



New South Wales

# Mining Amendment (Small-Scale Title Compensation) Bill 2014

## Explanatory note

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

## Overview of Bill

The objects of this Bill are:

- (a) to regulate the compensation paid by the holders of small-scale titles over land to landholders, and
- (b) to provide mechanisms for dealing with disputes between landholders and holders of small-scale titles or applicants for small-scale titles, and
- (c) to provide for levies on small-scale titles for purposes associated with those titles and the establishment of the Small-Scale Titles Levy Fund in the Special Deposits Account.

## 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.

## Schedule 1 Amendment of Mining Act 1992 No 29

Schedule 1 [5] provides for the compensation payable to landholders in respect of the granting (including the granting of a renewal) of small-scale titles (being mineral claims or opal prospecting licences). On the grant of a small-scale title the landholder of the land concerned becomes entitled to compensation in lieu of compensation for any compensable loss suffered, or likely to be suffered, by the landholder. The Minister for Resources and Energy (the *Minister*) can determine by order an amount of compensation (*standard compensation*) that is payable. Any

such order may prescribe different amounts for different mineral claims districts or opal prospecting areas and may provide for the standard compensation to be indexed on an annual or other basis.

The Secretary of the Department of Trade and Investment, Regional Infrastructure and Services (the *Secretary*) is not permitted to grant a small-scale title unless satisfied that the applicant has paid to the collection agency on behalf of any landholder entitled to compensation the standard compensation for the term of the small-scale title (unless the applicant and landholder have entered into an agreement as an alternative to standard compensation (a *compensation agreement*)).

Regulations under the *Mining Act 1992* may nominate a government sector agency or the head of a government agency as the collection agency.

The Secretary must also be satisfied that the applicant has given the landholder a notice that states the applicant's intention to exercise rights under the small-scale title and identifies the land to which the small-scale title applies. The small-scale title cannot be granted if it is for the renewal of a mineral claim and there is an outstanding amount of compensation (other than compensation under a compensation agreement) payable by the applicant to a landholder under the mineral claim. However, the Secretary may grant a small-scale title in circumstances where there is compensation owing or where no notice has been given if the Secretary is satisfied that this is because the applicant could not sufficiently identify the landholder and has taken all reasonable steps to do so.

If there is no standard compensation applicable to a small-scale title the applicant for the title or the landholder may apply to the Land and Environment Court to determine the amount of compensation payable. The Court, in making such a determination, is to take into account any determinations of standard compensation made by the Minister. The amount of compensation determined by the Court is taken to be standard compensation in respect of the granting of the particular small-scale title and (if there is no subsequent determination of standard compensation by the Minister) the renewal of the title.

A landholder may apply to the Land and Environment Court for compensation from the holder of a small-scale title for all compensable loss suffered, or likely to be suffered, by the landholder. The Court may award such additional compensation only if satisfied that there are exceptional circumstances that justify such an award.

No appeal lies against a determination of compensation by the Minister or the Land and Environment Court.

The Minister, in determining an amount of standard compensation payable cannot vary or substitute an amount previously determined unless 5 years have passed since that determination and the Minister has caused an independent review to be conducted into the appropriate levels of standard compensation and has considered the findings of that review.

**Schedule 1 [6]** makes an amendment consequential on the amendments made by Schedule 1 [5].

**Schedule 1 [8]** permits the Minister to impose a levy on small-scale titles for particular purposes. These purposes include the provision and maintenance of roads servicing small-scale titles and rehabilitation or environmental maintenance work on stockpiles of mullock or other land affected by work related to small-scale titles. The order is to specify the amount of the levy and the purposes for which the levy will be used. The holder of a small-scale title is required to pay to the Secretary the amount of any levy imposed on the small-scale title at such times as may be required. Money collected by way of a levy is to be used for the purposes for which the levy was imposed and the Secretary may award a grant to a person out of that money if satisfied that the grant is consistent with the purposes for which the levy was imposed and is appropriate and reasonable for achieving those purposes. **Schedule 1 [9]** establishes the Small-Scale Titles Levy Fund in the Special Deposits Account for the purposes of such levies. **Schedule 1 [11]** allows the regulations under the *Mining Act 1992* to regulate the imposition of such levies. **Schedule 1 [2] and [4]**

provide that an application for the grant of a small-scale title may be refused if the applicant has failed to pay any such levy.

**Schedule 1 [1] and [3]** remove provisions that allow the Minister, by order published in the Gazette, to include conditions as to the compensation payable in respect of the carrying out of prospecting and mining operations under small-scale titles.

**Schedule 1 [10]** gives the Land and Environment Court jurisdiction to hear questions or disputes in connection with compensation agreements.

**Schedule 1 [12]** includes savings and transitional provisions and a provision that validates a former scheme for the collection of money from the holders of small-scale titles for the purpose of providing appropriate land tenure for persons living on land covered by (or formerly covered by) small-scale titles within Western Lands leases. The validation makes sure that money collected by or on behalf of the Department of Trade and Investment, Regional Infrastructure and Services and any predecessor of the Department was lawfully collected if it was collected for that purpose. The validation also applies to money expended for that purpose or for any ancillary purpose.

**Schedule 1 [7]** omits a redundant provision.

## **Schedule 2     Amendment of other Acts**

**Schedule 2.1** amends the *Land and Environment Court Act 1979* to require that any proceedings that relate to small-scale titles (other than proceeding in the nature of a judicial review) are to have a mandatory conciliation conference, which may be conducted on-site or at any other place determined by the Commissioner who presides over the conference. If an agreement cannot be reached, the Commissioner is to terminate the conciliation conference and dispose of the proceedings following an immediate hearing or, if the parties agree, on the basis of what occurred at the conciliation conference. However, in certain circumstances the Land and Environment Court or the Commissioner may determine that the proceedings are better determined by the Court in which case they are to be dealt with as a hearing in court.

**Schedule 2.2** amends the *Mining Amendment Act 2008* to omit items that have been rendered redundant by the amendments in Schedule 1.

## **Schedule 3     Amendment of Mining Act 1992 No 29—statute law revision amendments**

**Schedule 3** updates references as a consequence of the change of name of a Government Department and the enactment of the *Government Sector Employment Act 2013*.