

FIRST PRINT

## MINING LEGISLATION (AMENDMENT) BILL 1994

NEW SOUTH WALES



### EXPLANATORY NOTE

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

The objects of this Bill are:

- (a) to make it possible to impose a fee for the grant of a mining lease (so that a partial fee may be charged at the initial application stage and the remainder of the fee charged only if the lease is granted); and
- (b) to impose royalty at a concessional rate on the coal in "coal reject" (coal-containing refuse) that is recovered under a mining lease and is used by the holder of that lease in producing energy or disposed of by the holder for use in producing energy; and
- (c) to allow the Minister to waive the payment of part of the royalty on coal in cases where the financial viability of a mine is under threat; and
- (d) to extend the requirement for permits in relation to tourist and educational activities at mines to mines that are subject to leases under the Mining Act 1992.

#### **Fee for the grant of a mining lease (Schedule 1 (1) and (4))**

An application for a mining lease under the Mining Act 1992 must be accompanied by a prescribed fee. Under current arrangements, if the application is not granted the applicant may apply to the Minister for a refund of that fee. The amount of the refund (if any) is at the discretion of the Minister.

The proposed amendments will allow a separate fee to be prescribed in respect of the grant of a mining lease. This will enable the regulations under the Mining Act 1992 to be amended so as to shift a portion of the lease fee (in some or all cases) from the application stage to the final stage when the grant is made (if at all). In those cases, an applicant will not have to outlay the full fee at the application stage.

The Bill also contains a transitional provision to ensure that this amendment does not apply to the grant of a mining lease in response to an application made before the amendment commences. The current arrangements for the payment of application fees will continue to apply to such an application.

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**Royalty on coal reject (Schedule 1 (2) and (4))**

Coal reject is a by-product of coal mining and coal processing operations which contains a mixture of coal and other substances (such as shale). It has a low energy content and high ash content and involves higher handling costs per unit of energy than coal itself.

The proposed amendments make the holder of a mining lease liable for a royalty on the coal in coal reject, but only if the holder uses the coal reject in producing energy or disposes of it for use in producing energy. The rate of royalty is to be determined by the Minister (with the concurrence of the Treasurer) in relation to individual mining leases. The rate of royalty is not to be more than half the base rate of royalty payable in respect of coal. (The base rate of royalty on coal is currently levied at \$1.70 per tonne.)

Only coal reject that is used or disposed of by the holder of a mining lease on or after the commencement of this proposed amendment will attract the new royalty.

**Waiver of additional royalty on coal (Schedule 1 (3) and (4))**

At present, the Mining Act 1992 provides for two royalties to be charged on publicly owned minerals recovered under a mining lease, the first being a base royalty and the second an additional royalty. The incidence and amount of the royalties are prescribed by regulation. Under the current regulation, additional royalty is payable only in respect of coal and only when the lease contains a condition requiring that royalty to be paid.

The proposed amendments allow the Minister, with the concurrence of the Treasurer, to waive payment of all or part of the additional royalty. Such a waiver may only be given if the Minister is satisfied that it is necessary for the financial viability of the mine or mines concerned.

This waiver provision will apply only to coal disposed of on or after the commencement of the provision.

**Permits for use of mine for tourist activities or educational purposes (Schedules 2 and 3)**

At present, an owner of a mine who allows tourist activities to be conducted in or about the mine or allows it to be used principally for educational purposes is required to hold a permit issued by the Minister authorising that use. The Minister may only issue a permit if satisfied that persons can enter the mine without risk to their safety or health. The requirement is contained in the Coal Mines Regulation Act 1982 (in relation to coal mines) and the Mines Inspection Act 1901 (in relation to other mines) but does not apply to a mine which is covered by a mining lease under the Mining Act 1992. The proposed amendments remove this exception by amending the definition of "mine" in both Acts.

The proposed amendments also require all applications for permits to be accompanied by a prescribed fee.

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**Clause 1** specifies the short title of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

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**Clause 3** is a formal provision giving effect to the Schedule of amendments to the Mining Act 1992.

**Clause 4** is a formal provision giving effect to the Schedule of amendments to the Mines Inspection Act 1901.

**Clause 5** is a formal provision giving effect to the Schedule of amendments to the Coal Mines Regulation Act 1982.

**Schedule 1** contains the amendments to the Mining Act 1992 described above.

**Schedule 2** contains the amendments to the Mines Inspection Act 1901 described above.

**Schedule 3** contains the amendments to the Coal Mines Regulation Act 1982 described above.

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**MINING LEGISLATION (AMENDMENT) BILL 1994**

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**TABLE OF PROVISIONS**

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2. Commencement
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SCHEDULE 1—AMENDMENT OF MINING ACT 1992

SCHEDULE 2—AMENDMENT OF MINES INSPECTION ACT 1901

SCHEDULE 3—AMENDMENT OF COAL MINES REGULATION ACT 1982

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**MINING LEGISLATION (AMENDMENT) BILL 1994**

**NEW SOUTH WALES**



No. , 1994

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**A BILL FOR**

An Act to amend the Mining Act 1992 to make further provision with respect to fees for mining leases and the charging of royalties; to amend the Mines Inspection Act 1901 and the Coal Mines Regulation Act 1982 to make further provision with respect to permits authorising the use of a mine for educational or tourist purposes; and for other purposes.

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**The Legislature of New South Wales enacts:**

**Short title**

1. This Act may be cited as the Mining Legislation (Amendment) Act 1994.

**5 Commencement**

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

**Amendment of Mining Act 1992 No. 29**

3. The Mining Act 1992 is amended as set out in Schedule 1.

**10 Amendment of Mines Inspection Act 1901 No. 75**

4. The Mines Inspection Act 1901 is amended as set out in Schedule 2.

**Amendment of Coal Mines Regulation Act 1982 No. 67**

5. The Coal Mines Regulation Act 1982 is amended as set out in Schedule 3.

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**15 SCHEDULE 1—AMENDMENT OF MINING ACT 1992**

(Sec. 3)

**(1) Section 63 (Power of Minister in relation to applications):**

After section 63 (4), insert:

20 (5) A mining lease is not to be granted under this section until the fee (if any) prescribed by the regulations as payable for the grant of a mining lease has been paid. This fee is in addition to the fee which is required to accompany an application for a mining lease.

**(2) Part 14, Division 3A, sections 286A–286D:**

25 After section 286, insert:

**Division 3A—Coal reject**

**Definition of coal reject**

286A. In this Division:

30 “coal reject” means the by-product of the mining or processing of coal that contains a mixture of coal and



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SCHEDULE 1—AMENDMENT OF MINING ACT 1992—*continued*

other substances (such as shale) and has either an energy value (the maximum energy capable of being produced by it on combustion) of less than 16 gigajoules per tonne (dry weight) or contains more than 35 per cent ash (by dry weight). 5

**Royalty on coal in coal reject**

286B. (1) Royalty is not payable on the coal in coal reject recovered under a mining lease until the coal reject is used or disposed of. 10

(2) The holder of a mining lease is liable to pay royalty under this Division to the Minister on the coal in coal reject recovered under the lease if the holder uses the coal reject in producing energy or disposes of it for use in producing energy. 15

(3) If royalty is payable under this Division on the coal in coal reject, Division 1 does not apply to that coal.

**Rate of royalty**

286C. (1) Royalty on the coal in coal reject recovered under a mining lease is payable under this Division at the rate determined from time to time by the Minister, with the concurrence of the Treasurer, in respect of the lease or the class of leases concerned. 20

(2) The rate of royalty on the coal in coal reject is not to exceed half the base rate of royalty prescribed from time to time in respect of coal under section 283 (1) (a) and a zero rate of royalty may be determined. 25

(3) In determining the rate of royalty the Minister is to have regard to:

(a) the energy value of the coal reject; and 30

(b) the costs associated with extracting, transporting or processing the coal reject for the purposes of use or disposal; and

(c) such other matters as the Minister considers appropriate. 35

(4) Royalty under this Division is payable on the coal in coal reject at the rate applicable at the time the coal reject is

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SCHEDULE 1—AMENDMENT OF MINING ACT 1992—*continued*

used by the holder of the relevant mining lease in producing energy or disposed of by that holder for use in producing energy.

- 5           (5) Royalty required to be calculated on the basis of the weight of coal is to be calculated by reference to dry weight.

**Evidentiary matters**

10           286D. (1) The energy value and ash content of the by-product of the mining or processing of coal recovered under a particular mining lease is to be determined, in the manner directed by the Minister, on the basis of the average energy value and average ash content of that by-product.

(2) The Minister may by determination in writing determine any of the following:

- 15           (a) that the by-product, or any identifiable quantity of the by-product, of the mining or processing of coal recovered under a particular mining lease is coal reject;
- 20           (b) the amount of coal in the coal reject recovered under a particular mining lease or the amount of coal in any identifiable quantity of that coal reject;
- 25           (c) that the coal reject, or any identifiable quantity of the coal reject, recovered under a particular mining lease and used or disposed of by the holder of the lease has been used by the holder in producing energy or disposed of by the holder for use in producing energy.

30           (3) The Minister's determination is evidence of the matter determined. A determination under subsection (2) (a) or (b) is not open to dispute or challenge on the basis that the determination is not correct or accurate for any particular sample or quantity of the material concerned.

(3) Section 287A:

After section 287, insert:

**Waiver of payment of additional royalty for coal**

35           287A. (1) The Minister may, by order in writing made with the concurrence of the Treasurer, waive all or part of the payment by the holder of a mining lease of royalty at the additional rate prescribed in respect of coal under section 283 (1) (b).

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SCHEDULE 1—AMENDMENT OF MINING ACT 1992—*continued*

(2) The order may be made only if the Minister is satisfied that it is necessary for the financial viability of the mine, or mines, to which the mining lease relates, having regard to such matters as the Minister considers appropriate. 5

(3) The power of the Minister to make an order under this section cannot be delegated, despite section 363.

(4) Schedule 6 (Savings, transitional and other provisions):

At the end of Schedule 6, insert:

**PART 3—PROVISIONS CONSEQUENTIAL ON THE  
ENACTMENT OF THE MINING LEGISLATION  
(AMENDMENT) ACT 1994** 10

**Applications for mining leases**

47. Section 63 (5) does not apply in respect of the grant of a mining lease in response to an application lodged with a mining registrar before the commencement of that subsection. 15

**Royalty on coal in coal reject**

48. Division 3A of Part 14 applies to coal reject that the holder of a mining lease uses or disposes of on or after the commencement of that Division (even if the coal reject was recovered before that commencement). 20

**Waiver of additional royalty for coal**

49. Section 287A applies in respect of coal disposed of on or after the commencement of that section (even if the coal was recovered before that commencement). 25

**SCHEDULE 2—AMENDMENT OF MINES INSPECTION  
ACT 1901**

(Sec. 4)

(1) Section 48A (Definitions): 30

From section 48A, omit the definition of “mine”, insert instead:

“mine” includes an abandoned mine;

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**SCHEDULE 2—AMENDMENT OF MINES INSPECTION ACT  
1901—*continued***

**(2) Section 48C (Issue of permits):**

After section 48C (1), insert:

- 5           (1A) An application for a permit is to be accompanied by a fee equivalent to the fee required to accompany an application for a permit under section 148 (Issue of tourist and educational permits) of the Coal Mines Regulation Act 1982.

10           **SCHEDULE 3—AMENDMENT OF COAL MINES  
REGULATION ACT 1982**

(Sec. 5)

**(1) Section 146 (Definitions):**

15           From section 146, omit the definition of “mine”, insert instead:

          “mine” includes an abandoned mine;

**(2) Section 148 (Issue of tourist and educational permits):**

After section 148 (1), insert:

- 20           (1A) An application for a permit is to be accompanied by the prescribed fee.
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