the application or affected mineral claim, devolved by operation of law may apply, under section 202, to the Secretary to have the person's name recorded as the holder of the mineral claim.	1 2 3 4
(3)	For subclause (2), the application may be dealt with under section 202 as if it were validly made.	5 6
(4)	The Secretary may reject an application referred to in subclause (2) if it is made more than 12 months after the assent date.	7 8
204	Devolution of rights—impact on number of mineral claims that may be held by persons	9 10
(1)	This clause applies if, under this Act, a condition limits the number of mineral claims that may be held by a person.	11 12
(2)	The condition does not operate to prevent the Secretary granting a mineral claim, as a result of one of the following applications in relation to an affected mineral claim, if the applicant is a person recorded under section 202 as a person on whom the rights of the holder of the affected mineral claim have devolved—	13 14 15 16 17
(a)	an application taken to have been made under clause 199(1) in relation to the affected mineral claim,	18 19
(b)	an application referred to in clause 200(6) in relation to the affected mineral claim.	20 21
205	Rehabilitation and other compliance matters	22
(1)	This clause applies if—	23
(a)	an affected mineral claim was purportedly subject to a condition in relation to the rehabilitation of disturbed land or water, or	24 25
(b)	an affected mineral claim was purportedly subject to another condition, or	26 27
(c)	the holder of an affected mineral claim or another person entered land and exercised rights in accordance with the mineral claim.	28 29
(2)	For subclause (1), until the relevant date for the affected mineral claim—	30
(a)	the affected mineral claim is taken to be, and always to have been, subject to the condition as if the affected mineral claim had been validly granted, renewed or transferred, and	31 32 33
(b)	the holder of the affected mineral claim or other person is taken to have, and always to have had, the power to enter the land and exercise rights in accordance with the mineral claim as if the affected mineral claim had been validly granted, renewed or transferred.	34 35 36 37
(3)	Without limiting subclause (2)(b), a condition to which the affected mineral claim is subject may be enforced on and after the commencement.	38 39
(4)	In this clause—	40
	<i>relevant date</i> means—	41
(a)	for a current affected mineral claim—the prescribed date, or	42
(b)	for an expired affected mineral claim—the date the mineral claim ceased to have effect or was cancelled.	43 44

206	Collection, expenditure and refund of money	1
(1)	A fee, levy, duty or other money collected by or on behalf of the Crown, a landholder or another person before the commencement in relation to an affected mineral claim is taken to be valid.	2 3 4
(2)	The expenditure of a fee, levy, duty or other money by or on behalf of the Crown, a landholder or another person before, on or after the commencement in relation to an affected mineral claim is taken to be valid.	5 6 7
(3)	The refund of a fee, levy, duty or other money by or on behalf of the Crown, a landholder or another person before, on or after the commencement in relation to an affected mineral claim is taken to be valid, whether the refund was—	8 9 10 11
(a)	on the Secretary’s own initiative, or	12
(b)	on application by another person.	13
	Example— After the commencement, a fee paid in relation to an affected mineral claim was refunded on the basis the affected mineral claim was not valid. Despite the mineral claim being validated by the operation of this part, the refund of the fee continues to be valid.	14 15 16 17
207	Legal claims	18
(1)	No claim for compensation or other legal action arises against the Crown or any other person as a result of a decision about the grant, renewal or transfer of, or other action taken in relation to, a mineral claim if that decision or other action would, but for this part, be invalid or unlawful because of a failure before the commencement to comply with section 266(4).	19 20 21 22 23
(2)	In this clause—	24
	<i>compensation</i> includes—	25
(a)	damages, and	26
(b)	other forms of monetary compensation, and	27
(c)	any other amount, whether described as compensation or not, payable under an instrument.	28 29
208	Land claims	30
(1)	Nothing in this part affects a land claim made before the assent date.	31
(2)	In this clause—	32
	<i>land claim</i> has the same meaning as in the <i>Aboriginal Land Rights Act 1983</i> .	33
209	Native title	34
	The operation of clause 197 or 198, to the extent the operation of the clause relates to anything done before the assent date, is taken to be an act to which the <i>Native Title (New South Wales) Act 1994</i> , section 104A applies.	35 36 37
210	Regulations for this part	38
(1)	The regulations may provide for the following matters—	39
(a)	the circumstances in which a provision in this part will not apply to a mineral claim or a class of mineral claims,	40 41
(b)	the date on which a provision in this part will commence or cease to have effect in relation to a mineral claim or a class of mineral claims,	42 43

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|-----|---|-------------|
| (c) | the date, not more than 5 years after the date the mineral claim purportedly took effect, that the term of an affected mineral claim or a class of affected mineral claims expires. | 1
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| (2) | To avoid doubt, the power to make regulations under subclause (1) is in addition to the power to make regulations under this schedule, clause 1. | 4
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| (3) | A regulation made under subclause (1) has effect despite anything to the contrary in this part. | 6
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**Schedule 2 Amendment of Native Title (New South Wales) Act
1994 No 45**

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**Section 104A Saving of native title rights and interests with respect to national parks
and other reservations, dedications or declarations**

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Insert after section 104A(1)(h)—

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- (i) the validation of an affected mineral claim under the *Mining Act 1992*,
Schedule 6, Part 28.

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