

#### 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 and the Petroleum (Onshore) Act 1991 in relation to access to land by the holders of prospecting titles over the land following the decision of the Supreme Court in *Brown & Anor v Coal Mines Australia; Alcorn & Anor v Coal Mines Australia Pty Ltd* [2010] NSWSC 143. The Bill:

- (a) removes the obligation, before prospecting activities are carried out, for an access arrangement to be made with certain secondary landholders whose interests are recorded on the land register but who are not entitled to possession of the land (such as a financial institution holding a registered mortgage over the land), but retains the obligation on holders of those titles to pay compensation to those secondary landholders for compensable loss caused by their prospecting activities, and
- (b) enables separate land access arrangements to be made where there are multiple landholders of particular land and removes provision for the termination of any arrangement with multiple landholders whenever one of those landholders ceases to be a landholder or when an additional person becomes a landholder, and

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- (c) makes a person who becomes an additional landholder of land for which there is an existing access arrangement subject to that arrangement unless the person objects within 7 days after being notified of the arrangement and, if he or she objects, until an access arrangement is agreed or determined or a period of 28 days expires without any such agreement or determination, and
- (d) provides for access arrangements to make provision for the notification to the holder of the prospecting title of particulars of additional landholders and makes it clear that additional provisions may be included in the arrangements if they are not matters already required by or under the Act or the conditions of the prospecting title, and
- (e) enables access arrangements to be varied by agreement of the parties, by the arbitrator who determined the arrangement or by the Land and Environment Court, and
- (f) repeals an uncommenced provision of the Mining Amendment Act 2008 that would have required the specification of the amount of compensation that is payable in the event of compensable loss before prospecting activities are carried out (in addition to requiring a land access arrangement before those activities are carried out), and
- (g) excludes secondary landholders from various other provisions that require landholders to be notified before leases and other authorities are granted or areas constituted for prospecting, and
- (h) validates existing land access arrangements and leases and other authorities if they comply with the revised requirements set out in the proposed Act.

#### 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 the date of assent to the proposed Act.

#### Schedule 1 Amendment of Mining Act 1992 No 29

Currently, the definition of landholder under the Mining Act 1992 (the Mining Act) includes a person identified in any register or record kept by the Registrar-General as a person having an interest in the land. Schedule 1 [1] amends the definition of

landholder to provide that in order to qualify as a person who falls within that part of the definition of landholder, the person must be a mortgagee in possession, the holder of a lease, or other person entitled to an exclusive right of occupation, a Minister or public authority having an interest under a covenant imposed under the Crown Lands Act 1989 or under a conservation, natural heritage or biobanking agreement or a person prescribed by the regulations.

Any person who does not hold any such interest in the land but who is identified in the land register as a person having an interest in the land (such as a financial

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institution holding a registered mortgage over the land) is a secondary landholder.

This amendment removes the obligation, before prospecting activities are carried out, for an access arrangement to be made with secondary landholders. It also removes various obligations under the Mining Act to notify those landholders before leases and other authorities are granted or certain prospecting areas are constituted (eg cl 21 of Schedule 1; s 177; s 200; s 221).

Schedule 1 [8] and [9] amend sections 255A, 262, 269 and 271 of the Mining Act to retain the obligation on holders of prospecting titles to give notice to secondary landholders prior to entering their land and to pay compensation to those secondary landholders for compensable loss caused by their prospecting activities.

Schedule 1 [10] amends section 383C of the Mining Act to retain a general immunity for secondary landholders from any action, liability, claim or demand arising as a consequence of any act or omission of a person authorised to exercise any power or right under the Mining Act or under a prospecting title. Schedule 1 [2] inserts a definition of secondary landholder for the purpose of the proposed amendments.

Currently, section 140 of the Mining Act requires the holder of a prospecting title to enter into an access arrangement in relation to land that is agreed between the holder of the title and each landholder prior to carrying out prospecting operations on that land. Schedule 1 [3] substitutes section 140 to enable separate land access arrangements to be made where there are multiple landholders of particular land, where prospecting occurs progressively in different areas of the same landholding or where separate arrangements are required to preserve the confidentiality of certain provisions in the arrangements. Schedule 1 [5] amends section 142 to make provision for circumstances in which some, but not all, landholders of particular land have agreed to an access arrangement with the holder of a prospecting title. In particular, a landholder who has agreed to an access arrangement will not be a party to a hearing before an arbitrator in relation to the landholders who have not agreed to an access arrangement, unless the landholder requests to be made a party to the hearing.

Schedule 1 [4] amends section 141 of the Mining Act to provide that access arrangements may make provision for the notification to the holder of the prospecting title of particulars of additional landholders and to make it clear that additional provisions may be included in the arrangements if they are not matters already required by or under the Act or the conditions of the prospecting title.

Schedule 1 [6] inserts proposed section 155 (6A) which provides that a review of a determination made by an arbitrator is to be by way of rehearing in the Land and Environment Court.

Schedule 1 [7] substitutes sections 157 and 158 of the Mining Act. Proposed section 157 enables an access arrangement to be varied or terminated by the agreement of the parties to the arrangement, by the arbitrator who determined the arrangement or by the Land and Environment Court.

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Proposed section 158 provides that an access arrangement does not terminate if a person becomes a landholder of all or any part of the land concerned after the arrangement was agreed or determined, or if one landholder to an arrangement with 2 or more landholders ceases to be a landholder of the land concerned.

A person who becomes an additional landholder of land for which there is an existing access arrangement is subject to that arrangement unless the person objects within 7 days after being notified of the arrangement and, if he or she so objects, until an access arrangement is agreed or determined, or a period of 28 days expires without any such arrangement or determination. If land subject to an access arrangement ceases to be subject to a particular prospecting title, and instead becomes subject to another prospecting title that is either held by the same title holder or by a person who is assigned the rights of the holder under the access arrangement, the access arrangement does not terminate and the arrangement becomes an access arrangement in respect of that other prospecting title.

Schedule 1 [11] permits, in addition to the regulation of arbitrator's costs, the making of provisions to regulate the procedure of any arbitration conducted under the Mining Act.

Schedule 1 [12] permits regulations under the Mining Act to contain provisions of a savings or transitional nature consequent on the enactment of the proposed Act.

Schedule 1 [13] contains savings and transitional provisions consequent on the enactment of the proposed Act, which validate existing land access arrangements and leases or other authorities if they comply with the revised requirements set out in the proposed Act.

### Schedule 2 Amendment of Mining Amendment Act

2008 No 19

Schedule 2 [2] amends an uncommenced provision of the Mining Amendment Act 2008 (the 2008 Act) to retain the obligation on the holder of a prospecting title to pay compensation to a secondary landholder for compensable loss caused by the holder's prospecting activities.

Schedule 2 [3] and [4] repeal uncommenced provisions of the 2008 Act that would have required the specification of the amount of compensation that is payable in the event of compensable loss before prospecting activities are carried out.

Schedule 2 [1] and [5] repeal uncommenced provisions of the 2008 Act consequential on the amendments made by Schedule 1 to the proposed Act.

### Schedule 3 Amendment of Petroleum (Onshore) Act

1991 No 84

Currently, the definition of landholder under the Petroleum (Onshore) Act 1991 (the Petroleum Act) includes a person identified in any register or record kept by the

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Registrar-General as a person having an interest in the land. Schedule 3 [1] amends the definition of landholder to provide that in order to qualify as a person who falls within that part of the definition of landholder, the person must be a mortgagee in possession, the holder of a lease, or other person entitled to an exclusive right of occupation, a Minister or public authority having an interest under a covenant imposed under the Crown Lands Act 1989 or under a conservation, natural heritage or biobanking agreement or a person prescribed by the regulations.

Any person who does not hold any such interest in the land but who is identified in the land register as a person having an interest in the land (such as a financial institution holding a registered mortgage over the land) is a secondary landholder.

This amendment removes the obligation, before prospecting activities are carried

out, for an access arrangement to be made with secondary landholders. It also removes various obligations under the Petroleum Act to obtain the consent of those landholders before certain operations under leases may be carried out (eg s 71). Schedule 3 [8] amends section 101 of the Petroleum Act to retain the obligation on holders of prospecting titles to give notice to secondary landholders prior to entering their land. Schedule 3 [2] inserts a definition of secondary landholder for the purpose of the proposed amendments.

Currently, section 69C of the Petroleum Act requires the holder of a prospecting title to enter into an access arrangement in relation to land that is agreed between the holder of the title and each landholder prior to carrying out prospecting operations on that land. Schedule 3 [3] substitutes section 69C to enable separate land access arrangements to be made where there are multiple landholders of particular land, where prospecting occurs progressively in different areas of the same landholding or where separate arrangements are required to preserve the confidentiality of certain provisions in the arrangements. Schedule 3 [5] amends section 69E to make provision for circumstances in which some, but not all, landholders of particular land have agreed to an access arrangement with the holder of a prospecting title. In particular, a landholder who has agreed to an access arrangement will not be a party to a hearing before an arbitrator in relation to the landholders who have not agreed to an access arrangement, unless the landholder requests to be made a party to the hearing.

Schedule 3 [4] amends section 69D of the Petroleum Act to provide that access arrangements may make provision for the notification to the holder of the prospecting title of particulars of additional landholders and to make it clear that additional provisions may be included in the arrangements if they are not matters already required by or under the Act or the conditions of the prospecting title.

Schedule 3 [6] inserts proposed section 69R (6A), which provides that a review of a determination made by an arbitrator is to be by way of rehearing in the Land and Environment Court.

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Schedule 3 [7] substitutes sections 69T and 69U of the Petroleum Act. Proposed section 69T enables an access arrangement to be varied or terminated by the agreement of the parties to the arrangement, by the arbitrator who determined the arrangement or by the Land and Environment Court.

Proposed section 69U provides that an access arrangement does not terminate if a person becomes a landholder of all or any part of the land concerned after the arrangement was agreed or determined, or if one landholder to an arrangement with 2 or more landholders ceases to be a landholder of the land concerned.

A person who becomes an additional landholder of land for which there is an existing access arrangement is subject to that arrangement unless the person objects within 7 days after being notified of the arrangement and, if he or she so objects, until an access arrangement is agreed or determined, or a period of 28 days expires without any such arrangement or determination. If land subject to an access arrangement ceases to be subject to a particular prospecting title, and instead becomes subject to another prospecting title that is either held by the same title holder or by a person who is assigned the rights of the holder under the access arrangement, the access arrangement does not terminate and the arrangement becomes an access arrangement in respect of that other prospecting title.

Schedule 3 [9] allows the making of regulations to regulate arbitrator's costs and the procedure of any arbitration conducted under the Petroleum Act.

Schedule 3 [10] inserts proposed section 141 to provide a general immunity to landholders (including secondary landholders) from any action, liability, claim or

demand arising as a consequence of any act or omission of a person authorised to exercise any power or right under the Petroleum Act or under a petroleum title. Schedule 3 [11] allows regulations under the Petroleum Act to contain provisions of a savings or transitional nature consequent on the enactment of the proposed Act. Schedule 3 [12] contains savings and transitional provisions consequent on the enactment of the proposed Act, which validate existing land access arrangements and petroleum titles if they comply with the revised requirements set out in the proposed Act.