



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*.



New South Wales

Mining Amendment (Small-Scale Title Compensation) Bill 2014

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New South Wales

Mining Amendment (Small-Scale Title Compensation) Bill 2014

No. , 2014

A Bill for

An Act to amend the *Mining Act 1992* and other legislation to provide, in respect of small-scale titles, a system for the payment of compensation to landholders, mechanisms for resolving disputes and the imposition of levies; and for other purposes.

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 (Small-Scale Title Compensation) Act 2014*.

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2 Commencement

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This Act commences on a day or days to be appointed by proclamation.

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Schedule 1	Amendment of Mining Act 1992 No 29	1
[1] Section 175 Special conditions		2
Omit section 175 (2) (g).		3
[2] Section 190 Power of Secretary in relation to applications		4
Insert after section 190 (2) (a):		5
(a1) that the applicant has failed to pay any levy required under section 292SA in relation to the mineral claim,		6 7
[3] Section 223A Special conditions		8
Omit section 223A (2) (e).		9
[4] Section 228 Power of Secretary in relation to applications		10
Insert after section 228 (2) (a):		11
(a1) that the applicant has failed to pay any levy required under section 292SA in relation to the opal prospecting licence,		12 13
[5] Section 266		14
Omit sections 266 and 267. Insert instead:		15
266 Compensation arising under small-scale title		16
(1) On the granting of a small-scale title, a landholder becomes entitled to compensation determined under this section in lieu of compensation for any compensable loss suffered, or likely to be suffered, by the landholder as a result of the exercise of the rights conferred by the small-scale title.		17 18 19 20
Note. <i>Small-scale title</i> means a mineral claim or an opal prospecting licence.		21
(2) The Minister may determine the compensation payable (<i>standard compensation</i>) for the purposes of subsection (1) and the quantum of any standard compensation is at the discretion of the Minister.		22 23 24
(3) A determination of the Minister is to be made by order published in the Gazette and any such order:		25 26
(a) may prescribe different amounts of standard compensation for different mineral claims districts or opal prospecting areas, and		27 28
(b) may provide for standard compensation to be indexed on an annual or other basis.		29 30
(4) The Secretary must not grant a small-scale title to an applicant unless satisfied that:		31 32
(a) the applicant has paid to the collection agency on behalf of any landholder entitled to compensation on the granting of the small-scale title 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 <i>compensation agreement</i>)), and		33 34 35 36 37 38
(b) the applicant has given, in the manner prescribed by the regulations, any such landholder a notice that states the applicant's intention to exercise rights under the small-scale title and that identifies (by map or otherwise) the land to which the small-scale title applies, and		39 40 41 42

- (c) if the application is for the renewal of a mineral claim, the applicant has, no later than 28 days after lodging the application, paid all outstanding amounts of compensation payable by the applicant to the landholder under the mineral claim (other than compensation that may be payable under a compensation agreement). 1
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- (5) The Secretary may grant a small-scale title to an applicant despite the applicant failing to satisfy the Secretary of a matter specified in subsection (4) if the Secretary is satisfied that the failure occurred because the applicant, after taking all reasonable steps, has been unable to sufficiently identify a landholder for the purposes of this section. Nothing in this subsection affects the right of a landholder to compensation under this section. 6
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- (6) The Land and Environment Court: 12
 - (a) may determine the compensation payable for the purposes of subsection (1) in respect of a small-scale title for which no standard compensation has been determined by the Minister, and 13
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 - (b) may make any such determination on the application of the landholder or the applicant for the small-scale title, and 16
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 - (c) in determining the compensation payable is to have regard to any determinations of standard compensation made by the Minister. 18
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- (7) Compensation determined by the Court under subsection (6) is taken to be standard compensation in respect of: 20
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 - (a) the grant of the relevant small-scale title, and 22
 - (b) the grant of a renewal of the title (but only if the Minister does not, within the term of the title, make a determination of standard compensation in respect of the title). 23
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- (8) The Land and Environment Court may, in exceptional circumstances and despite subsection (1), award a landholder compensation for the compensable loss suffered, or likely to be suffered, by the landholder as a result of the exercise of the rights conferred by a small-scale title, but only if: 26
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 - (a) the application for such compensation is made to the Court no later than 60 days after the notice under subsection (4) (b) is given to the landholder in respect of the title, and 30
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 - (b) there is no compensation agreement in place in respect of the title between the landholder and the person from whom compensation is sought. 33
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- (9) Division 3 does not apply to a determination of compensation under this section. However, sections 271, 272 (other than section 272 (1) (b) (i)) and 275 do apply to a determination of compensation under subsection (8). 36
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- (10) No appeal lies against a determination of compensation under this section. 39
- (11) The Minister cannot vary or substitute a standard compensation amount previously determined by the Minister under this section unless: 40
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 - (a) at least 5 years have passed since that previous determination, and 42
 - (b) 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. 43
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(12)	The regulations may make provisions for or with respect to the collection of standard compensation by the collection agency and the payment of that compensation to landholders, and in particular may:	1 2 3
(a)	prescribe fees in respect of the exercise of functions by or on behalf of the collection agency under this section, and	4 5
(b)	permit any such function to be delegated to Service NSW as a customer service function.	6 7
(13)	In this section:	8
	<i>collection agency</i> means a government sector agency or the head of a government sector agency nominated by the regulations as the collection agency.	9 10 11
	<i>grant</i> of a small-scale title includes, in the case of a mineral claim, the grant of a renewal of the small-scale title.	12 13
	<i>term</i> of a small-scale title includes, in the case of the renewal of a mineral claim, any period during which, before its renewal, the mineral claim was taken to continue to have effect under section 197 (3).	14 15 16
[6]	Section 267A Effect of determination and payment of compensation under provisions of Commonwealth Native Title Act	17 18
	Omit “, 266 or 267” from section 267A (1) (a). Insert instead “or 266”.	19
[7]	Section 278 Appeals	20
	Omit the section.	21
[8]	Part 14AA	22
	Insert after Part 14A:	23
	Part 14AA Small-scale title levies	24
292SA	Levy may be imposed by Minister	25
(1)	The Minister may, by order published in the Gazette, impose a levy on small-scale titles for any one or more of the following purposes:	26 27
(a)	the provision and maintenance of roads servicing small-scale titles and road related infrastructure (including gates, grids and signs),	28 29
(b)	rehabilitation or environmental maintenance work on land not held under a small-scale title but affected by work relating to small-scale titles,	30 31 32
(c)	rehabilitation or environmental maintenance work on stockpiles of mullock,	33 34
(d)	any purpose prescribed by the regulations,	35
(e)	any purpose ancillary to a purpose set out in paragraphs (a)–(d).	36
(2)	The amount of the levy is the amount specified in the order.	37
292SB	Orders imposing levy	38
(1)	An order of the Minister under section 292SA (a <i>levy order</i>) is to set out the purpose for which the levy is being imposed.	39 40
(2)	A levy order may impose a levy that is payable once only or may impose a levy that is payable on a recurrent basis as specified in the order.	41 42

(3)	A levy order may apply to all small-scale titles or be limited to small-scale titles of a specified class.	1 2
(4)	More than one levy order may be made under this Part and more than one levy may be imposed on a particular small-scale title.	3 4
292SC	Holder of small-scale title required to pay levy	5
(1)	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 under this Part at such times as may be required by the order imposing the levy.	6 7 8
(2)	The Secretary may recover the amount of any such levy from the holder of a small-scale title as a debt in any court of competent jurisdiction.	9 10
292SD	Use of money raised through levy	11
(1)	Money collected by way of a levy under this Part is to be used for the purposes for which the levy was imposed.	12 13
(2)	The Secretary may, on the application of a person, award a grant to the person from any money collected by way of any such levy if the Secretary is satisfied that the grant is consistent with the purposes for which the levy was imposed and is appropriate and reasonable for achieving those purposes.	14 15 16 17
[9] Section 292V		18
	Insert after section 292U:	19
292V	Small-Scale Titles Levy Fund	20
(1)	There is to be established in the Special Deposits Account a fund called the Small-Scale Titles Levy Fund.	21 22
(2)	The Small-Scale Titles Levy Fund is to be administered by the Secretary.	23
(3)	There is payable into the Small-Scale Titles Levy Fund:	24
(a)	small-scale title levies payable under Part 14AA of this Act, and	25
(b)	all money directed or authorised to be paid into the Small-Scale Titles Levy Fund by or under this or any other Act, and	26 27
(c)	the proceeds from the investment of money in the Small-Scale Titles Levy Fund.	28 29
(4)	There is payable from the Small-Scale Titles Levy Fund:	30
(a)	such amounts as the Secretary awards as grants under section 292SD, and	31 32
(b)	administrative expenses incurred in relation to the Small-Scale Titles Levy Fund, and	33 34
(c)	administrative expenses incurred in relation to the collection and recovery of amounts payable into the Small-Scale Titles Levy Fund, and	35 36 37
(d)	any refund required under this Act of an amount paid as a small-scale title levy.	38 39
(5)	The Small-Scale Titles Levy Fund is to be divided into separate accounts in respect of levies collected for different purposes referred to in section 292SA to ensure that, as far as is practicable, money collected by way of a levy is used for the purposes for which the levy was imposed.	40 41 42 43

(6)	The Secretary may invest money in the Small-Scale Titles Levy Fund in any manner authorised by the <i>Public Authorities (Financial Arrangements) Act 1987</i> .	1 2 3
(7)	The annual report of the Department is to include details of the amounts paid from the Small-Scale Titles Levy Fund during the financial year to which the report relates and the purposes for which those payments were made.	4 5 6
[10]	Section 293 Jurisdiction of Land and Environment Court	7
	Insert after section 293 (1) (t):	8
	(t1) any question or dispute in connection with a compensation agreement under section 266,	9 10
[11]	Schedule 4 Regulation making powers	11
	Insert after clause 6:	12
	7 Levies on small-scale titles	13
	Regulating the imposition of levies on small-scale titles and authorising the postponement, refund or waiver of such levies.	14 15
[12]	Schedule 6 Savings, transitional and other provisions	16
	Insert at the end of the Schedule with appropriate Part and clause numbering:	17
Part	Provisions consequent on enactment of Mining Amendment (Small-Scale Title Compensation) Act 2014	18 19 20
	Validation of scheme for the collection of funds from small-scale title holders	21
(1)	In this clause: <i>Department</i> includes a predecessor of the Department. <i>the Scheme</i> means the scheme established within the Department to provide for the voluntary surrender of land held under Western Lands leases to facilitate the grant of leases for residence to cover the area of mineral claims known as residential mineral claims, and for the payment of compensation in connection with any such voluntary surrender.	22 23 24 25 26 27 28
(2)	Money collected by, or on behalf of, the Department from holders of small-scale titles before the commencement of this clause, was lawfully collected if it was collected for the purposes of the Scheme.	29 30 31
(3)	Money expended, whether before or after the commencement of this clause, from money referred to in subclause (2) is lawfully expended if it is expended for the purposes of the Scheme including for purposes ancillary to the Scheme.	32 33 34
	Agreements taken to be compensation agreements	35
	An agreement, between a landholder and the holder of a small-scale title under section 266 (2) (a) or 267 (2) (a), that was in force immediately before the substitution of section 266 by the <i>Mining Amendment (Small-Scale Title Compensation) Act 2014</i> is taken, on that substitution, to be a compensation agreement under section 266.	36 37 38 39 40

Appeals

Section 278 (2) as repealed by the *Mining Amendment (Small-Scale Title Compensation) Act 2014* continues to apply in respect of an assessment of compensation made before that repeal.

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Schedule 2	Amendment of other Acts	1
2.1	Land and Environment Court Act 1979 No 204	2
	Section 41A	3
	Insert before section 42:	4
41A	Mandatory conciliation and arbitration	5
(1)	This section applies to proceedings relating to small-scale titles that are pending in Class 8 of the Court's jurisdiction to hear and dispose of proceedings arising under the <i>Mining Act 1992</i> other than proceedings relating to a matter referred to in section 293 (1) (q) of that Act.	6 7 8 9
(2)	Section 34 applies to the proceedings (in the same way as it applies to proceedings in Class 1, 2 or 3 of the Court's jurisdiction) but with the following modifications:	10 11 12
(a)	the Court must arrange a conciliation conference between the parties and their representatives with or without their consent at such place as the Court determines,	13 14 15
(b)	if no agreement of a kind referred to in section 34 (3) is reached, the Commissioner who presides over the conciliation conference must terminate the conciliation conference and, subject to this section, dispose of the proceedings:	16 17 18 19
(i)	following a hearing held forthwith, or	20
(ii)	if the parties consent, on the basis of what has occurred at the conciliation conference.	21 22
(3)	The Court or the Commissioner may at any time, if the Court or Commissioner thinks it appropriate in the circumstances of the case, determine that proceedings are not to be dealt with or are not to continue to be dealt with under subsection (2). A determination may be made on the motion of the Court or Commissioner or on application by the parties.	23 24 25 26 27
(4)	If the Court or Commissioner determines that proceedings are not to be dealt with or are not to continue to be dealt with under subsection (2), the proceedings are to be dealt with as a hearing in court and sections 38 and 39 apply as far as is relevant as if the proceedings were proceedings in Class 1, 2 or 3 of the Court's jurisdiction.	28 29 30 31 32
2.2	Mining Amendment Act 2008 No 19	33
[1]	Schedule 1 Amendment of Mining Act 1992	34
	Omit Schedule 1 [228], [229], [231]–[235], [240] and [285].	35
[2]	Schedule 1 [246C]	36
	Omit proposed section 293 (1) (v2).	37

Schedule 3	Amendment of Mining Act 1992 No 29—statute law revision amendments	1
		2
[1]	The whole Act (Schedule 6 excepted)	3
	Omit “Director-General” wherever occurring. Insert instead “Secretary”.	4
[2]	Sections 163 (9), 261BC (4) (b) and (9) (a), 261BD (1), 261BE (1) and (4) and 293 (1) (u)	5
	Omit “Director-General’s” wherever occurring. Insert instead “Secretary’s”.	6
[3]	Dictionary	7
	Omit the definitions of <i>Department</i> and <i>Director-General</i> .	8
	Insert in alphabetical order:	9
	<i>Department</i> means the Department of Trade and Investment, Regional Infrastructure and Services.	10
	<i>Secretary</i> means the Secretary of the Department.	11
		12