

**MINING (ACCESS TO LANDS) AMENDMENT ACT
1989 No. 136**

NEW SOUTH WALES



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**MINING (ACCESS TO LANDS) AMENDMENT ACT
1989 No. 136**

NEW SOUTH WALES



Act No. 136, 1989

An Act to amend the Mining Act 1973 so as to facilitate the exercise of rights under exploration licences and prospecting licences in relation to agricultural and other lands; and for other purposes. [Assented to 27 September 1989]

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Mining (Access to Lands) Amendment Act 1989.

Commencement

2. (1) This Act commences on a day or days to be appointed by proclamation, except as provided by this section.

(2) Schedule 2, and section 3 in its application to that Schedule, commence on the date of assent to this Act.

Amendment of Mining Act 1973 No. 42

3. The Mining Act 1973 is amended as set out in Schedules 1 and 2.

SCHEDULE 1 - AMENDMENTS

(Sec. 3)

(1) Section 46 (**Decision as to whether land marked out is agricultural land**):

(a) Omit section 46 (1), insert instead:

(1) If an authorised officer considers that any area of land marked out, pursuant to section 44, for the purposes of an application for a mining lease or a mining purposes lease:

(a) may include private lands that are agricultural land;
or

(b) may include Crown lands held under a pastoral lease that are agricultural land,

the officer shall notify the Director-General.

(b) Section 46 (2):

Omit "the prospecting licence,".

SCHEDULE 1 - AMENDMENTS - *continued*

- (c) Section 46 (2):
Omit "the licence or".
- (d) Section 46 (2A):
Omit "prospecting licence,".
- (2) Section 53A (**Application for mining lease dealt with as application for prospecting licence**):
Section 53A (3) (b):
Omit "section 46", insert instead "Division 4A".
- (3) Section 80 (**Mining lease etc. not to be granted over agricultural land**):
 - (a) Section 80 (1):
Omit "the prospecting licence,".
 - (b) Section 80 (3):
Omit "prospecting licence, a".
- (4) Part 5, Division 4A:
After Division 4 of Part 5, insert:

Division 4A - Access arrangements

Definitions

84A. In this Division:

"access arrangement" means an arrangement referred to in section 84C;

"arbitrator" means an arbitrator appointed under section 84E or 84F;

"land to which this Division applies" means private lands or Crown lands held under a pastoral lease;

"licensee" means the registered holder of an exploration licence or prospecting licence;

"owner", in relation to Crown lands held under a pastoral lease, includes a holder of the pastoral lease;

SCHEDULE 1 - AMENDMENTS - *continued*

"Panel" means the Arbitration Panel established by section 84B;

"party" means:

- (a) in relation to a hearing - a person who is entitled to appear and be heard at the hearing pursuant to section 84H; or
- (b) in relation to an access arrangement - the licensee to whom, or an owner or occupier of land to which, the arrangement relates.

Arbitration Panel

84B. (1) There shall be an Arbitration Panel.

(2) The Panel shall consist of one or more members appointed by the Minister after consultation with the Minister for Agriculture and Rural Affairs.

(3) The conditions on which a member of the Panel holds office (including conditions relating to remuneration and travelling and subsistence allowances) shall be as determined by the Minister.

Prospecting to be carried out in accordance with access arrangement

84C. A licensee shall not prospect in or on land to which this Division applies otherwise than in accordance with an arrangement:

- (a) agreed (whether orally or, if any of the parties to the proposed arrangement so require, in writing and whether before or after the licensee was granted the licence) between the licensee and each owner and occupier of the land; or
- (b) determined by an arbitrator in accordance with this Division.

SCHEDULE 1 - AMENDMENTS - *continued*

Matters for which access arrangement to provide

84D. (1) An access arrangement in relation to land to which this Division applies may make provision for or with respect to the following matters:

- (a) the periods during which the licensee is to be permitted access to the land;
- (b) the parts of the land in or on which the licensee may prospect and the means by which the licensee may gain access to those parts of the land;
- (c) the kinds of prospecting operations that may be carried out in or on the land;
- (d) the conditions to be observed by the licensee in prospecting in or on the land;
- (e) the things which the licensee needs to do in order to protect the environment while having access to the land and prospecting in or on the land;
- (f) the compensation to be paid to any owner or occupier of the land as a consequence of the licensee prospecting in or on the land;
- (g) the manner of resolving any dispute arising in connection with the arrangement;
- (h) the manner of varying the arrangement;
- (i) such other matters as the parties to the arrangement may agree to include in the arrangement.

(2) An access arrangement that is determined by an arbitrator shall specify the compensation, as assessed by the arbitrator, to which each owner or occupier of the land concerned is entitled under section 121A.

- (3) In the event of an inconsistency between:
 - (a) a provision of an access arrangement; and
 - (b) a provision of this Act (including, in particular, any provision of Part 7 that relates to the protection of the environment), the regulations or a condition of

SCHEDULE 1 - AMENDMENTS - *continued*

an exploration licence or prospecting licence (including, in particular, a condition approved by the Soil Conservation Service of New South Wales in accordance with section 53 (6)),

the provision referred to in paragraph (b) shall prevail to the extent of the inconsistency.

(4) Without affecting any proceedings which may be brought against a licensee in respect of the contravention of an access arrangement, if a licensee contravenes an access arrangement, an owner or occupier of the land to which the arrangement applies may deny the licensee access to the land until:

- (a) the licensee ceases the contravention; or
- (b) the contravention is remedied to the reasonable satisfaction of the owner or occupier.

Appointment of arbitrator by agreement

84E. (1) If, by the end of 30 days after a licensee serves notice in writing on each owner and occupier of land to which this Division applies of the licensee's intention to obtain an access arrangement in respect of the land, the licensee and each owner and occupier of the land have been unable to agree on such an arrangement, the licensee may, by further notice in writing served on each such owner and occupier, request them to agree to the appointment of an arbitrator.

(2) The notice of the licensee's intention to obtain an access arrangement must, in addition to stating the licensee's intention, contain:

- (a) a plan and description of the area of land over which the access is sought sufficient to enable the ready identification of that area; and
- (b) a description of the prospecting methods intended to be used in that area.

SCHEDULE 1 - AMENDMENTS - *continued*

(3) The licensee, and each owner and occupier of the land concerned, may agree to the appointment of any person as an arbitrator.

Appointment of arbitrator in default of agreement

84F. (1) If, by the end of 30 days after a licensee serves notice in accordance with section 84E, the licensee and each owner and occupier of the land concerned have been unable to agree on the appointment of an arbitrator, then any one of them may apply to the Director-General for the appointment of a member of the Panel as an arbitrator.

(2) An application shall be accompanied by the prescribed fee.

(3) The Director-General shall, after consultation with the Director-General of the Department of Agriculture and Fisheries, appoint a member of the Panel as an arbitrator.

Arbitration

84G. (1) As soon as practicable after having been appointed, an arbitrator shall:

- (a) fix a time and place for conducting a hearing into the question of access to the land concerned; and
- (b) cause notice of his or her appointment, and of the time and place fixed for conducting the hearing, to be given to the licensee and to each of the owners and occupiers of that land.

(2) The arbitrator may, by a further notice served on the licensee and on each of the owners and occupiers of the land concerned (whether on the application of the licensee or of any owner or occupier of that land or otherwise), vary the time or place fixed for conducting the hearing.

(3) The arbitrator shall, at the time and place fixed under this section, conduct a hearing into the question of access to the land concerned.

SCHEDULE 1 - AMENDMENTS - *continued*

Right of appearance

84H. (1) At any hearing into the question of access by a licensee to land to which this Division applies, the licensee, and each of the owners and occupiers of the land, are entitled to appear and be heard.

(2) A party to a hearing may be represented:

- (a) by an agent who is not a barrister or a solicitor; or
- (b) with the agreement of the parties and the leave of the arbitrator, by a barrister or a solicitor.

Conciliation

84I. (1) An arbitrator shall not make a determination until the arbitrator has brought, or has used his or her best endeavours to bring, the parties to a settlement acceptable to all of them.

(2) If the parties come to such a settlement, the arbitrator shall make a determination that gives effect to the terms of the settlement.

Procedure

84J. (1) Except as otherwise provided by this Act or the regulations, the procedure at a hearing shall be as determined by the arbitrator.

(2) An arbitrator shall act according to equity, good conscience and the substantial merits of the case without regard for technicalities or legal forms.

(3) An arbitrator may conduct a hearing even though one or more of the parties to the hearing fails to attend the hearing.

Interim determination by arbitrator

84K. (1) As soon as practicable after concluding a hearing, an arbitrator shall:

SCHEDULE 1 - AMENDMENTS - *continued*

- (a) make an interim determination as to whether or not the licensee should have a right of access to the land concerned; and
 - (b) if the arbitrator determines that the licensee should have such a right of access, prepare a draft access arrangement in respect of that land.
- (2) As soon as practicable after making an interim determination, the arbitrator shall:
- (a) reduce the determination to writing; and
 - (b) cause a copy of the determination, together with a copy of any draft access arrangement, to be served on each of the parties to the hearing.

Further arbitration

84L. (1) A party to a hearing may, within 14 days after being served with a copy of the arbitrator's interim determination, apply to the arbitrator:

- (a) for reconsideration of the question of access to the land concerned; or
 - (b) for variation of any draft access arrangement prepared by the arbitrator in respect of that land.
- (2) As soon as practicable after receiving such an application, the arbitrator shall:
- (a) fix a time and place for continuing the hearing into the question of access to the land concerned; and
 - (b) cause notice of the time and place fixed for continuing the hearing to be given to the licensee and to each of the owners and occupiers of that land.
- (3) The arbitrator may, by a further notice served on the licensee and on each of the owners and occupiers of the land concerned (whether on the application of the licensee or of any owner or occupier of that land or otherwise), vary the time or place fixed for continuing the hearing.

SCHEDULE 1 - AMENDMENTS - *continued*

(4) The arbitrator shall, at the time and place fixed under this section, continue the hearing into the question of access to the land concerned.

Final determination by arbitrator

84M. (1) If an application is not made to the arbitrator under section 84L (1) within the period of 14 days referred to in that subsection:

- (a) the interim determination shall be taken to be the arbitrator's final determination; and
- (b) any draft access arrangement shall be taken to be a final access arrangement.

(2) If an application is made to the arbitrator under section 84L (1) within the period of 14 days referred to in that subsection, the arbitrator shall, as soon as practicable after concluding the continued hearing:

- (a) make a final determination as to whether or not the licensee should have a right of access to the land concerned; and
- (b) if the arbitrator determines that the licensee should have such a right of access, determine a final access arrangement in respect of that land.

(3) As soon as practicable after making a final determination, the arbitrator shall:

- (a) reduce the determination to writing; and
- (b) cause a copy of the determination, together with a copy of any final access arrangement forming part of the determination, to be served on each of the parties to the hearing.

Costs

84N. (1) Each party to the hearing shall bear his or her own costs in relation to the hearing.

SCHEDULE 1 - AMENDMENTS - *continued*

(2) The arbitrator's costs in relation to the hearing shall be borne by the licensee.

(3) Payment of the arbitrator's costs in relation to a hearing shall, for the purposes of any security given by the licensee under section 51 or 53, be taken to be an obligation under the licence.

Withdrawal from arbitration

84O. (1) The parties to a hearing may, at any time before the conclusion of the hearing, terminate the hearing by notice in writing, signed by all of the parties, served on the arbitrator.

(2) This section does not limit the liability of the licensee to bear the arbitrator's costs in relation to the hearing.

Liability

84P. No proceedings lie against an arbitrator for or with respect to:

- (a) any determination made by the arbitrator; or
- (b) any publication made by the arbitrator; or
- (c) any other act, matter or thing done by the arbitrator.

for the purposes of a hearing, as long as the determination, publication, act, matter or thing was made or done in good faith.

Review of determination

84Q. (1) A party to a hearing who is aggrieved by an arbitrator's final determination (other than a determination referred to in section 84I (2)) may apply to the warden's court for a review of the determination.

SCHEDULE 1 - AMENDMENTS - *continued*

- (2) An application:
 - (a) shall be accompanied by a copy of the determination to which it relates, together with a copy of any access arrangement forming part of the determination; and
 - (b) shall be filed in the warden's court:
 - (i) in the case of an interim determination that has become a final determination by virtue of section 84M (1) - within 28 days after a copy of the interim determination was served on the applicant under section 84K (2); or
 - (ii) in the case of a final determination made under section 84M (2) - within 14 days after a copy of the final determination was served on the applicant under section 84M (3).
- (3) An application for review may not be made:
 - (a) during the period of 14 days within which an application may be made to an arbitrator under section 84L (1); or
 - (b) if such an application is made, until the arbitrator has made a final determination under section 84M with respect to the application.
- (4) The applicant shall cause a copy of the application to be served on each of the other parties to the determination to which the application relates.
- (5) Subject to any order of the warden's court to the contrary, an application for review of a determination operates to stay the effect of any related access arrangement in relation to a party to the arrangement from the time when a copy of the arrangement has been served on the party until the decision of the warden's court on the review.
- (6) In reviewing a determination under this section, a warden has the functions of an arbitrator under this

SCHEDULE 1 - AMENDMENTS - *continued*

Division in addition to the other functions that the warden has under this Act.

(7) The decision of the warden's court on a review of a determination is final and shall be given effect to as if it were the determination of an arbitrator.

Effect of access arrangement etc.

84R. An access arrangement determined by an arbitrator:

(a) takes effect:

- (i) in the case of a draft access arrangement that is, pursuant to section 84M (1), to be taken to be a final access arrangement, at the end of the period of 14 days after a copy of the arrangement has been served on each of the parties under section 84K (2); or
- (ii) in the case of a final access arrangement prepared under section 84M (2), when a copy of the arrangement has been served on each of the parties,

or on such later date as may be specified in the arrangement; and

(b) subject to section 84D (3), has effect as if its terms were embodied in a deed that had been duly executed by each of the parties.

Variation of access arrangements

84S. An access arrangement determined by an arbitrator may, subject to the terms of the arrangement, be varied by the arbitrator with the consent of all of the parties to the arrangement.

Duration of access arrangements

84T. An access arrangement does not run with the land and, unless sooner terminated, terminates:

SCHEDULE 1 - AMENDMENTS - *continued*

- (a) if an owner or occupier of the land with whom the arrangement is made ceases to be an owner or occupier of the land; or
 - (b) on the death of an owner or occupier of the land with whom the arrangement is made.
- (5) Section 86 (**Rights of registered holder of an exploration licence**):
- Omit section 86 (2).
- (6) Section 87 (**Rights under exploration licence not to be exercised in agricultural land**):
- Omit the section.
- (7) Section 121A:

After section 121, insert:

Entitlement to compensation in respect of operations under an exploration licence or a prospecting licence

121A. (1) Where an exploration licence or prospecting licence is granted:

- (a) the occupier of any Crown lands, and the owner and occupier of any private lands, subject to the licence; and
- (b) the occupier of any Crown lands, and the owner and occupier of any private lands, not being lands subject to the licence,

are entitled to compensation for any loss referred to in section 124 (1) (b) suffered, or likely to be suffered, by them as a result of the grant of the licence or the exercise of the rights conferred by this Act, or by the licence or by an access arrangement under Division 4A of Part 5, on the registered holder of the licence.

(2) The registered holder of a licence may treat and agree with an owner or an occupier as to the amount of compensation payable, but an agreement reached is not

SCHEDULE 1 - AMENDMENTS - *continued*

valid unless it is in writing, signed by the parties thereto or their agents, and lodged with the Director-General.

(3) Notwithstanding subsection (2), such of the provisions of an access arrangement in force under Division 4A of Part 5 as relate to compensation have effect as an agreement for the purposes of this section.

(4) Payment of compensation under this section (other than compensation payable under an access arrangement agreed on as referred to in section 84C (a)) shall, for the purposes of any security given by the licensee under section 51 or 53, be taken to be an obligation under the licence.

(8) Section 122 (**Entitlement to compensation in respect of operations under a mining lease or a mining purposes lease**):

(a) Section 122:

Omit "an authority" wherever occurring, insert instead "a mining lease or a mining purposes lease".

(b) Section 122:

Omit "the authority" wherever occurring, insert instead "the lease".

(c) Section 122 (4):

Omit "a mining purposes", insert instead "the".

(9) Section 124 (**Assessment of compensation**):

(a) Section 124 (3):

Omit "an authority", insert instead "a mining lease or a mining purposes lease".

(b) Section 124 (5), (6):

Omit "an authority" wherever occurring, insert instead "a mining lease, a mining purposes lease".

(10) Section 125 (**Procedure in court on making assessment**):

After section 125 (2), insert:

(3) Notwithstanding subsection (2), such of the provisions of an access arrangement in force under

SCHEDULE 1 - AMENDMENTS - *continued*

Division 4A of Part 5 as relate to compensation have effect as an agreement for the purposes of this section.

(11) Section 126 (**Additional assessment**):

At the end of section 126, insert:

- (2) If it is proved to the satisfaction of the warden:
 - (a) that an access arrangement under Division 4A of Part 5 does not make provision for or with respect to compensation; and
 - (b) that loss has been caused to the land to which the arrangement relates, being loss arising from any one or more of the causes referred to in section 124 (1) (b),

the warden shall, subject to section 125 (2), assess that loss and order that the amount so assessed be paid by the registered holder of the licence to which the assessment relates, within the time and to the persons specified in the order.

- (3) If it is proved to the satisfaction of the warden:
 - (a) that the whole of the amount assessed by or in accordance with an access arrangement determined by an arbitrator under Division 4A of Part 5 has been paid by the licensee in accordance with the arrangement; and
 - (b) that further loss has been caused to the land to which the assessment relates or to other land, being loss arising from any one or more of the causes referred to in section 124 (1) (b),

the warden shall, subject to section 125 (2), assess that loss and order that the amount so assessed be paid by the registered holder of the licence to which the assessment relates, within the time and to the persons specified in the order.

SCHEDULE 1 - AMENDMENTS - *continued*

- (12) Section 133 (**Jurisdiction of warden's court**):
- (a) Section 133 (o):
Omit "and" where lastly occurring.
 - (b) Section 133 (q), (r):
After section 133 (p), insert:
 - (q) the review of a determination under Division 4A of Part 5;
 - (r) any question or dispute as to the provisions of an access arrangement or as to any matter arising as a consequence of such an arrangement.
- (13) Section 146 (**Costs may be allowed**):
At the end of section 146, insert:
 - (2) The reference in subsection (1) to costs includes a reference to an arbitrator's costs in relation to a hearing under Division 4A of Part 5.
- (14) Section 195 (**Regulations**):
After section 195 (2) (s), insert:
 - (s1) arbitrators' costs under Division 4A of Part 5;
- (15) First Schedule (**Agricultural land**):
- (a) Clause 2 (1) (b):
Omit "the prospecting licence,".
 - (b) Omit clause 2 (1) (c).
 - (c) Omit clause 3 (a).
- (16) Second Schedule (**Transitional provisions and savings**):
- (a) Part 1:

SCHEDULE 1 - AMENDMENTS - *continued*

At the beginning of the Schedule, insert:

PART 1 - GENERAL

Transitional and savings regulations

1A. (1) The regulations may contain provisions of a transitional or savings nature consequent on the enactment of the following Acts:

Mining (Access to Lands) Amendment Act 1989.

(2) Any such provision may, if the regulations so provide, take effect on the date of assent to the Act concerned or a later date.

(3) To the extent to which any such provision takes effect on a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication; or
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

(b) Part 2, heading:

Before clause 1, insert:

PART 2 - TRANSITIONAL PROVISIONS AND SAVINGS CONSEQUENT ON THE ENACTMENT OF THE MINING ACT 1973

(c) Part 3:

At the end of the Schedule, insert:

SCHEDULE 1 - AMENDMENTS - *continued*

**PART 3 - TRANSITIONAL PROVISIONS
AND SAVINGS CONSEQUENT ON THE
ENACTMENT OF THE MINING (ACCESS
TO LANDS) AMENDMENT ACT 1989**

Definitions

23. In this Part:

"existing exploration licence" means an exploration licence that was in force immediately before the commencement of this Part, but does not include any renewal of such a licence effected after that commencement;

"existing prospecting licence" means a prospecting licence that was in force immediately before the commencement of this Part, but does not include any renewal of such a licence effected after that commencement;

"expiry date", in relation to a licence, means the date on which the licence would cease to have effect:

- (a) if no application for a renewal of the licence were to be made; or
- (b) in the case of an exploration licence - if no application for a prospecting licence were to be made under section 50 (2) in respect of any of the land to which the licence relates;

"new exploration licence" means an exploration licence that is neither an existing exploration licence nor a renewed exploration licence;

"new prospecting licence" means a prospecting licence that is neither an existing prospecting licence nor a renewed prospecting licence;

"renewed exploration licence" means an exploration licence that has been renewed and that was an existing exploration licence before it was renewed;

SCHEDULE 1 - AMENDMENTS - *continued*

"renewed prospecting licence" means a prospecting licence that has been renewed and that was an existing prospecting licence before it was renewed;

"the amending Act" means the Mining (Access to Lands) Amendment Act 1989;

"the new Act" means this Act, as amended by the amending Act;

"the old Act" means this Act, as in force immediately before the commencement of this Part.

Pending applications for exploration licences

24. An application for an exploration licence lodged before the commencement of this Part shall be dealt with in accordance with the new Act.

Exploration licences

25. (1) The old Act continues to apply to and in respect of an existing exploration licence until the expiry date of the licence.

(2) The new Act applies to and in respect of an existing exploration licence during any period for which the licence is in force after the expiry date of the licence.

(3) The new Act applies to and in respect of a renewed exploration licence in the same way as it applies to a new exploration licence.

(4) Notwithstanding subclauses (1), (2) and (3):

(a) a decision under section 87 (whether made before or after the commencement of this Part) that land to which an existing exploration licence relates is or is not agricultural land; and

(b) a consent under section 87 (whether given before or after the commencement of this Part) in respect of land to which an existing exploration licence relates, have effect until the expiry date of the licence or, if the licence is renewed, until the first expiry date of the renewed

SCHEDULE 1 - AMENDMENTS - *continued*

licence that occurs after the expiration of 2 years after the commencement of this Part.

(5) The registered holder of an existing exploration licence or a renewed exploration licence may not, within the period of 6 months after the commencement of this Part, exercise the rights conferred by the licence in respect of the land to which the licence relates unless:

- (a) the land has been determined not to be agricultural land pursuant to a decision under section 87; or
- (b) the owner or occupier of the land consents to those rights being exercised in respect of the land.

Pending applications for prospecting licences

26. (1) The new Act applies to and in respect of an application for a prospecting licence in respect of which no notice under section 44 (1) (b) had been sent before the commencement of this Part.

(2) The old Act continues to apply to and in respect of any other application for a prospecting licence that had not been finally dealt with before the commencement of this Part.

Existing prospecting licences

27. (1) The old Act continues to apply to and in respect of an existing prospecting licence.

(2) The registered holder of an existing prospecting licence or renewed prospecting licence may, with the consent in writing of each of the owners and occupiers of the land to which the application for the licence related, apply for a new prospecting licence over the whole of the land, and may make such an application at any time before the expiry date of the licence.

(3) No other person may make an application for a prospecting licence in respect of that land, or any part of that land, while the existing prospecting licence or renewed

SCHEDULE 1 - AMENDMENTS - *continued*

prospecting licence is in force in respect of that land or part.

Agricultural land

28. (1) Land that has, pursuant to section 80 of the old Act, been excluded from:

- (a) an existing prospecting licence; or
- (b) a prospecting licence granted pursuant to an application to which the old Act applies,

on the ground that the land is agricultural land is to be excluded also from any new exploration licence while the prospecting licence has effect.

(2) Land that has been excluded from an exploration licence by the operation of subclause (1) becomes subject to the licence when the prospecting licence referred to in that subclause ceases to have effect.

(3) Land that is agricultural land for the purposes of an existing exploration licence to or in respect of which the old Act applies shall be taken to be agricultural land for the purposes also of any prospecting licence granted in respect of that land before the expiry date of the existing exploration licence, and the old Act continues to apply to and in respect of any such prospecting licence until that date.

Application of new Act by agreement

29. Notwithstanding any other provision of this Part:
- (a) the registered holder of a licence to which the old Act applies or the applicant for a prospecting licence the subject of an application to which the old Act applies; and
 - (b) the owners and occupiers of land to which such a licence or application relates,

SCHEDULE 1 - AMENDMENTS - *continued*

may agree to apply the new Act to the licence or application, and the new Act shall apply to the licence or application accordingly.

**SCHEDULE 2 - FURTHER AMENDMENTS BY WAY
OF STATUTE LAW REVISION**

(Sec. 3)

- (1) Section 2 (**Division of Act**):
Omit the section.
- (2) Section 6 (**Definitions**):
 - (a) Section 6 (1):
Omit the definition of "Department", insert instead:
"Department" means the Department of Minerals and Energy;
"Director-General" means the Director-General of the Department;
 - (b) Section 6 (1), definition of "irrigation area":
After "Wentworth Irrigation Act", insert "1890".
 - (c) Section 6 (1), definition of "owner":
From paragraph (b), omit "the committee or manager, appointed under Part 10 of the Mental Health Act 1958, of the estate or property of a mentally ill or incapable owner", insert instead "the manager, appointed under the Protected Estates Act 1983, of the estate of an owner who is a protected person within the meaning of that Act".
 - (d) Section 6 (1), definition of "Registrar":
Omit "Mineral Resources", insert instead "Minerals and Energy".
 - (e) Section 6 (1):
Omit the definition of "Secretary".
- (3) Sections 9, 9A, 14, 15, 17, 19, 20, 25A, 25B, 39, 43, 44, 46, 49, 62, 66, 75, 76, 77, 87, 92, 94B, 95, 99, 107, 111E, 111G, 112, 113, 115, 116, 122, 172, 173, 177B, First Schedule:

SCHEDULE 2 - FURTHER AMENDMENTS BY WAY
OF STATUTE LAW REVISION - *continued*

- Omit "Secretary" wherever occurring, insert instead "Director-General".
- (4) Sections 25A, 25B, 35, 36, 46, 80, 87:
After "Agriculture" wherever occurring, insert "and Fisheries".
- (5) Section 53 (**Powers in relation to application for prospecting licence or mining lease**):
Section 53 (6):
Before "Soil Conservation", insert "Commissioner of the".
- (6) Section 94A (**Tourist activities**):
Omit section 94A (5) (c), insert instead:
(c) within a special area within the meaning of the Water Board Act 1987 - without the consent, given by instrument in writing, of the Managing Director of the Water Board; or
- (7) Section 105 (**Records**):
Omit "Mineral Resources", insert instead "Minerals and Energy".
- (8) Sections 111E, 111F, 113:
Omit "Environment and" wherever occurring.
- (9) Section 117A (**Right of entry for environmental study**):
Section 117A (12):
Omit "Planning and", insert instead "the".
- (10) Section 169 (**Proceedings in respect of offences**):
Omit "a stipendiary magistrate or any two justices in petty sessions", insert instead "a Local Court constituted by a Magistrate or 2 justices".

SCHEDULE 2 - FURTHER AMENDMENTS BY WAY
OF STATUTE LAW REVISION - *continued*

(11) Section 176:

Omit the section, insert instead:

Death etc. of applicant for authority etc.

176. Where an applicant for registration of a claim or an applicant for an authority:

- (a) dies;
- (b) becomes bankrupt; or
- (c) becomes a protected person within the meaning of the Protected Estates Act 1983,

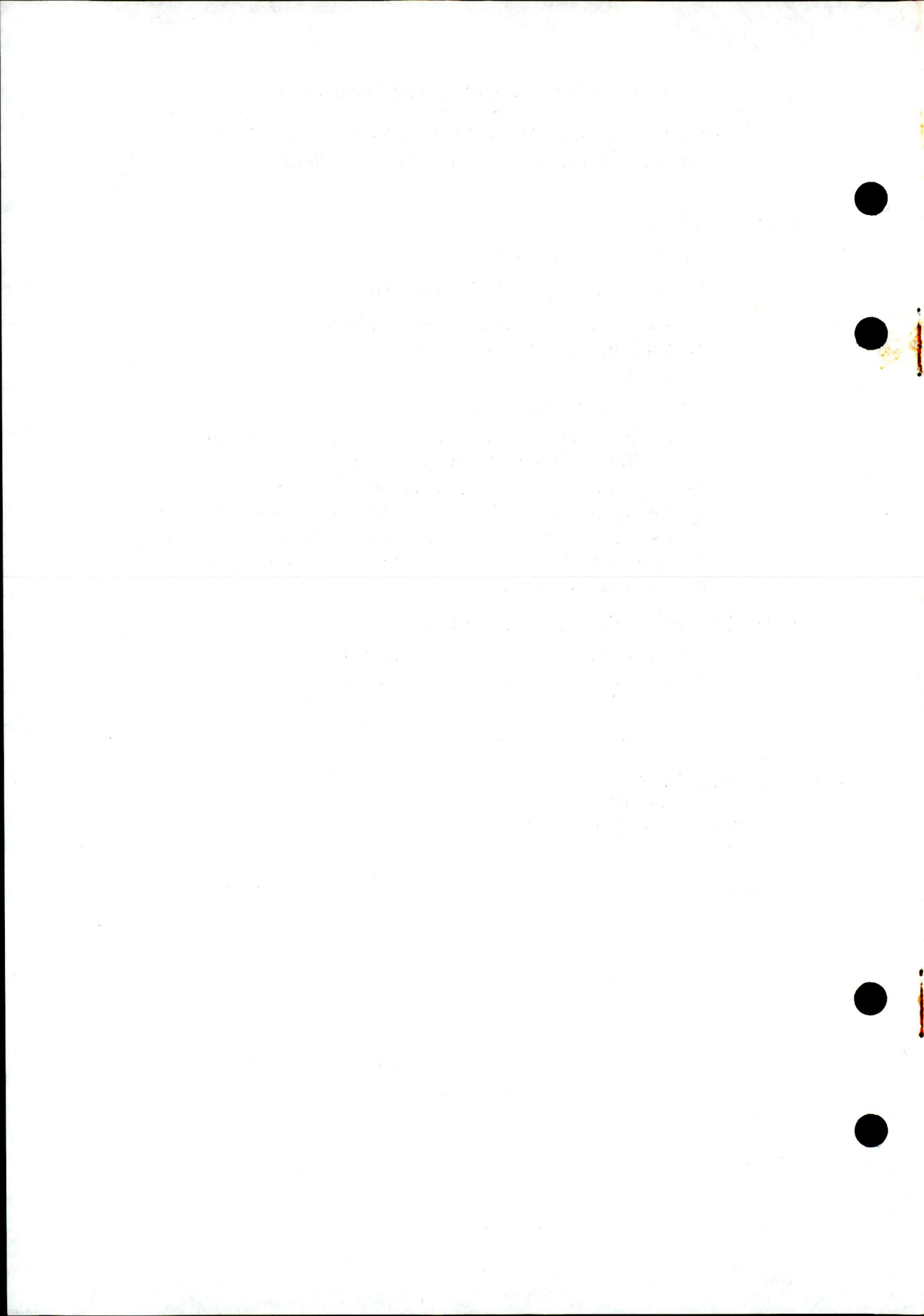
the application shall (if the applicant's legal representative or the manager of the applicant's estate so requests) subsist for the benefit of the applicant's estate and may be dealt with under the Part of this Act under which the application was made.

(12) First Schedule (**Agricultural land**):

Clause 1 (1), definition of "the Director":

After "Agriculture", insert "and Fisheries".

[*Minister's second reading speech made in -
Legislative Assembly on 9 May 1989
Legislative Council on 10 August 1989*]



MINING (ACCESS TO LANDS) AMENDMENT BILL 1989

NEW SOUTH WALES



EXPLANATORY NOTE

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

The object of this Bill is to amend the Mining Act 1973 so as—

- (a) to remove the distinction between agricultural and other lands in relation to rights of access that may be exercised by the holders of exploration licences and prospecting licences under that Act; and
- (b) to provide for “access arrangements”, between the owners and occupiers of those lands and the holders of those licences, that will define the rights of access that may be exercised by the holders of those licences in relation to those lands; and
- (c) to effect statute law revision; and
- (d) to make other minor, consequential and ancillary amendments.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that the proposed Act is to commence on a day or days to be appointed by proclamation, except for Schedule 2, and clause 3 in its application to that Schedule, which are to commence on the date of assent to the proposed Act.

Clause 3 gives effect to Schedules 1 and 2.

SCHEDULE 1—AMENDMENTS

Schedule 1 (1)–(3) amend sections 46, 53A and 80 as a consequence of the proposed insertion of Division 4A into Part 5 to be effected by Schedule 1 (4).

Schedule 1 (4) inserts a new Division 4A into Part 5. The proposed Division contains new sections 84A–84S.

Proposed section 84A defines certain expressions (in particular, “access arrangement”, “arbitrator” and “licensee”) for the purposes of the proposed Division.

Mining (Access to Lands) Amendment 1989

Proposed section 84B establishes an Arbitration Panel consisting of one or more members appointed by the Minister after consultation with the Minister for Agriculture and Rural Affairs.

Proposed section 84C prohibits a licensee from prospecting in or on land to which the proposed Division applies otherwise than in accordance with an access arrangement agreed or determined in accordance with the Division.

Proposed section 84D specifies the matters in respect of which an access arrangement may make provision and provides that such an arrangement may not override the Act, the regulations or the conditions of a licence under the Act.

Proposed section 84E provides for the appointment of an arbitrator by agreement between a licensee and the owners and occupiers of the land to which the licensee wishes to obtain access.

Proposed section 84F provides for the appointment of an arbitrator where such an agreement cannot be reached. In this situation, an arbitrator will be appointed by the Director-General of the Department of Minerals and Energy after consultation with the Director-General of the Department of Agriculture and Fisheries.

Proposed section 84G requires an arbitrator—

- (a) to fix a time and place (which may be varied) for conducting a hearing into the question of the licensee's right of access to the land concerned; and
- (b) to cause notice of his or her appointment, and of the time and place so fixed, to be given to the licensee and to each of the owners and occupiers of the land concerned; and
- (c) to conduct a hearing, at the time and place so fixed, into the question of the licensee's right of access to the land concerned.

Proposed section 84H entitles the licensee, and each of the owners and occupiers of the land concerned, to appear and be heard at the hearing, but precludes them from being represented by barristers or solicitors.

Proposed section 84I requires an arbitrator to attempt to bring the parties to the hearing to a settlement acceptable to all of them and, if this can be done, to make a determination that gives effect to the terms of the settlement.

Proposed section 84J allows an arbitrator to decide on the appropriate procedure to be followed at a hearing, and requires the arbitrator, when conducting a hearing, to act according to equity, good conscience and the substantial merits of the case without regard for technicalities or legal forms. An arbitrator will be able to conduct a hearing even though one or more of the parties may not be present.

Proposed section 84K requires an arbitrator to make an interim determination as to whether or not a licensee should have a right of access to the land concerned and to prepare (where applicable) a draft access arrangement in respect of the land.

Proposed section 84L enables a party to a hearing to apply to the arbitrator for reconsideration of the question of the licensee's right of access to the land concerned or for variation of any draft access arrangement prepared by the arbitrator in relation to that land. The proposed section requires the arbitrator to continue the hearing into the matter to which the application relates.

Proposed section 84M provides for the final determination of the question of a licensee's right of access to the land concerned. Where no application has been made under proposed section 84L, the interim determination is to become the final determination.

Mining (Access to Lands) Amendment 1989

Proposed section 84N requires each party to a hearing to bear his or her own costs in relation to the hearing, and further requires the licensee to bear the arbitrator's costs in relation to the hearing.

Proposed section 84O entitles the parties to a hearing to terminate the hearing if the consent of all parties has been obtained. The licensee will still be required to bear the arbitrator's costs in relation to the hearing.

Proposed section 84P exempts an arbitrator from personal liability in relation to any determination or publication made, or any other act, matter or thing done, for the purposes of a hearing.

Proposed section 84Q enables a party to a hearing to apply to the warden's court for a review of a determination made as a consequence of the hearing. The effect of the determination is suspended, subject to any order of the warden's court to the contrary. The decision of the warden's court on the review of a determination is to be final and is to have effect as if it were made by an arbitrator.

Proposed section 84R specifies when an access arrangement is to take effect and provides that an access arrangement is to have effect as though it were a deed duly executed by each of the parties to it.

Proposed section 84S provides that an access arrangement determined by an arbitrator may, with the consent of all of the parties to it, be varied by the arbitrator.

Schedule 1 (5) repeals section 86 (2) as a consequence of the amendment to be effected by Schedule 1 (4).

Schedule 1 (6) repeals section 87 as a consequence of the amendment to be effected by Schedule 1 (4).

Schedule 1 (7) inserts a new section 121A. The proposed section provides for the compensation payable in relation to the granting of, and the exercise of the rights under, an exploration licence or a prospecting licence. The proposed section further provides that the provisions of an access arrangement under proposed Division 4A of Part 5 are, to the extent to which they relate to compensation, to have effect as an agreement for the purposes of the proposed section.

Schedule 1 (8) amends section 122 so as to limit the application of that section to mining leases and mining purposes leases as a consequence of the amendments to be effected by Schedule 1 (4) and (7).

Schedule 1 (9) amends section 124 so as to limit the application of that section to mining leases and mining purposes leases as a consequence of the amendments to be effected by Schedule 1 (4) and (7).

Schedule 1 (10) amends section 125 so as to ensure that the provisions of an access arrangement under proposed Division 4A of Part 5 are, to the extent to which they relate to compensation, to have effect as an agreement for the purposes of that section.

Schedule 1 (11) amends section 126 so as to ensure that a mining warden—

- (a) may assess compensation in respect of the exercise of rights under an exploration licence or prospecting licence in those cases where an access arrangement fails to provide for compensation; and
- (b) may assess additional compensation in respect of the exercise of rights under an exploration licence or prospecting licence in those cases where an access arrangement determined by an arbitrator fails to provide for adequate compensation.

Mining (Access to Lands) Amendment 1989

Schedule 1 (12) amends section 133 so as to extend the jurisdiction of the warden's court to include proceedings for the review of determinations made under proposed Division 4A of Part 5 and proceedings on any question or dispute as to the provisions of any access arrangement determined by an arbitrator under the proposed Division.

Schedule 1 (13) amends section 146 so as to ensure that the section enables a mining warden to determine questions relating to an arbitrator's costs in any proceedings arising from a determination made by an arbitrator under proposed Division 4A of Part 5.

Schedule 1 (14) amends section 195 so as to enable the Governor-in-Council to make regulations with respect to arbitrators' costs under proposed Division 4A of Part 5.

Schedule 1 (15) amends the First Schedule as a consequence of the proposed insertion of Division 4A into Part 5 to be effected by Schedule 1 (4).

Schedule 1 (16) amends the Second Schedule so as to enact transitional and savings provisions as a consequence of the other amendments effected by Schedule 1.

**SCHEDULE 2—FURTHER AMENDMENTS BY WAY OF
STATUTE LAW REVISION**

Schedule 2 (1) repeals section 2. This section has become redundant in the light of the current practice of prefacing reprints of Acts with Tables of Provisions.

Schedule 2 (2) (a), (d) and (e) (3), and (7) amend various provisions as a consequence of the Department of Mineral Resources having become the Department of Minerals and Energy and the Secretary of the Department of Mineral Resources having become the Director-General of the Department of Minerals and Energy.

Schedule 2 (2) (b) amends the definition of "irrigation area" in section 6 (1) so as to bring up-to-date a reference to the Wentworth Irrigation Act 1890.

Schedule 2 (2) (c) amends the definition of "owner" in section 6 (1) as a consequence of the enactment of the Protected Estates Act 1983.

Schedule 2 (4) amends sections 25A, 25B, 35, 36, 46, 80 and 87 as a consequence of the Department of Agriculture having become the Department of Agriculture and Fisheries.

Schedule 2 (5) amends section 53 (6) as a consequence of the reconstitution of the Soil Conservation Service that resulted in the creation of a position of Commissioner of that Service to manage its affairs.

Schedule 2 (6) substitutes section 94A (5) (c) as a consequence of the Metropolitan Water Sewerage and Drainage Board having become the Water Board.

Schedule 2 (8) amends sections 111E, 111F and 113 as a consequence of the devolution of the environmental functions of the former office of Director of Environment and Planning to the office of Director of Planning.

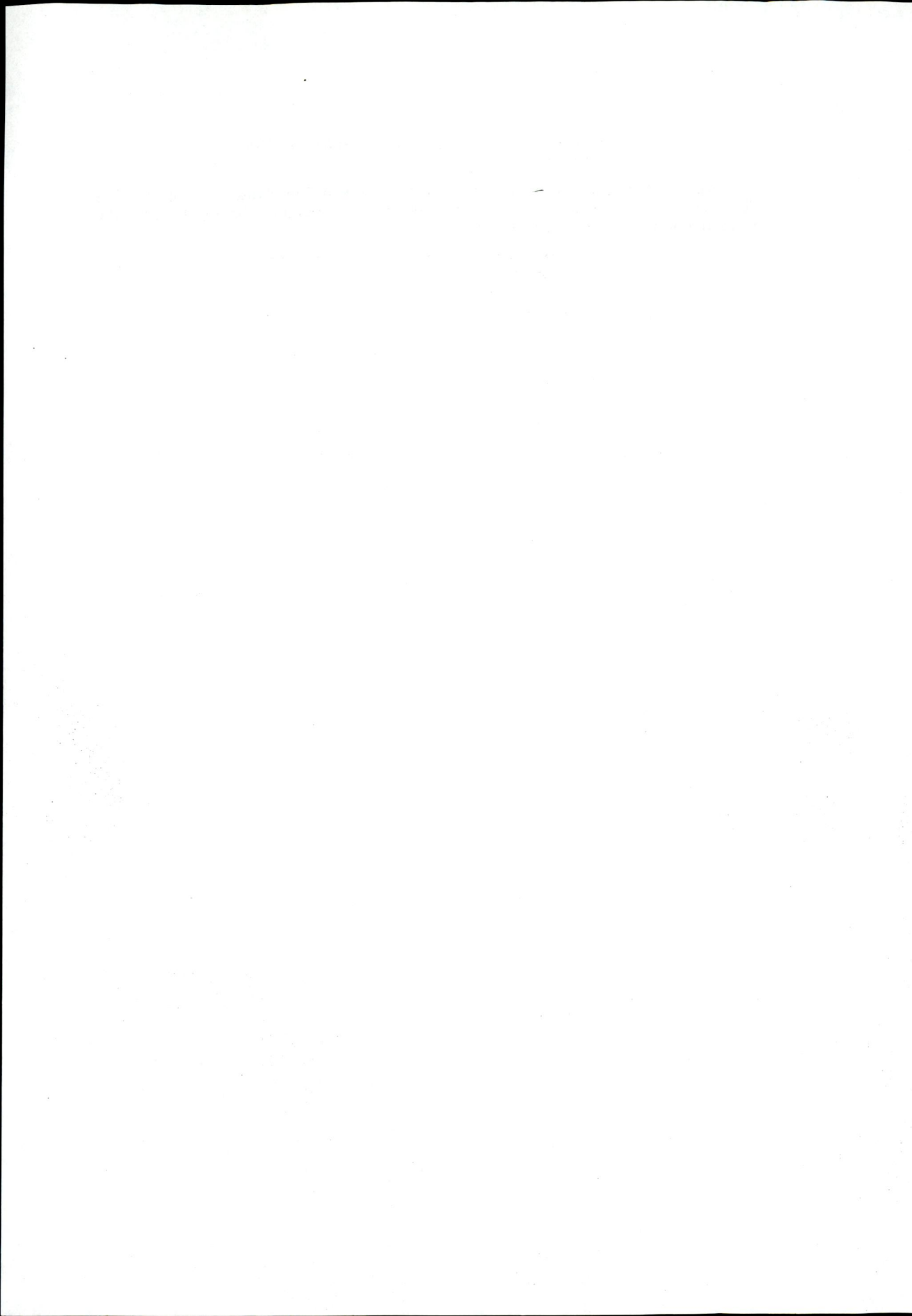
Schedule 2 (9) amends section 117A as a consequence of the devolution of the environmental functions of the former office of Minister for Planning and Environment to the office of Minister for the Environment.

Schedule 2 (10) amends section 169 as a consequence of the enactment of the Local Courts Act 1982 which abolished courts of petty sessions and replaced them with Local Courts.

Schedule 2 (11) substitutes section 176 as a consequence of the enactment of the Protected Estates Act 1983.

Mining (Access to Lands) Amendment 1989

Schedule 2 (12) amends the definition of "the Director" in clause 1 (1) of the First Schedule as a consequence of the Department of Agriculture having become the Department of Agriculture and Fisheries.



MINING (ACCESS TO LANDS) AMENDMENT BILL 1989

NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of Mining Act 1973 No. 42

SCHEDULE 1—AMENDMENTS

SCHEDULE 2—FURTHER AMENDMENTS BY WAY OF STATUTE LAW
REVISION



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MINING (ACCESS TO LANDS) AMENDMENT BILL 1989

NEW SOUTH WALES



No. , 1989

A BILL FOR

An Act to amend the Mining Act 1973 so as to facilitate the exercise of rights under exploration licences and prospecting licences in relation to agricultural and other lands; and for other purposes.

Mining (Access to Lands) Amendment 1989

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Mining (Access to Lands) Amendment Act 1989.

5 Commencement

2. (1) This Act commences on a day or days to be appointed by proclamation, except as provided by this section.

(2) Schedule 2, and section 3 in its application to that Schedule, commence on the date of assent to this Act.

10 Amendment of Mining Act 1973 No. 42

3. The Mining Act 1973 is amended as set out in Schedules 1 and 2.

SCHEDULE 1—AMENDMENTS

(Sec. 3)

15 (1) Section 46 (**Decision as to whether land marked out is agricultural land**)—

(a) Omit section 46 (1), insert instead:

(1) If an authorised officer considers that any area of land marked out, pursuant to section 44, for the purposes of an application for a mining lease or a mining purposes lease—

20 (a) may include private lands that are agricultural land; or

(b) may include Crown lands held under a pastoral lease that are agricultural land,

the officer shall notify the Director-General.

(b) Section 46 (2)—

25 Omit “the prospecting licence,”.

(c) Section 46 (2)—

Omit “the licence or”.

(d) Section 46 (2A)—

Omit “prospecting licence,”.

30 (2) Section 53A (**Application for mining lease dealt with as application for prospecting licence**)—

Section 53A (3) (b)—

Omit “section 46”, insert instead “Division 4A”.

*Mining (Access to Lands) Amendment 1989*SCHEDULE 1—AMENDMENTS—*continued*(3) Section 80 (**Mining lease etc. not to be granted over agricultural land**)—

(a) Section 80 (1)—

Omit “the prospecting licence.”.

(b) Section 80 (3)—

5 Omit “prospecting licence, a”.

(4) Part 5, Division 4A—

After Division 4 of Part 5, insert:

Division 4A—Access arrangements**Definitions**

10 84A. In this Division—

“access arrangement” means an arrangement referred to in section 84C;

“arbitrator” means an arbitrator appointed under section 84E or 84F;

15 “land to which this Division applies” means private lands or Crown lands held under a pastoral lease;

“licensee” means the registered holder of an exploration licence or prospecting licence;

20 “owner”, in relation to Crown lands held under a pastoral lease, includes a holder of the pastoral lease;

“Panel” means the Arbitration Panel established by section 84B;

“party” means—

25 (a) in relation to a hearing—a person who is entitled to appear and be heard at the hearing pursuant to section 84H; or

(b) in relation to an access arrangement—the licensee to whom, or an owner or occupier of land to which, the arrangement relates.

Arbitration Panel

30 84B. (1) There shall be an Arbitration Panel.

(2) The Panel shall consist of one or more members appointed by the Minister after consultation with the Minister for Agriculture and Rural Affairs.

35 (3) The conditions on which a member of the Panel holds office (including conditions relating to remuneration and travelling and subsistence allowances) shall be as determined by the Minister.

Mining (Access to Lands) Amendment 1989

SCHEDULE 1—AMENDMENTS—*continued*

Prospecting to be carried out in accordance with access arrangement

84C. A licensee shall not prospect in or on land to which this Division applies otherwise than in accordance with an arrangement—

- 5 (a) agreed (whether orally or in writing and whether before or after the licensee was granted the licence) between the licensee and each owner and occupier of the land; or
- (b) determined by an arbitrator in accordance with this Division.

Matters for which access arrangement to provide

10 84D. (1) An access arrangement in relation to land to which this Division applies may make provision for or with respect to the following matters:

- 15 (a) the periods during which the licensee is to be permitted access to the land;
- (b) the parts of the land in or on which the licensee may prospect and the means by which the licensee may gain access to those parts of the land;
- 20 (c) the kinds of prospecting operations that may be carried out in or on the land;
- (d) the conditions to be observed by the licensee in prospecting in or on the land;
- (e) the compensation to be paid to any owner or occupier of the land as a consequence of the licensee prospecting in or on the land;
- 25 (f) the manner of resolving any dispute arising in connection with the arrangement;
- (g) the manner of varying the arrangement;
- 30 (h) such other matters as the parties to the arrangement may agree to include in the arrangement.

(2) An access arrangement that is determined by an arbitrator shall specify the compensation, as assessed by the arbitrator, to which each owner or occupier of the land concerned is entitled under section 121A.

35 (3) In the event of an inconsistency between—

- (a) a provision of an access arrangement; and
- (b) a provision of this Act, the regulations or a condition of an exploration licence or prospecting licence,

40 the provision referred to in paragraph (b) shall prevail to the extent of the inconsistency.

SCHEDULE 1—AMENDMENTS—*continued***Appointment of arbitrator by agreement**

5 84E. (1) If, by the end of 30 days after a licensee serves notice in writing on each owner and occupier of land to which this Division applies of the licensee's intention to obtain an access arrangement in respect of the land, the licensee and each owner and occupier of the land have been unable to agree on such an arrangement, the licensee may, by further notice in writing served on each such owner and occupier, request them to agree to the appointment of an arbitrator.

10 (2) The licensee, and each owner and occupier of the land concerned, may agree to the appointment of any person as an arbitrator.

Appointment of arbitrator in default of agreement

15 84F. (1) If, by the end of 30 days after a licensee serves notice in accordance with section 84E, the licensee and each owner and occupier of the land concerned have been unable to agree on the appointment of an arbitrator, then any one of them may apply to the Director-General for the appointment of a member of the Panel as an arbitrator.

20 (2) An application shall be accompanied by the prescribed fee.

(3) The Director-General shall, after consultation with the Director-General of the Department of Agriculture and Fisheries, appoint a member of the Panel as an arbitrator.

Arbitration

25 84G. (1) As soon as practicable after having been appointed, an arbitrator shall—

- 30 (a) fix a time and place for conducting a hearing into the question of access to the land concerned; and
- (b) cause notice of his or her appointment, and of the time and place fixed for conducting the hearing, to be given to the licensee and to each of the owners and occupiers of that land.

35 (2) The arbitrator may, by a further notice served on the licensee and on each of the owners and occupiers of the land concerned (whether on the application of the licensee or of any owner or occupier of that land or otherwise), vary the time or place fixed for conducting the hearing.

40 (3) The arbitrator shall, at the time and place fixed under this section, conduct a hearing into the question of access to the land concerned.

Mining (Access to Lands) Amendment 1989

SCHEDULE 1—AMENDMENTS—*continued*

Right of appearance

5 84H. (1) At any hearing into the question of access by a licensee to land to which this Division applies, the licensee, and each of the owners and occupiers of the land, are entitled to appear and be heard.

(2) A party to a hearing may not be represented at the hearing by a barrister or a solicitor.

Conciliation

10 84I. (1) An arbitrator shall not make a determination until the arbitrator has brought, or has used his or her best endeavours to bring, the parties to a settlement acceptable to all of them.

(2) If the parties come to such a settlement, the arbitrator shall make a determination that gives effect to the terms of the settlement.

15 **Procedure**

84J. (1) Except as otherwise provided by this Act or the regulations, the procedure at a hearing shall be as determined by the arbitrator.

20 (2) An arbitrator shall act according to equity, good conscience and the substantial merits of the case without regard for technicalities or legal forms.

(3) An arbitrator may conduct a hearing even though one or more of the parties to the hearing fails to attend the hearing.

Interim determination by arbitrator

25 84K. (1) As soon as practicable after concluding a hearing, an arbitrator shall—

(a) make an interim determination as to whether or not the licensee should have a right of access to the land concerned; and

30 (b) if the arbitrator determines that the licensee should have such a right of access, prepare a draft access arrangement in respect of that land.

(2) As soon as practicable after making an interim determination, the arbitrator shall—

35 (a) reduce the determination to writing; and

(b) cause a copy of the determination, together with a copy of any draft access arrangement, to be served on each of the parties to the hearing.

Mining (Access to Lands) Amendment 1989

SCHEDULE 1—AMENDMENTS—*continued*

Further arbitration

84L. (1) A party to a hearing may, within 14 days after being served with a copy of the arbitrator's interim determination, apply to the arbitrator—

- 5 (a) for reconsideration of the question of access to the land concerned; or
 (b) for variation of any draft access arrangement prepared by the arbitrator in respect of that land.

10 (2) As soon as practicable after receiving such an application, the arbitrator shall—

- (a) fix a time and place for continuing the hearing into the question of access to the land concerned; and
 15 (b) cause notice of the time and place fixed for continuing the hearing to be given to the licensee and to each of the owners and occupiers of that land.

(3) The arbitrator may, by a further notice served on the licensee and on each of the owners and occupiers of the land concerned (whether on the application of the licensee or of any owner or occupier of that land or otherwise), vary the time or
 20 place fixed for continuing the hearing.

(4) The arbitrator shall, at the time and place fixed under this section, continue the hearing into the question of access to the land concerned.

Final determination by arbitrator

25 84M. (1) If an application is not made to the arbitrator under section 84L (1) within the period of 14 days referred to in that subsection—

- (a) the interim determination shall be taken to be the
 30 arbitrator's final determination; and
 (b) any draft access arrangement shall be taken to be a final access arrangement.

(2) If an application is made to the arbitrator under section 84L (1) within the period of 14 days referred to in that subsection, the
 35 arbitrator shall, as soon as practicable after concluding the continued hearing—

- (a) make a final determination as to whether or not the licensee should have a right of access to the land concerned; and
 40 (b) if the arbitrator determines that the licensee should have such a right of access, determine a final access arrangement in respect of that land.

*Mining (Access to Lands) Amendment 1989*SCHEDULE 1—AMENDMENTS—*continued*

(3) As soon as practicable after making a final determination, the arbitrator shall—

- (a) reduce the determination to writing; and
- (b) cause a copy of the determination, together with a copy of any final access arrangement forming part of the determination, to be served on each of the parties to the hearing.

Costs

84N. (1) Each party to the hearing shall bear his or her own costs in relation to the hearing.

(2) The arbitrator's costs in relation to the hearing shall be borne by the licensee.

(3) Payment of the arbitrator's costs in relation to a hearing shall, for the purposes of any security given by the licensee under section 51 or 53, be taken to be an obligation under the licence.

Withdrawal from arbitration

84O. (1) The parties to a hearing may, at any time before the conclusion of the hearing, terminate the hearing by notice in writing, signed by all of the parties, served on the arbitrator.

(2) This section does not limit the liability of the licensee to bear the arbitrator's costs in relation to the hearing.

Liability

84P. No proceedings lie against an arbitrator for or with respect to—

- (a) any determination made by the arbitrator; or
- (b) any publication made by the arbitrator; or
- (c) any other act, matter or thing done by the arbitrator,

for the purposes of a hearing, as long as the determination, publication, act, matter or thing was made or done in good faith.

Review of determination

84Q. (1) A party to a hearing who is aggrieved by an arbitrator's final determination (other than a determination referred to in section 84I (2)) may apply to the warden's court for a review of the determination.

(2) An application—

- (a) shall be accompanied by a copy of the determination to which it relates, together with a copy of any access arrangement forming part of the determination; and
- (b) shall be filed in the warden's court—

*Mining (Access to Lands) Amendment 1989*SCHEDULE 1—AMENDMENTS—*continued*

- 5 (i) in the case of an interim determination that has become a final determination by virtue of section 84M (1)—within 28 days after a copy of the interim determination was served on the applicant under section 84K (2); or
- (ii) in the case of a final determination made under section 84M (2)—within 14 days after a copy of the final determination was served on the applicant under section 84M (3).
- 10 (3) An application for review may not be made—
- (a) during the period of 14 days within which an application may be made to an arbitrator under section 84L (1); or
- 15 (b) if such an application is made, until the arbitrator has made a final determination under section 84M with respect to the application.
- (4) The applicant shall cause a copy of the application to be served on each of the other parties to the determination to which the application relates.
- 20 (5) Subject to any order of the warden's court to the contrary, an application for review of a determination operates to stay the effect of any related access arrangement in relation to a party to the arrangement from the time when a copy of the arrangement has been served on the party until the decision of the warden's court on the review.
- 25 (6) In reviewing a determination under this section, a warden has the functions of an arbitrator under this Division in addition to the other functions that the warden has under this Act.
- 30 (7) The decision of the warden's court on a review of a determination is final and shall be given effect to as if it were the determination of an arbitrator.

Effect of access arrangement etc.

- 84R. An access arrangement determined by an arbitrator—
- (a) takes effect—
- 35 (i) in the case of a draft access arrangement that is, pursuant to section 84M (1), to be taken to be a final access arrangement, at the end of the period of 14 days after a copy of the arrangement has been served on each of the parties under section 84K (2); or

*Mining (Access to Lands) Amendment 1989*SCHEDULE 1—AMENDMENTS—*continued*

(ii) in the case of a final access arrangement prepared under section 84M (2), when a copy of the arrangement has been served on each of the parties, or on such later date as may be specified in the arrangement; and

(b) subject to section 84D (3), has effect as if its terms were embodied in a deed that had been duly executed by each of the parties.

Variation of access arrangements

84s. An access arrangement determined by an arbitrator may, subject to the terms of the arrangement, be varied by the arbitrator with the consent of all of the parties to the arrangement.

(5) Section 86 (**Rights of registered holder of an exploration licence**)—

Omit section 86 (2).

(6) Section 87 (**Rights under exploration licence not to be exercised in agricultural land**)—

Omit the section.

(7) Section 121A—

After section 121, insert:

Entitlement to compensation in respect of operations under an exploration licence or a prospecting licence

121A. (1) Where an exploration licence or prospecting licence is granted—

(a) the occupier of any Crown lands, and the owner and occupier of any private lands, subject to the licence; and

(b) the occupier of any Crown lands, and the owner and occupier of any private lands, not being lands subject to the licence,

are entitled to compensation for any loss referred to in section 124 (1) (b) suffered, or likely to be suffered, by them as a result of the grant of the licence or the exercise of the rights conferred by this Act, or by the licence or by an access arrangement under Division 4A of Part 5, on the registered holder of the licence.

(2) The registered holder of a licence may treat and agree with an owner or an occupier as to the amount of compensation payable, but an agreement reached is not valid unless it is in writing, signed by the parties thereto or their agents, and lodged with the Director-General.

*Mining (Access to Lands) Amendment 1989*SCHEDULE 1—AMENDMENTS—*continued*

- (3) Notwithstanding subsection (2), such of the provisions of an access arrangement in force under Division 4A of Part 5 as relate to compensation have effect as an agreement for the purposes of this section.
- 5 (4) Payment of compensation under this section (other than compensation payable under an access arrangement agreed on as referred to in section 84C (a)) shall, for the purposes of any security given by the licensee under section 51 or 53, be taken to be an obligation under the licence.
- 10 (8) Section 122 (**Entitlement to compensation in respect of operations under a mining lease or a mining purposes lease**)—
- (a) Section 122—
Omit “an authority” wherever occurring, insert instead “a mining lease or a mining purposes lease”.
- 15 (b) Section 122—
Omit “the authority” wherever occurring, insert instead “the lease”.
- (c) Section 122 (4)—
Omit “a mining purposes”, insert instead “the”.
- 20 (9) Section 124 (**Assessment of compensation**)—
- (a) Section 124 (3)—
Omit “an authority”, insert instead “a mining lease or a mining purposes lease”.
- (b) Section 124 (5), (6)—
25 Omit “an authority” wherever occurring, insert instead “a mining lease, a mining purposes lease”.
- (10) Section 125 (**Procedure in court on making assessment**)—
After section 125 (2), insert:
- 30 (3) Notwithstanding subsection (2), such of the provisions of an access arrangement in force under Division 4A of Part 5 as relate to compensation have effect as an agreement for the purposes of this section.
- (11) Section 126 (**Additional assessment**)—
At the end of section 126, insert:
- 35 (2) If it is proved to the satisfaction of the warden—
- (a) that an access arrangement under Division 4A of Part 5 does not make provision for or with respect to compensation; and

SCHEDULE 1—AMENDMENTS—*continued*

(b) that loss has been caused to the land to which the arrangement relates, being loss arising from any one or more of the causes referred to in section 124 (1) (b),
 5 the warden shall, subject to section 125 (2), assess that loss and order that the amount so assessed be paid by the registered holder of the licence to which the assessment relates, within the time and to the persons specified in the order.

(3) If it is proved to the satisfaction of the warden—

10 (a) that the whole of the amount assessed by or in accordance with an access arrangement determined by an arbitrator under Division 4A of Part 5 has been paid by the licensee in accordance with the arrangement; and

15 (b) that further loss has been caused to the land to which the assessment relates or to other land, being loss arising from any one or more of the causes referred to in section 124 (1) (b),

20 the warden shall, subject to section 125 (2), assess that loss and order that the amount so assessed be paid by the registered holder of the licence to which the assessment relates, within the time and to the persons specified in the order.

(12) Section 133 (**Jurisdiction of warden's court**)—

(a) Section 133 (o)—

Omit "and" where lastly occurring.

25 (b) Section 133 (q), (r)—

After section 133 (p), insert:

(q) the review of a determination under Division 4A of Part 5;

30 (r) any question or dispute as to the provisions of an access arrangement determined by an arbitrator under Division 4A of Part 5 or as to any matter arising as a consequence of such an arrangement.

(13) Section 146 (**Costs may be allowed**)—

At the end of section 146, insert:

35 (2) The reference in subsection (1) to costs includes a reference to an arbitrator's costs in relation to a hearing under Division 4A of Part 5.

(14) Section 195 (**Regulations**)—

After section 195 (2) (s), insert:

(s1) arbitrators' costs under Division 4A of Part 5;

*Mining (Access to Lands) Amendment 1989***SCHEDULE 1—AMENDMENTS—*continued*****(15) First Schedule (Agricultural land)—****(a) Clause 2 (1) (b)—**

Omit “the prospecting licence,”.

(b) Omit clause 2 (1) (c).**5 (c) Omit clause 3 (a).****(16) Second Schedule (Transitional provisions and savings)—****(a) Part 1—**

At the beginning of the Schedule, insert:

PART 1—GENERAL**10 Transitional and savings regulations**

1A. (1) The regulations may contain provisions of a transitional or savings nature consequent on the enactment of the following Acts:

Mining (Access to Lands) Amendment Act 1989.

15 (2) Any such provision may, if the regulations so provide, take effect on the date of assent to the Act concerned or a later date.

(3) To the extent to which any such provision takes effect on a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as—

20 (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication; or

(b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

25 (b) Part 2, heading—

Before clause 1, insert:

**PART 2—TRANSITIONAL PROVISIONS AND SAVINGS
CONSEQUENT ON THE ENACTMENT OF THE MINING ACT 1973****(c) Part 3—**

30 At the end of the Schedule, insert:

**PART 3—TRANSITIONAL PROVISIONS AND SAVINGS
CONSEQUENT ON THE ENACTMENT OF THE MINING (ACCESS
TO LANDS) AMENDMENT ACT 1989****Definitions**

35 23. In this Part—

“existing exploration licence” means an exploration licence that was in force immediately before the commencement of this Part, but does not include any renewal of such a licence effected after that commencement;

40 “existing prospecting licence” means a prospecting licence that was in force immediately before the commencement of this Part, but does not include any renewal of such a licence effected after that commencement;

*Mining (Access to Lands) Amendment 1989*SCHEDULE 1—AMENDMENTS—*continued*

“expiry date”, in relation to a licence, means the date on which the licence would cease to have effect—

(a) if no application for a renewal of the licence were to be made; or

(b) in the case of an exploration licence—if no application for a prospecting licence were to be made under section 50 (2) in respect of any of the land to which the licence relates;

“new exploration licence” means an exploration licence that is neither an existing exploration licence nor a renewed exploration licence;

“new prospecting licence” means a prospecting licence that is neither an existing prospecting licence nor a renewed prospecting licence;

“renewed exploration licence” means an exploration licence that has been renewed and that was an existing exploration licence before it was renewed;

“renewed prospecting licence” means a prospecting licence that has been renewed and that was an existing prospecting licence before it was renewed;

“the amending Act” means the Mining (Access to Lands) Amendment Act 1989;

“the new Act” means this Act, as amended by the amending Act;

“the old Act” means this Act, as in force immediately before the commencement of this Part.

Pending applications for exploration licences

24. An application for an exploration licence lodged before the commencement of this Part shall be dealt with in accordance with the new Act.

Exploration licences

25. (1) The old Act continues to apply to and in respect of an existing exploration licence until the expiry date of the licence.

(2) The new Act applies to and in respect of an existing exploration licence during any period for which the licence is in force after the expiry date of the licence.

(3) The new Act applies to and in respect of a renewed exploration licence in the same way as it applies to a new exploration licence.

(4) Notwithstanding subclauses (1), (2) and (3)—

(a) a decision under section 87 (whether made before or after the commencement of this Part) that land to which an existing exploration licence relates is or is not agricultural land; and

(b) a consent under section 87 (whether given before or after the commencement of this Part) in respect of land to which an existing exploration licence relates,

have effect until the expiry date of the licence or, if the licence is renewed, until the first expiry date of the renewed licence that occurs after the expiration of 2 years after the commencement of this Part.

*Mining (Access to Lands) Amendment 1989*SCHEDULE 1—AMENDMENTS—*continued*

(5) The registered holder of an existing exploration licence or a renewed exploration licence may not, within the period of 6 months after the commencement of this Part, exercise the rights conferred by the licence in respect of the land to which the licence relates unless—

- 5
- (a) the land has been determined not to be agricultural land pursuant to a decision under section 87; or
 - (b) the owner or occupier of the land consents to those rights being exercised in respect of the land.

Pending applications for prospecting licences

10 26. (1) The new Act applies to and in respect of an application for a prospecting licence in respect of which no notice under section 44 (1) (b) had been sent before the commencement of this Part.

15 (2) The old Act continues to apply to and in respect of any other application for a prospecting licence that had not been finally dealt with before the commencement of this Part.

Existing prospecting licences

27. (1) The old Act continues to apply to and in respect of an existing prospecting licence.

20 (2) The registered holder of an existing prospecting licence may, with the consent in writing of each of the owners and occupiers of the land to which the application for the existing licence related, apply for a new prospecting licence over the whole of the land, and may make such an application at any time before the expiry date of the licence.

25 (3) No other person may make an application for a prospecting licence in respect of that land, or any part of that land, while the existing prospecting licence is in force in respect of that land or part.

Agricultural land

30 28. (1) Land that is excluded from the operation of an existing prospecting licence on the ground that the land is agricultural land for the purposes of the licence shall be taken to be agricultural land for the purposes also of any exploration licence to or in respect of which the old Act applies.

35 (2) Land that is agricultural land for the purposes of an existing exploration licence to or in respect of which the old Act applies shall be taken to be agricultural land for the purposes also of any prospecting licence granted in respect of that land before the expiry date of the existing exploration licence, and the old Act continues to apply to and in respect of any such prospecting licence until that date.

Application of new Act by agreement

40 29. Notwithstanding any other provision of this Part—

- (a) the registered holder of a licence to which the old Act applies; and
 - (b) the owners and occupiers of land to which such a licence relates,
- may agree to apply the new Act to the licence, and the new Act shall apply to the licence accordingly.

*Mining (Access to Lands) Amendment 1989***SCHEDULE 2—FURTHER AMENDMENTS BY WAY
OF STATUTE LAW REVISION**

(Sec. 3)

- (1) Section 2 (**Division of Act**)—
5 Omit the section.
- (2) Section 6 (**Definitions**)—
 (a) Section 6 (1)—
 Omit the definition of “Department”, insert instead:
 “Department” means the Department of Minerals and Energy;
 10 “Director-General” means the Director-General of the Department;
 (b) Section 6 (1), definition of “irrigation area”—
 After “Wentworth Irrigation Act”, insert “1890”.
 (c) Section 6 (1), definition of “owner”—
 15 From paragraph (b), omit “the committee or manager, appointed under Part
 10 of the Mental Health Act 1958, of the estate or property of a mentally ill
 or incapable owner”, insert instead “the manager, appointed under the
 Protected Estates Act 1983, of the estate of an owner who is a protected person
 within the meaning of that Act”.
 (d) Section 6 (1), definition of “Registrar”—
 20 Omit “Mineral Resources”, insert instead “Minerals and Energy”.
 (e) Section 6 (1)—
 Omit the definition of “Secretary”.
- (3) Sections 9, 9A, 14, 15, 17, 19, 20, 25A, 25B, 39, 43, 44, 46, 49, 62, 66, 75, 76, 77,
 87, 92, 94B, 95, 99, 107, 111E, 111G, 112, 113, 115, 116, 122, 172, 173, 177B,
 25 First Schedule—
 Omit “Secretary” wherever occurring, insert instead “Director-General”.
- (4) Sections 25A, 25B, 35, 36, 46, 80, 87—
 After “Agriculture” wherever occurring, insert “and Fisheries”.
- (5) Section 53 (**Powers in relation to application for prospecting licence or mining
 lease**)—
 30 Section 53 (6)—
 Before “Soil Conservation”, insert “Commissioner of the”.
- (6) Section 94A (**Tourist activities**)—
 Omit section 94A (5) (c), insert instead:
 35 (c) within a special area within the meaning of the Water Board Act
 1987—without the consent, given by instrument in writing, of the
 Managing Director of the Water Board; or
- (7) Section 105 (**Records**)—
 Omit “Mineral Resources”, insert instead “Minerals and Energy”.
- (8) Sections 111E, 111F, 113—
 40 Omit “Environment and” wherever occurring.
- (9) Section 117A (**Right of entry for environmental study**)—
 Section 117A (12)—
 Omit “Planning and”, insert instead “the”.

Mining (Access to Lands) Amendment 1989

SCHEDULE 2—FURTHER AMENDMENTS BY WAY OF STATUTE LAW
REVISION—*continued*

(10) Section 169 (**Proceedings in respect of offences**)—

Omit “a stipendiary magistrate or any two justices in petty sessions”, insert instead “a Local Court constituted by a Magistrate or 2 justices”.

(11) Section 176—

5 Omit the section, insert instead:

Death etc. of applicant for authority etc.

176. Where an applicant for registration of a claim or an applicant for an authority—

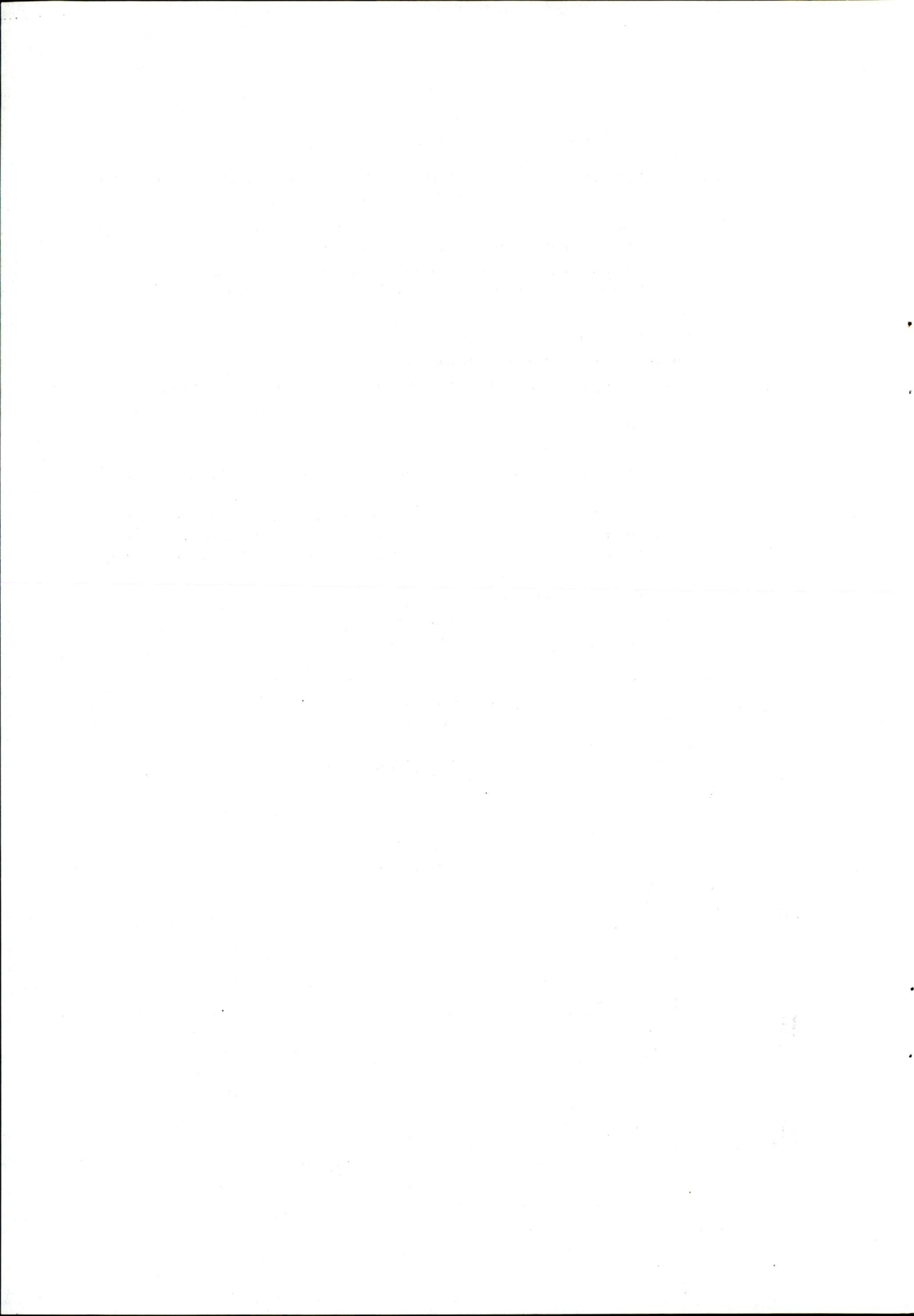
- 10 (a) dies;
- (b) becomes bankrupt; or
- (c) becomes a protected person within the meaning of the Protected Estates Act 1983,

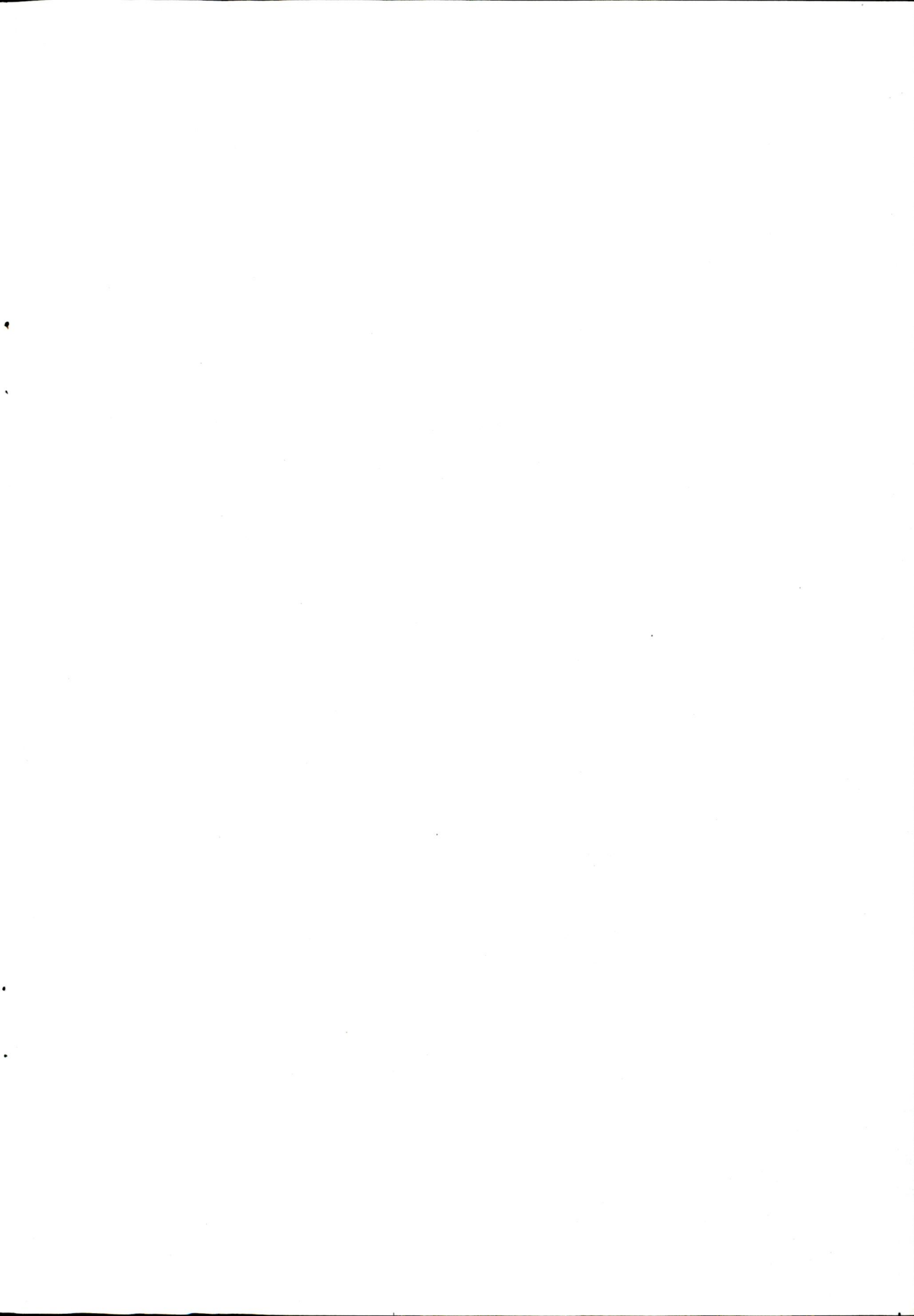
15 the application shall (if the applicant’s legal representative or the manager of the applicant’s estate so requests) subsist for the benefit of the applicant’s estate and may be dealt with under the Part of this Act under which the application was made.

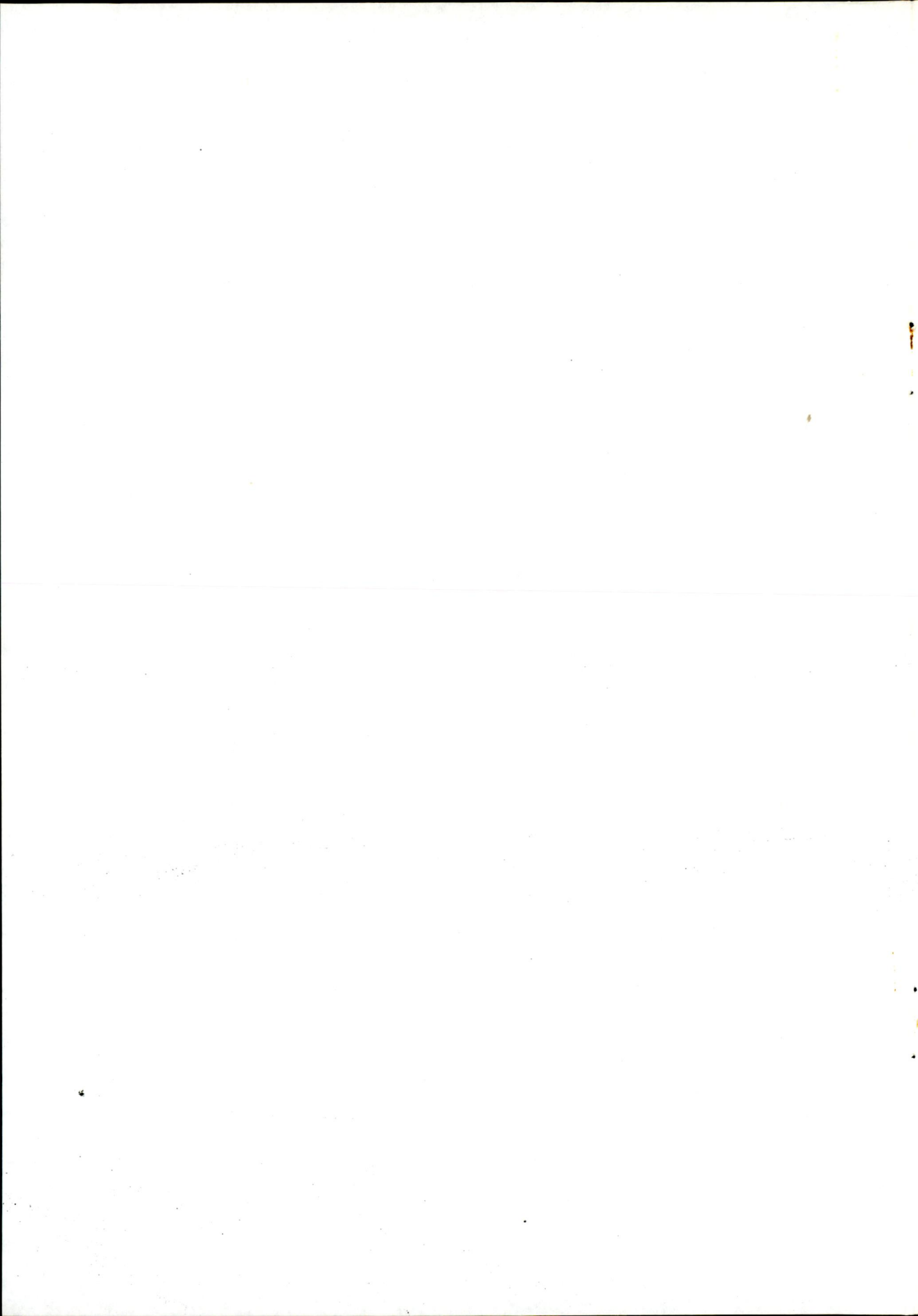
(12) First Schedule (**Agricultural land**)—

Clause 1 (1), definition of “the Director”—

After “Agriculture”, insert “and Fisheries”.







SECOND PRINT

MINING (ACCESS TO LANDS) AMENDMENT BILL 1989

NEW SOUTH WALES

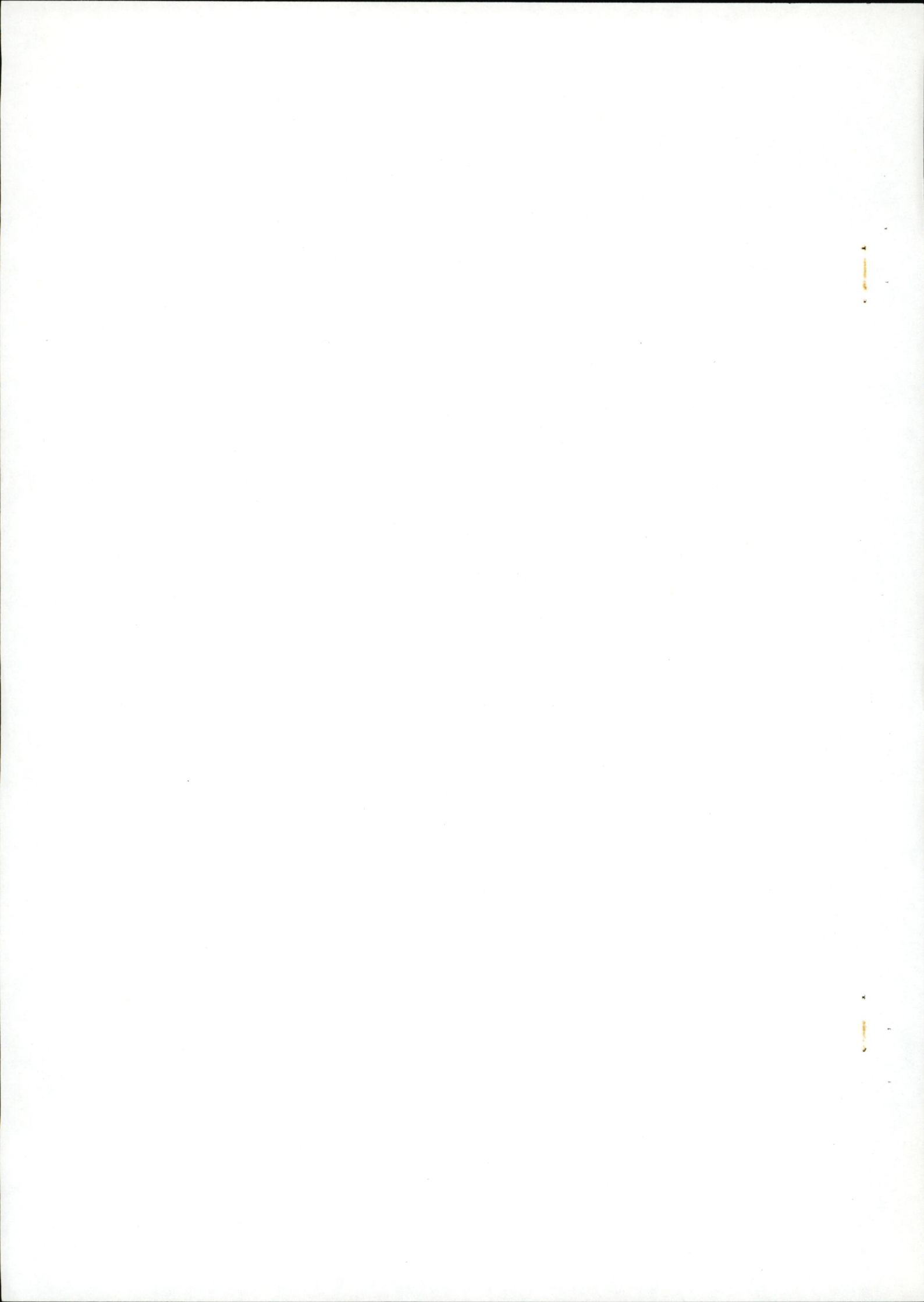


TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of Mining Act 1973 No. 42

SCHEDULE 1 - AMENDMENTS

SCHEDULE 2 - FURTHER AMENDMENTS BY WAY OF STATUTE LAW
REVISION



This PUBLIC BILL originated in the LEGISLATIVE ASSEMBLY and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.

*Legislative Assembly Chamber,
Sydney, , 1989*

Clerk of the Legislative Assembly.

NEW SOUTH WALES



Act No. , 1989

An Act to amend the Mining Act 1973 so as to facilitate the exercise of rights under exploration licences and prospecting licences in relation to agricultural and other lands; and for other purposes.

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Mining (Access to Lands) Amendment Act 1989.

Commencement

2. (1) This Act commences on a day or days to be appointed by proclamation, except as provided by this section.

(2) Schedule 2, and section 3 in its application to that Schedule, commence on the date of assent to this Act.

Amendment of Mining Act 1973 No. 42

3. The Mining Act 1973 is amended as set out in Schedules 1 and 2.

SCHEDULE 1 - AMENDMENTS

(Sec. 3)

(1) Section 46 (**Decision as to whether land marked out is agricultural land**):

(a) Omit section 46 (1), insert instead:

(1) If an authorised officer considers that any area of land marked out, pursuant to section 44, for the purposes of an application for a mining lease or a mining purposes lease:

(a) may include private lands that are agricultural land;
or

(b) may include Crown lands held under a pastoral lease that are agricultural land,

the officer shall notify the Director-General.

(b) Section 46 (2):

Omit "the prospecting licence,".

SCHEDULE 1 - AMENDMENTS - *continued*

- (c) Section 46 (2):
Omit "the licence or".
- (d) Section 46 (2A):
Omit "prospecting licence,".
- (2) Section 53A (**Application for mining lease dealt with as application for prospecting licence**):
Section 53A (3) (b):
Omit "section 46", insert instead "Division 4A".
- (3) Section 80 (**Mining lease etc. not to be granted over agricultural land**):
 - (a) Section 80 (1):
Omit "the prospecting licence,".
 - (b) Section 80 (3):
Omit "prospecting licence, a".
- (4) Part 5, Division 4A:
After Division 4 of Part 5, insert:

Division 4A - Access arrangements

Definitions

84A. In this Division:

"access arrangement" means an arrangement referred to in section 84C;

"arbitrator" means an arbitrator appointed under section 84E or 84F;

"land to which this Division applies" means private lands or Crown lands held under a pastoral lease;

"licensee" means the registered holder of an exploration licence or prospecting licence;

"owner", in relation to Crown lands held under a pastoral lease, includes a holder of the pastoral lease;

SCHEDULE 1 - AMENDMENTS - *continued*

"Panel" means the Arbitration Panel established by section 84B;

"party" means:

- (a) in relation to a hearing - a person who is entitled to appear and be heard at the hearing pursuant to section 84H; or
- (b) in relation to an access arrangement - the licensee to whom, or an owner or occupier of land to which, the arrangement relates.

Arbitration Panel

84B. (1) There shall be an Arbitration Panel.

(2) The Panel shall consist of one or more members appointed by the Minister after consultation with the Minister for Agriculture and Rural Affairs.

(3) The conditions on which a member of the Panel holds office (including conditions relating to remuneration and travelling and subsistence allowances) shall be as determined by the Minister.

Prospecting to be carried out in accordance with access arrangement

84C. A licensee shall not prospect in or on land to which this Division applies otherwise than in accordance with an arrangement:

- (a) agreed (whether orally or, if any of the parties to the proposed arrangement so require, in writing and whether before or after the licensee was granted the licence) between the licensee and each owner and occupier of the land; or
- (b) determined by an arbitrator in accordance with this Division.

SCHEDULE 1 - AMENDMENTS - *continued*

Matters for which access arrangement to provide

84D. (1) An access arrangement in relation to land to which this Division applies may make provision for or with respect to the following matters:

- (a) the periods during which the licensee is to be permitted access to the land;
- (b) the parts of the land in or on which the licensee may prospect and the means by which the licensee may gain access to those parts of the land;
- (c) the kinds of prospecting operations that may be carried out in or on the land;
- (d) the conditions to be observed by the licensee in prospecting in or on the land;
- (e) the compensation to be paid to any owner or occupier of the land as a consequence of the licensee prospecting in or on the land;
- (f) the manner of resolving any dispute arising in connection with the arrangement;
- (g) the manner of varying the arrangement;
- (h) such other matters as the parties to the arrangement may agree to include in the arrangement.

(2) An access arrangement that is determined by an arbitrator shall specify the compensation, as assessed by the arbitrator, to which each owner or occupier of the land concerned is entitled under section 121A.

- (3) In the event of an inconsistency between:
 - (a) a provision of an access arrangement; and
 - (b) a provision of this Act, the regulations or a condition of an exploration licence or prospecting licence,

the provision referred to in paragraph (b) shall prevail to the extent of the inconsistency.

SCHEDULE 1 - AMENDMENTS - *continued*

Appointment of arbitrator by agreement

84E. (1) If, by the end of 30 days after a licensee serves notice in writing on each owner and occupier of land to which this Division applies of the licensee's intention to obtain an access arrangement in respect of the land, the licensee and each owner and occupier of the land have been unable to agree on such an arrangement, the licensee may, by further notice in writing served on each such owner and occupier, request them to agree to the appointment of an arbitrator.

(2) The licensee, and each owner and occupier of the land concerned, may agree to the appointment of any person as an arbitrator.

Appointment of arbitrator in default of agreement

84F. (1) If, by the end of 30 days after a licensee serves notice in accordance with section 84E, the licensee and each owner and occupier of the land concerned have been unable to agree on the appointment of an arbitrator, then any one of them may apply to the Director-General for the appointment of a member of the Panel as an arbitrator.

(2) An application shall be accompanied by the prescribed fee.

(3) The Director-General shall, after consultation with the Director-General of the Department of Agriculture and Fisheries, appoint a member of the Panel as an arbitrator.

Arbitration

84G. (1) As soon as practicable after having been appointed, an arbitrator shall:

- (a) fix a time and place for conducting a hearing into the question of access to the land concerned; and
- (b) cause notice of his or her appointment, and of the time and place fixed for conducting the hearing, to

SCHEDULE 1 - AMENDMENTS - *continued*

be given to the licensee and to each of the owners and occupiers of that land.

(2) The arbitrator may, by a further notice served on the licensee and on each of the owners and occupiers of the land concerned (whether on the application of the licensee or of any owner or occupier of that land or otherwise), vary the time or place fixed for conducting the hearing.

(3) The arbitrator shall, at the time and place fixed under this section, conduct a hearing into the question of access to the land concerned.

Right of appearance

84H. (1) At any hearing into the question of access by a licensee to land to which this Division applies, the licensee, and each of the owners and occupiers of the land, are entitled to appear and be heard.

(2) A party to a hearing may not be represented at the hearing by a barrister or a solicitor.

Conciliation

84I. (1) An arbitrator shall not make a determination until the arbitrator has brought, or has used his or her best endeavours to bring, the parties to a settlement acceptable to all of them.

(2) If the parties come to such a settlement, the arbitrator shall make a determination that gives effect to the terms of the settlement.

Procedure

84J. (1) Except as otherwise provided by this Act or the regulations, the procedure at a hearing shall be as determined by the arbitrator.

SCHEDULE 1 - AMENDMENTS - *continued*

(2) An arbitrator shall act according to equity, good conscience and the substantial merits of the case without regard for technicalities or legal forms.

(3) An arbitrator may conduct a hearing even though one or more of the parties to the hearing fails to attend the hearing.

Interim determination by arbitrator

84K. (1) As soon as practicable after concluding a hearing, an arbitrator shall:

- (a) make an interim determination as to whether or not the licensee should have a right of access to the land concerned; and
- (b) if the arbitrator determines that the licensee should have such a right of access, prepare a draft access arrangement in respect of that land.

(2) As soon as practicable after making an interim determination, the arbitrator shall:

- (a) reduce the determination to writing; and
- (b) cause a copy of the determination, together with a copy of any draft access arrangement, to be served on each of the parties to the hearing.

Further arbitration

84L. (1) A party to a hearing may, within 14 days after being served with a copy of the arbitrator's interim determination, apply to the arbitrator:

- (a) for reconsideration of the question of access to the land concerned; or
- (b) for variation of any draft access arrangement prepared by the arbitrator in respect of that land.

(2) As soon as practicable after receiving such an application, the arbitrator shall:

SCHEDULE 1 - AMENDMENTS - *continued*

- (a) fix a time and place for continuing the hearing into the question of access to the land concerned; and
- (b) cause notice of the time and place fixed for continuing the hearing to be given to the licensee and to each of the owners and occupiers of that land.

(3) The arbitrator may, by a further notice served on the licensee and on each of the owners and occupiers of the land concerned (whether on the application of the licensee or of any owner or occupier of that land or otherwise), vary the time or place fixed for continuing the hearing.

(4) The arbitrator shall, at the time and place fixed under this section, continue the hearing into the question of access to the land concerned.

Final determination by arbitrator

84M. (1) If an application is not made to the arbitrator under section 84L (1) within the period of 14 days referred to in that subsection:

- (a) the interim determination shall be taken to be the arbitrator's final determination; and
- (b) any draft access arrangement shall be taken to be a final access arrangement.

(2) If an application is made to the arbitrator under section 84L (1) within the period of 14 days referred to in that subsection, the arbitrator shall, as soon as practicable after concluding the continued hearing:

- (a) make a final determination as to whether or not the licensee should have a right of access to the land concerned; and
- (b) if the arbitrator determines that the licensee should have such a right of access, determine a final access arrangement in respect of that land.

SCHEDULE 1 - AMENDMENTS - *continued*

(3) As soon as practicable after making a final determination, the arbitrator shall:

- (a) reduce the determination to writing; and
- (b) cause a copy of the determination, together with a copy of any final access arrangement forming part of the determination, to be served on each of the parties to the hearing.

Costs

84N. (1) Each party to the hearing shall bear his or her own costs in relation to the hearing.

(2) The arbitrator's costs in relation to the hearing shall be borne by the licensee.

(3) Payment of the arbitrator's costs in relation to a hearing shall, for the purposes of any security given by the licensee under section 51 or 53, be taken to be an obligation under the licence.

Withdrawal from arbitration

84O. (1) The parties to a hearing may, at any time before the conclusion of the hearing, terminate the hearing by notice in writing, signed by all of the parties, served on the arbitrator.

(2) This section does not limit the liability of the licensee to bear the arbitrator's costs in relation to the hearing.

Liability

84P. No proceedings lie against an arbitrator for or with respect to:

- (a) any determination made by the arbitrator; or
- (b) any publication made by the arbitrator; or
- (c) any other act, matter or thing done by the arbitrator,

SCHEDULE 1 - AMENDMENTS - *continued*

for the purposes of a hearing, as long as the determination, publication, act, matter or thing was made or done in good faith.

Review of determination

84Q. (1) A party to a hearing who is aggrieved by an arbitrator's final determination (other than a determination referred to in section 84I (2)) may apply to the warden's court for a review of the determination.

- (2) An application:
 - (a) shall be accompanied by a copy of the determination to which it relates, together with a copy of any access arrangement forming part of the determination; and
 - (b) shall be filed in the warden's court:
 - (i) in the case of an interim determination that has become a final determination by virtue of section 84M (1) - within 28 days after a copy of the interim determination was served on the applicant under section 84K (2); or
 - (ii) in the case of a final determination made under section 84M (2) - within 14 days after a copy of the final determination was served on the applicant under section 84M (3).
- (3) An application for review may not be made:
 - (a) during the period of 14 days within which an application may be made to an arbitrator under section 84L (1); or
 - (b) if such an application is made, until the arbitrator has made a final determination under section 84M with respect to the application.
- (4) The applicant shall cause a copy of the application to be served on each of the other parties to the determination to which the application relates.

SCHEDULE 1 - AMENDMENTS - *continued*

(5) Subject to any order of the warden's court to the contrary, an application for review of a determination operates to stay the effect of any related access arrangement in relation to a party to the arrangement from the time when a copy of the arrangement has been served on the party until the decision of the warden's court on the review.

(6) In reviewing a determination under this section, a warden has the functions of an arbitrator under this Division in addition to the other functions that the warden has under this Act.

(7) The decision of the warden's court on a review of a determination is final and shall be given effect to as if it were the determination of an arbitrator.

Effect of access arrangement etc.

84R. An access arrangement determined by an arbitrator:

(a) takes effect:

- (i) in the case of a draft access arrangement that is, pursuant to section 84M (1), to be taken to be a final access arrangement, at the end of the period of 14 days after a copy of the arrangement has been served on each of the parties under section 84K (2); or
- (ii) in the case of a final access arrangement prepared under section 84M (2), when a copy of the arrangement has been served on each of the parties,

or on such later date as may be specified in the arrangement; and

(b) subject to section 84D (3), has effect as if its terms were embodied in a deed that had been duly executed by each of the parties.

SCHEDULE 1 - AMENDMENTS - *continued*

Variation of access arrangements

84s. An access arrangement determined by an arbitrator may, subject to the terms of the arrangement, be varied by the arbitrator with the consent of all of the parties to the arrangement.

- (5) Section 86 (**Rights of registered holder of an exploration licence**):

Omit section 86 (2).

- (6) Section 87 (**Rights under exploration licence not to be exercised in agricultural land**):

Omit the section.

- (7) Section 121A:

After section 121, insert:

Entitlement to compensation in respect of operations under an exploration licence or a prospecting licence

121A. (1) Where an exploration licence or prospecting licence is granted:

- (a) the occupier of any Crown lands, and the owner and occupier of any private lands, subject to the licence; and
- (b) the occupier of any Crown lands, and the owner and occupier of any private lands, not being lands subject to the licence,

are entitled to compensation for any loss referred to in section 124 (1) (b) suffered, or likely to be suffered, by them as a result of the grant of the licence or the exercise of the rights conferred by this Act, or by the licence or by an access arrangement under Division 4A of Part 5, on the registered holder of the licence.

(2) The registered holder of a licence may treat and agree with an owner or an occupier as to the amount of compensation payable, but an agreement reached is not

SCHEDULE 1 - AMENDMENTS - *continued*

valid unless it is in writing, signed by the parties thereto or their agents, and lodged with the Director-General.

(3) Notwithstanding subsection (2), such of the provisions of an access arrangement in force under Division 4A of Part 5 as relate to compensation have effect as an agreement for the purposes of this section.

(4) Payment of compensation under this section (other than compensation payable under an access arrangement agreed on as referred to in section 84C (a)) shall, for the purposes of any security given by the licensee under section 51 or 53, be taken to be an obligation under the licence.

(8) **Section 122 (Entitlement to compensation in respect of operations under a mining lease or a mining purposes lease):**

(a) Section 122:

Omit "an authority" wherever occurring, insert instead "a mining lease or a mining purposes lease".

(b) Section 122:

Omit "the authority" wherever occurring, insert instead "the lease".

(c) Section 122 (4):

Omit "a mining purposes", insert instead "the".

(9) **Section 124 (Assessment of compensation):**

(a) Section 124 (3):

Omit "an authority", insert instead "a mining lease or a mining purposes lease".

(b) Section 124 (5), (6):

Omit "an authority" wherever occurring, insert instead "a mining lease, a mining purposes lease".

(10) **Section 125 (Procedure in court on making assessment):**

After section 125 (2), insert:

(3) Notwithstanding subsection (2), such of the provisions of an access arrangement in force under

SCHEDULE 1 - AMENDMENTS - *continued*

Division 4A of Part 5 as relate to compensation have effect as an agreement for the purposes of this section.

(11) Section 126 (**Additional assessment**):

At the end of section 126, insert:

- (2) If it is proved to the satisfaction of the warden:
 - (a) that an access arrangement under Division 4A of Part 5 does not make provision for or with respect to compensation; and
 - (b) that loss has been caused to the land to which the arrangement relates, being loss arising from any one or more of the causes referred to in section 124 (1) (b),

the warden shall, subject to section 125 (2), assess that loss and order that the amount so assessed be paid by the registered holder of the licence to which the assessment relates, within the time and to the persons specified in the order.

- (3) If it is proved to the satisfaction of the warden:
 - (a) that the whole of the amount assessed by or in accordance with an access arrangement determined by an arbitrator under Division 4A of Part 5 has been paid by the licensee in accordance with the arrangement; and
 - (b) that further loss has been caused to the land to which the assessment relates or to other land, being loss arising from any one or more of the causes referred to in section 124 (1) (b),

the warden shall, subject to section 125 (2), assess that loss and order that the amount so assessed be paid by the registered holder of the licence to which the assessment relates, within the time and to the persons specified in the order.

SCHEDULE 1 - AMENDMENTS - *continued*

- (12) **Section 133 (Jurisdiction of warden's court):**
- (a) Section 133 (o):
Omit "and" where lastly occurring.
 - (b) Section 133 (q), (r):
After section 133 (p), insert:
 - (q) the review of a determination under Division 4A of Part 5;
 - (r) any question or dispute as to the provisions of an access arrangement determined by an arbitrator under Division 4A of Part 5 or as to any matter arising as a consequence of such an arrangement.
- (13) **Section 146 (Costs may be allowed):**
At the end of section 146, insert:
 - (2) The reference in subsection (1) to costs includes a reference to an arbitrator's costs in relation to a hearing under Division 4A of Part 5.
- (14) **Section 195 (Regulations):**
After section 195 (2) (s), insert:
 - (s1) arbitrators' costs under Division 4A of Part 5;
- (15) **First Schedule (Agricultural land):**
- (a) Clause 2 (1) (b):
Omit "the prospecting licence,".
 - (b) Omit clause 2 (1) (c).
 - (c) Omit clause 3 (a).
- (16) **Second Schedule (Transitional provisions and savings):**
- (a) Part 1:

SCHEDULE 1 - AMENDMENTS - *continued*

At the beginning of the Schedule, insert:

PART 1 - GENERAL

Transitional and savings regulations

1A. (1) The regulations may contain provisions of a transitional or savings nature consequent on the enactment of the following Acts:

Mining (Access to Lands) Amendment Act 1989.

(2) Any such provision may, if the regulations so provide, take effect on the date of assent to the Act concerned or a later date.

(3) To the extent to which any such provision takes effect on a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication; or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.
- (b) Part 2, heading:
Before clause 1, insert:

**PART 2 - TRANSITIONAL PROVISIONS AND
SAVINGS CONSEQUENT ON THE ENACTMENT
OF THE MINING ACT 1973**

- (c) Part 3:
At the end of the Schedule, insert:

SCHEDULE 1 - AMENDMENTS - *continued*

**PART 3 - TRANSITIONAL PROVISIONS
AND SAVINGS CONSEQUENT ON THE
ENACTMENT OF THE MINING (ACCESS
TO LANDS) AMENDMENT ACT 1989**

Definitions

23. In this Part:

"existing exploration licence" means an exploration licence that was in force immediately before the commencement of this Part, but does not include any renewal of such a licence effected after that commencement;

"existing prospecting licence" means a prospecting licence that was in force immediately before the commencement of this Part, but does not include any renewal of such a licence effected after that commencement;

"expiry date", in relation to a licence, means the date on which the licence would cease to have effect:

- (a) if no application for a renewal of the licence were to be made; or
- (b) in the case of an exploration licence - if no application for a prospecting licence were to be made under section 50 (2) in respect of any of the land to which the licence relates;

"new exploration licence" means an exploration licence that is neither an existing exploration licence nor a renewed exploration licence;

"new prospecting licence" means a prospecting licence that is neither an existing prospecting licence nor a renewed prospecting licence;

"renewed exploration licence" means an exploration licence that has been renewed and that was an existing exploration licence before it was renewed;

SCHEDULE 1 - AMENDMENTS - *continued*

"renewed prospecting licence" means a prospecting licence that has been renewed and that was an existing prospecting licence before it was renewed;

"the amending Act" means the Mining (Access to Lands) Amendment Act 1989;

"the new Act" means this Act, as amended by the amending Act;

"the old Act" means this Act, as in force immediately before the commencement of this Part.

Pending applications for exploration licences

24. An application for an exploration licence lodged before the commencement of this Part shall be dealt with in accordance with the new Act.

Exploration licences

25. (1) The old Act continues to apply to and in respect of an existing exploration licence until the expiry date of the licence.

(2) The new Act applies to and in respect of an existing exploration licence during any period for which the licence is in force after the expiry date of the licence.

(3) The new Act applies to and in respect of a renewed exploration licence in the same way as it applies to a new exploration licence.

(4) Notwithstanding subclauses (1), (2) and (3):

(a) a decision under section 87 (whether made before or after the commencement of this Part) that land to which an existing exploration licence relates is or is not agricultural land; and

(b) a consent under section 87 (whether given before or after the commencement of this Part) in respect of land to which an existing exploration licence relates,

have effect until the expiry date of the licence or, if the licence is renewed, until the first expiry date of the renewed

SCHEDULE 1 - AMENDMENTS - *continued*

licence that occurs after the expiration of 2 years after the commencement of this Part.

(5) The registered holder of an existing exploration licence or a renewed exploration licence may not, within the period of 6 months after the commencement of this Part, exercise the rights conferred by the licence in respect of the land to which the licence relates unless:

- (a) the land has been determined not to be agricultural land pursuant to a decision under section 87; or
- (b) the owner or occupier of the land consents to those rights being exercised in respect of the land.

Pending applications for prospecting licences

26. (1) The new Act applies to and in respect of an application for a prospecting licence in respect of which no notice under section 44 (1) (b) had been sent before the commencement of this Part.

(2) The old Act continues to apply to and in respect of any other application for a prospecting licence that had not been finally dealt with before the commencement of this Part.

Existing prospecting licences

27. (1) The old Act continues to apply to and in respect of an existing prospecting licence.

(2) The registered holder of an existing prospecting licence or renewed prospecting licence may, with the consent in writing of each of the owners and occupiers of the land to which the application for the licence related, apply for a new prospecting licence over the whole of the land, and may make such an application at any time before the expiry date of the licence.

(3) No other person may make an application for a prospecting licence in respect of that land, or any part of that land, while the existing prospecting licence or renewed

SCHEDULE 1 - AMENDMENTS - *continued*

prospecting licence is in force in respect of that land or part.

Agricultural land

28. (1) Land that has, pursuant to section 80 of the old Act, been excluded from:

- (a) an existing prospecting licence; or
- (b) a prospecting licence granted pursuant to an application to which the old Act applies,

on the ground that the land is agricultural land is to be excluded also from any new exploration licence while the prospecting licence has effect.

(2) Land that has been excluded from an exploration licence by the operation of subclause (1) becomes subject to the licence when the prospecting licence referred to in that subclause ceases to have effect.

(3) Land that is agricultural land for the purposes of an existing exploration licence to or in respect of which the old Act applies shall be taken to be agricultural land for the purposes also of any prospecting licence granted in respect of that land before the expiry date of the existing exploration licence, and the old Act continues to apply to and in respect of any such prospecting licence until that date.

Application of new Act by agreement

29. Notwithstanding any other provision of this Part:

- (a) the registered holder of a licence to which the old Act applies or the applicant for a prospecting licence the subject of an application to which the old Act applies; and
- (b) the owners and occupiers of land to which such a licence or application relates,

SCHEDULE 1 - AMENDMENTS - *continued*

may agree to apply the new Act to the licence or application, and the new Act shall apply to the licence or application accordingly.

SCHEDULE 2 - FURTHER AMENDMENTS BY WAY OF STATUTE LAW REVISION

(Sec. 3)

- (1) **Section 2 (Division of Act):**
Omit the section.
- (2) **Section 6 (Definitions):**
 - (a) **Section 6 (1):**
Omit the definition of "Department", insert instead:
"Department" means the Department of Minerals and Energy;
"Director-General" means the Director-General of the Department;
 - (b) **Section 6 (1), definition of "irrigation area":**
After "Wentworth Irrigation Act", insert "1890".
 - (c) **Section 6 (1), definition of "owner":**
From paragraph (b), omit "the committee or manager, appointed under Part 10 of the Mental Health Act 1958, of the estate or property of a mentally ill or incapable owner", insert instead "the manager, appointed under the Protected Estates Act 1983, of the estate of an owner who is a protected person within the meaning of that Act".
 - (d) **Section 6 (1), definition of "Registrar":**
Omit "Mineral Resources", insert instead "Minerals and Energy".
 - (e) **Section 6 (1):**
Omit the definition of "Secretary".
- (3) **Sections 9, 9A, 14, 15, 17, 19, 20, 25A, 25B, 39, 43, 44, 46, 49, 62, 66, 75, 76, 77, 87, 92, 94B, 95, 99, 107, 111E, 111G, 112, 113, 115, 116, 122, 172, 173, 177B, First Schedule:**

SCHEDULE 2 - FURTHER AMENDMENTS BY WAY
OF STATUTE LAW REVISION - *continued*

Omit "Secretary" wherever occurring, insert instead "Director-General".

- (4) Sections 25A, 25B, 35, 36, 46, 80, 87:
After "Agriculture" wherever occurring, insert "and Fisheries".
- (5) Section 53 (**Powers in relation to application for prospecting licence or mining lease**):
Section 53 (6):
Before "Soil Conservation", insert "Commissioner of the".
- (6) Section 94A (**Tourist activities**):
Omit section 94A (5) (c), insert instead:
(c) within a special area within the meaning of the Water Board Act 1987 - without the consent, given by instrument in writing, of the Managing Director of the Water Board; or
- (7) Section 105 (**Records**):
Omit "Mineral Resources", insert instead "Minerals and Energy".
- (8) Sections 111E, 111F, 113:
Omit "Environment and" wherever occurring.
- (9) Section 117A (**Right of entry for environmental study**):
Section 117A (12):
Omit "Planning and", insert instead "the".
- (10) Section 169 (**Proceedings in respect of offences**):
Omit "a stipendiary magistrate or any two justices in petty sessions", insert instead "a Local Court constituted by a Magistrate or 2 justices".

SCHEDULE 2 - FURTHER AMENDMENTS BY WAY
OF STATUTE LAW REVISION - *continued*

(11) Section 176:

Omit the section, insert instead:

Death etc. of applicant for authority etc.

176. Where an applicant for registration of a claim or an applicant for an authority:

- (a) dies;
- (b) becomes bankrupt; or
- (c) becomes a protected person within the meaning of the Protected Estates Act 1983,

the application shall (if the applicant's legal representative or the manager of the applicant's estate so requests) subsist for the benefit of the applicant's estate and may be dealt with under the Part of this Act under which the application was made.

(11) First Schedule (**Agricultural land**):

Clause 1 (1), definition of "the Director":

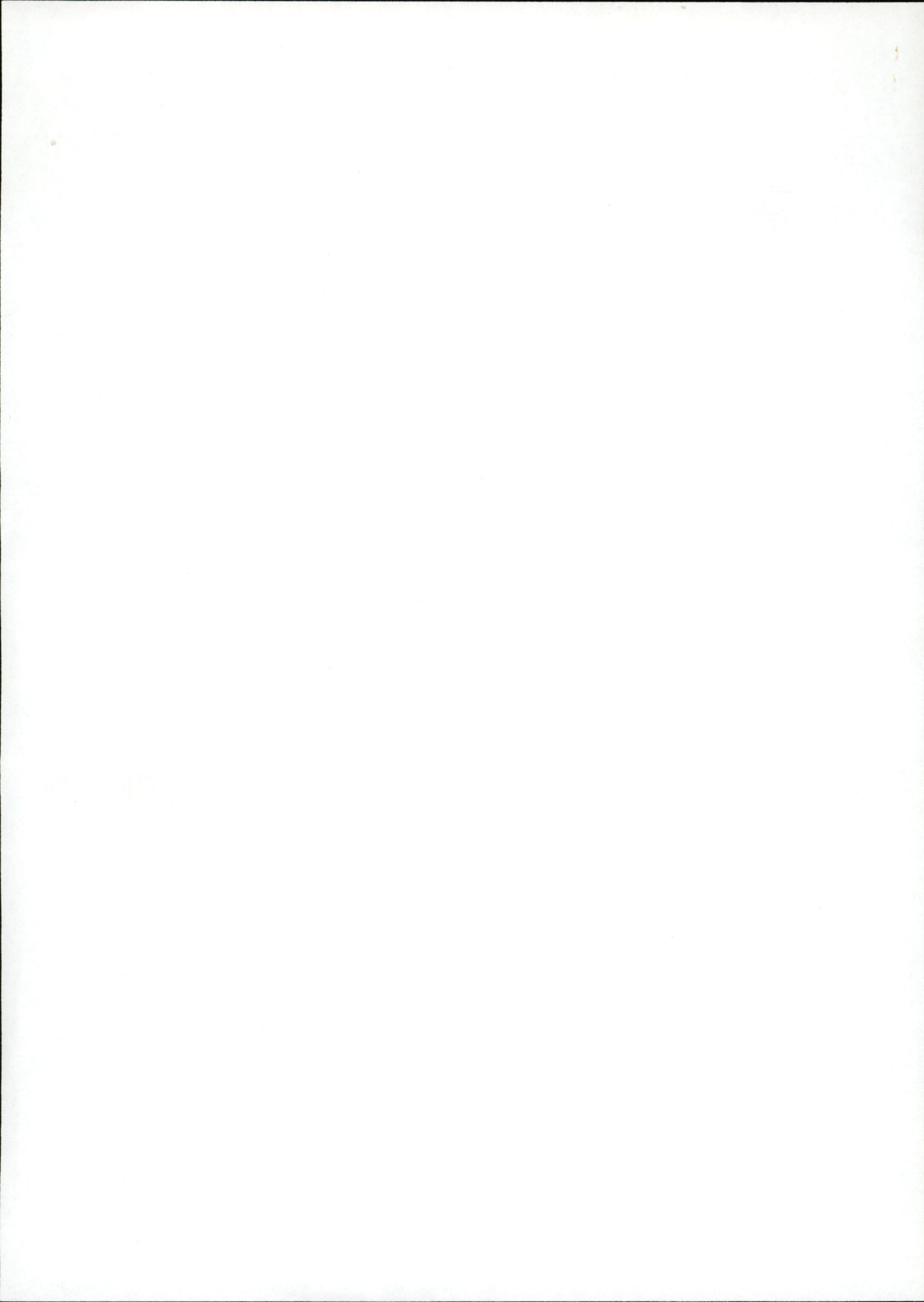
After "Agriculture", insert "and Fisheries".

LEGISLATIVE ASSEMBLY

MINING (ACCESS TO LANDS) AMENDMENT BILL 1989

Amendments to be moved in Committee

1. Page 4, Schedule 1, line 5. After "orally or", insert ", if any of the parties to the proposed arrangement so require,".
2. Page 15, Schedule 1, line 19. After "licence", insert "or renewed prospecting licence".
3. Page 15 Schedule 1, line 21. Omit "existing".
4. Page 15, Schedule 1, line 26. After "licence", insert "or renewed prospecting licence".
5. Page 15, Schedule 1, lines 28-31. Omit all words on those lines, insert instead:
 28. (1) Land that has, pursuant to section 80 of the old Act, been excluded from -
 - (a) an existing prospecting licence; or
 - (b) a prospecting licence granted pursuant to an application to which the old Act applies, on the ground that the land is agricultural land is to be excluded also from any new exploration licence while the prospecting licence has effect.
 - (2) Land that has been excluded from an exploration licence by the operation of subclause (1) becomes subject to the licence when the prospecting licence referred to in that subclause ceases to have effect.
6. Page 15, Schedule 1, line 40. After "applies", insert "or the applicant for a prospecting licence the subject of an application to which the old Act applies".
7. Page 15, Schedule 1, line 41. After "licence", insert "or application".
8. Page 15, Schedule 1, line 42. After "licence", insert "or application".
9. Page 15, Schedule 1, line 43. After "licence", insert "or application".



MINING (ACCESS TO LANDS) AMENDMENT BILL

Schedule of the amendments referred to
in Message of 10 August 1989


Acting Clerk of the Parliaments

No. 1 Page 5, Schedule 1. After proposed section 84D (1) (d), insert:

- (e) the things which the licensee needs to do in order to protect the environment while having access to the land and prospecting in or on the land;

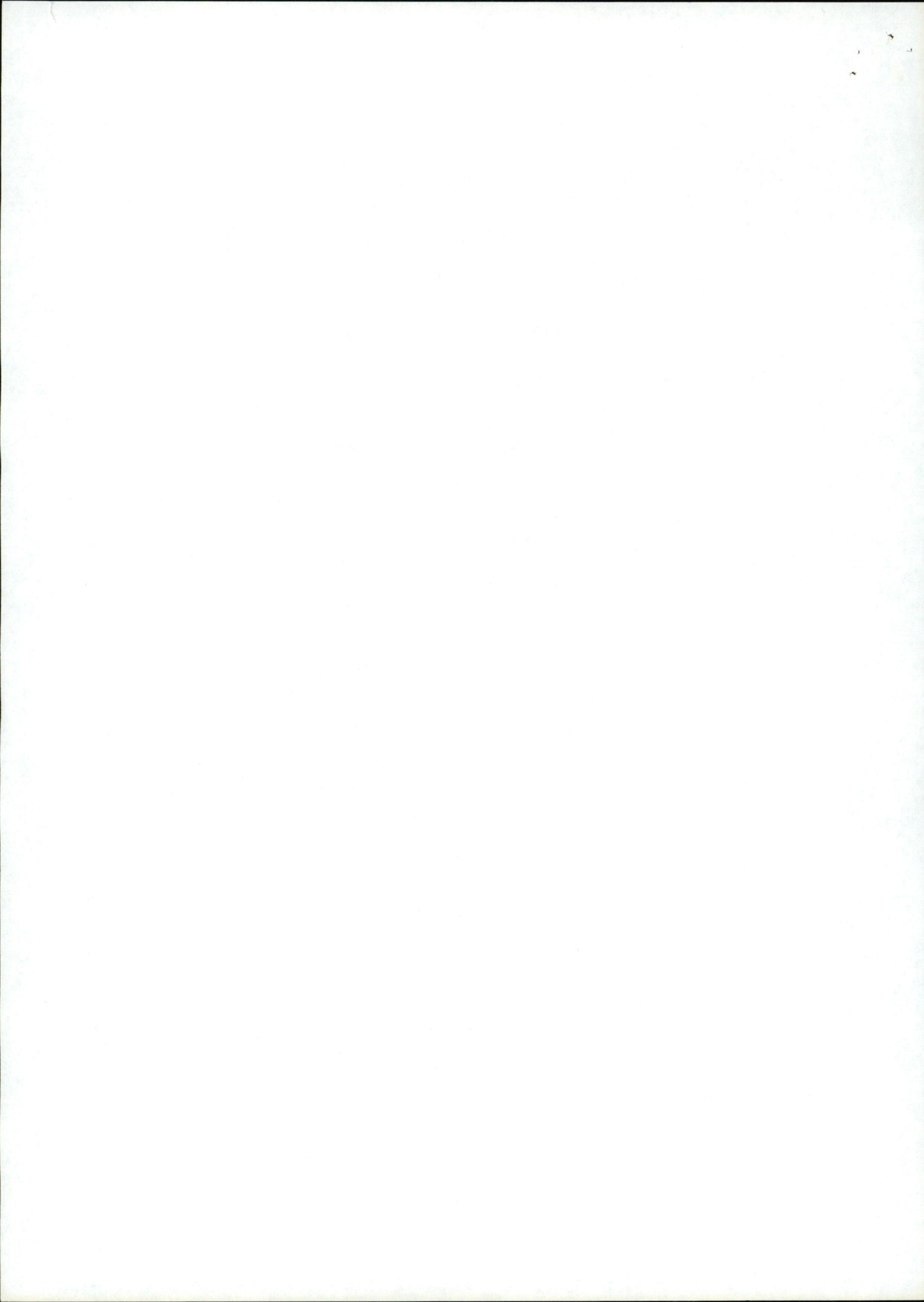
No. 2 Page 5, Schedule 1. Omit proposed section 84D (3) (b), insert instead:

- (b) a provision of this Act (including, in particular, any provision of Part 7 that relates to the protection of the environment), the regulations or a condition of an exploration licence or prospecting licence (including, in particular, a condition approved by the Soil Conservation Service of New South Wales in accordance with section 53 (6)),

No. 3 Page 5, Schedule 1. After proposed section 84D (3), insert:

(4) Without affecting any proceedings which may be brought against a licensee in respect of the contravention of an access arrangement, if a licensee contravenes an access arrangement, an owner or occupier of the land to which the arrangement applies may deny the licensee access to the land until:

- (a) the licensee ceases the contravention; or
- (b) the contravention is remedied to the reasonable satisfaction of the owner or occupier.



No. 4 Page 6, Schedule 1. After proposed section 84E (1), insert:

(2) The notice of the licensee's intention to obtain an access arrangement must, in addition to stating the licensee's intention, contain:

- (a) a plan and description of the area of land over which the access is sought sufficient to enable the ready identification of that area; and
- (b) a description of the prospecting methods intended to be used in that area.

No. 5 Page 7, Schedule 1. Omit proposed section 84H (2), insert instead:

(2) A party to a hearing may be represented:

- (a) by an agent who is not a barrister or a solicitor; or
- (b) with the agreement of the parties and the leave of the arbitrator, by a barrister or a solicitor.

No. 6 Page 13, Schedule 1. After proposed section 84S, insert:

Duration of access arrangements

84T. An access arrangement does not run with the land and, unless sooner terminated, terminates:

- (a) if an owner or occupier of the land with whom the arrangement is made ceases to be an owner or occupier of the land; or
- (b) on the death of an owner or occupier of the land with whom the arrangement is made.

No. 7 Page 16, Schedule 1. From proposed section 133 (r), omit "determined by an arbitrator under Division 4A of Part 5".

Examined

[Handwritten Signature]
Chairman of Committees

