



## Exploration and mining on private land in NSW: a brief legislative history

by Lenny Roth

### 1. Introduction

The recent mining boom and emergence of the coal seam gas industry have created significant economic opportunities but they have also raised concerns about the potential impacts of these activities on the environment and on agricultural land. In NSW, as in other States, these issues, and the tensions between mining companies and farmers, have generated much debate both in the community and in Parliament.

Previous publications have outlined the regulatory framework for the mining and coal seam gas industries in NSW.<sup>1</sup> This framework is comprised of mining and petroleum legislation as well as environmental and planning legislation. This e-brief presents a brief history of land access provisions in NSW: first in relation to minerals, and secondly in relation to petroleum (which includes coal seam gas). This paper also briefly examines land access provisions in other States.

### 2. Ownership of resources

A discussion of exploration and mining on private land can only be properly understood with some background on

the ownership of mineral and petroleum resources by the Crown.

In the nineteenth century, the ownership of minerals (except gold and silver) depended upon whether the Crown grant of land reserved minerals to the Crown and what minerals were reserved.<sup>2</sup> Gold and silver were royal minerals and remained the property of the Crown regardless of reservations.

For most of the nineteenth century, the policy of Crown reservations in relation to minerals varied. This was the case until the *Crown Lands Act 1884* provided for all grants of land issued under the Act to contain a reservation of minerals. Minerals were defined as:

coal kerosene shale and any of the following metals or any ore containing the same viz.— Gold silver copper tin iron antimony cinnabar galena nickel cobalt platinum bismuth and manganese and any other substance which may from time to time be declared a mineral within the meaning of this Act by proclamation of the Governor published in the *Gazette*.<sup>3</sup>

No proclamation was made under the Act before it was replaced by the

*Crown Lands Consolidation Act 1913.* This Act "continued the policy of reservation of minerals from all Crown lands, and adopted the same definition of 'minerals'".<sup>4</sup> Proclamations adding to the list of minerals were made in 1922 (including petroleum), 1955, 1957, 1971 and 1983.<sup>5</sup> The *Crown Lands Act 1989* (currently in force) continued the policy of the previous Acts.

Subject to certain exceptions, private ownership of minerals only continues to exist if the land on or below which the minerals are situated was part of a Crown grant which did not reserve those minerals to the Crown.<sup>6</sup> Private ownership does not exist in the royal minerals of gold and silver. Nor does it exist in petroleum, which the Crown acquired by legislation in 1955.<sup>7</sup> A further exception is coal, which the Crown acquired by legislation in 1981.<sup>8</sup> A recent exception is uranium, which was acquired by legislation in 2012.<sup>9</sup>

### 3. Minerals and land access

**3.1 Authority to access private land:** There had been some provision for mining on private land in the *Gold Fields Management Act 1852* but this was not replicated in the *Gold Fields Management Act 1857*, section 9 of which prohibited mining for gold on private land without the consent of the owner. No provision was subsequently made for mining on private land until the *Mining on Private Lands Act 1894*. It has been explained that this Act:

...embodied a new idea. The earlier statutes had dealt with mining for minerals belonging to the Crown, but only on land belonging in some sense to the Crown—that is to say on land which had not yet been granted by the Crown in fee simple, although it might, by conditional purchase or otherwise, have come into private occupation. Now, in 1894, in order to promote the

exploration and full exploitation of the mineral resources of the Crown, mining wardens were empowered to grant to any holder of a miner's right an authority to enter specified private lands where the minerals were reserved to the Crown, and there to search for gold, silver, lead, tin and antimony.

An authority to enter entitled the holder, who must also have a miner's right, to enter, either alone or accompanied by one other person, "but without any dog", upon the designated private land, and there take samples from any vein or lode outcropping the surface of the land. But the holder of an authority to enter could not mine until he obtained from the Governor a [mining] lease—

.....

The holder of a mining lease...was required to compensate the landowner for any damage done to the surface of the land and to any crop, buildings or other structures, and to pay him a yearly rent of twenty shillings per acre. If the Crown grant had no reservation of minerals, or of minerals other than gold, mining on the land...was to be confined to mining for gold or for any ore of which gold was the chief and most profitable metallic product.<sup>10</sup>

The *Mining Act 1906* consolidated into one Act a number of mining statutes including the *Mining on Private Lands Act*. Part IV of the 1906 Act dealt with mining on private land. As outlined in more detail below, the Act contained certain exceptions with respect to exploring or mining on private land.

In 1918, a new Division was added to Part IV of the Act. The new provisions enabled a mining warden to grant to any holder of a miner's right an authority to enter private lands and search for minerals that were *not* reserved to the Crown; and to apply for a mining lease. The landholder was

entitled to receive from the miner rent, compensation, and royalties.

The *Mining Act 1906* was amended several times during the twentieth century, and this included enacting a new Mining Act in 1973 and later in 1992. However, the general policy behind the 1894 and 1906 Acts has continued until the present time.

**3.2 Requirements for landholder consent:** The 1906 Act provided for the consent of the landholder in certain circumstances. Section 47 stated:

No authority to enter and no lease under this Part shall, except with the consent of the owner, extend to—

- (a) within fifty yards on the surface of any land bona fide in use as a garden or orchard; or
- (b) within two hundred yards on the surface of the principal residence of the owner or occupier; or
- (c) any land whereon is any substantial building, bridge, dam, reservoir, well, or other valuable improvement other than an improvement effected for mining purposes and not bona fide used for any other purpose. The Minister shall determine whether any such improvement is substantial or valuable, and may define an area adjoining such improvement within which no mining operations shall be carried on.

Similar provisions still exist in NSW.<sup>11</sup>

The 1906 Act also contained a requirement to obtain the consent of the owner and occupier of "land under cultivation". Section 48 stated:

No authority to enter and no lease under this Part shall, except with the consent of the owner and occupier,

extend to the surface of any land enclosed and under cultivation when the application for the authority was made; and without such consent no operations under such authority shall be conducted, and no such lease shall be granted below the surface of any such land, except with the authority of the Minister, and at such depth as the Minister may, after full inquiry, deem to be sufficient to prevent damage to the surface:

Provided that—

- (a) a lease under this Part may be granted of such portion of the surface of such land as the Minister may deem necessary for giving access to the gold or minerals therein; but before any such lease is granted the warden shall assess the amount to be paid as compensation for any loss of or damage to any crop or improvements on such land ; and
- (b) the Minister may decide, in case of dispute, whether any land is or is not under cultivation.

The *Mining Act 1973* contained slightly different provisions in relation to "agricultural land", which was defined in the First Schedule (and there were similar provisions in the *Coal Mining Act 1973*). Section 87 provided that the owner or occupier of private lands could object to the exercise in any part of their land of the rights conferred on the holder of an *exploration licence*, on the grounds that that part of those lands was "agricultural land". Subsections 87(5)-(7) provided:

- (5) Subject to subsection (7), in any case where an objection is made under this section the registered holder of the exploration licence concerned shall not exercise any right under the licence in the land to which the objection relates—

- (a) until the Director-General of Agriculture decides the question referred to him; or
  - (b) over any land which the Director-General of Agriculture decides to be agricultural land, except with the consent of the owner and the occupier of that land.
- (6) Any consent given for the purposes of subsection (5) (b) shall be given by instrument in writing and shall be irrevocable.
- (7) If the Minister authorises him to do so the registered holder of an exploration licence may exercise such rights in agricultural land subject to the licence as the Minister may specify at such depths as the Minister may, after full inquiry, deem to be sufficient to prevent damage to the surface.

The Act also contained rights of objection in relation to the grant of a *prospecting licence* and a *mining lease*.<sup>12</sup> Section 46 of the Act allowed an owner or occupier to object to the granting of a prospecting licence or a mining lease on the ground that any part of the land over which the licence or lease was sought was agricultural land. Under subsection 46(3), the Director-General of Agriculture was required to determine the question of whether the land was agricultural land.

Section 80(1) stated that, subject to subsections (3) and (4) a prospecting licence or a mining lease should not be granted over any land which the Director-General decides to be agricultural land, except with the consent of the owner and occupier of that land. Such consent would be irrevocable. Subsections 80(3) and (4) contained the following exceptions:

- (3) A prospecting licence, a mining lease or a mining purposes lease may be granted beneath the surface of any agricultural land at

such depths as the Minister may, after full inquiry, deem to be sufficient to prevent damage to the surface.

- (4) A mining lease or a mining purposes lease may be granted over any part of any land notwithstanding that the Director-General of Agriculture decides that it is agricultural land if the Minister considers that the granting of the lease over that part is necessary to give access to any minerals, but before any such lease is granted the warden shall assess the amount to be paid as compensation for any loss of damage to any crop on the land.

**3.3 Reforms in 1989:** The *Mining (Access to Lands) Amendment Act* 1989 removed the agricultural land provisions in the *Mining Act* 1973 in so far as they related to *exploration licences* and *prospecting licences*; and it enacted new land access provisions that applied to the exploration of minerals on all land. In the second reading speech on the 1989 bill, the Minister for Natural Resources, Ian Causley, explained that the provisions of the 1973 Act had "presented difficulties in their operations for both farmers and exploration companies for some time". The Minister then stated:

This amendment bill is a legislative process to address these difficulties. At the outset it should be noted by the House that my comments in relation to this amendment apply only to exploration. Provisions relating to access to agricultural land for mineral exploration in the 1973 Mining Act are to be replaced by this amendment bill. The existing provisions of the Mining Act will remain for mining, mining purposes, and claims. The exploration industry has expressed clear concern that the present arrangements proved to be a serious impediment to the

orderly and responsible development of one of this State's most valuable assets.

The denial of access to land solely by its classification or potential classification as agricultural land has meant a cumbersome system which does not maximize the benefits to landholder, explorer, or the State. The need to resolve this state of affairs was recognized by the previous Government, which commenced the process of reform, and is fully in line with the present Government's promise to streamline and reduce regulation in the minerals industry. The bill is a further step towards our goal of creating a climate where enterprise can operate within a framework of minimum interference and maximum co-operation from government...<sup>13</sup>

The Minister further explained the changes as follows:

The proposal involves the removal of the present agricultural provisions of the Mining Act 1973 as they relate to exploration, and their replacement by amendments enabling negotiated access agreements to all land. Again I emphasize that the existing provisions will remain in the case of mining, mining purposes, and claims. The essence of the process is that the explorer becomes able to negotiate an agreement with the landowners and occupiers. A major benefit of this package will be that both explorers and farmers will know exactly where they stand. Other benefits are: that farmers will be able to condition access to all their lands; that parties will have access to a mutually acceptable non-legalistic system of arbitration: that a *pro forma* access agreement will be available, and a code of conduct can become part of the agreement; that restoration of disturbed areas can be specified; that a course of legal appeal against the arbitrator's decision will be available

through the mining warden; and that oral or handshake agreements will be recognized in the legislation.<sup>14</sup>

The new provisions (in Part 5, Div 4A) stated that a licensee shall not prospect in or on private land otherwise than in accordance with an arrangement (a) agreed between the licensee and the owner and occupier of the land; or (b) determined by an arbitrator in accordance with the Act. Access arrangements could make provision with respect to a number of matters including the parts of the land in or on which the licensee may prospect, the kinds of prospecting operations that may be carried out, and the compensation to be paid to any owner or occupier of the land.

The *Mining Act 1992* (which replaced the *Mining Act 1973* and the *Coal Mining Act 1973*) incorporated these provisions on access arrangements (in Part 8, Div 2). The 1992 Act also contained agricultural land consent provisions in respect of mining leases.

In the current version of the Act, Schedule 1, Division 4 is headed "Notification to Owners of Private Land". The division applies to a mining lease that "is proposed to extend to the surface of any land". Clause 21 states that "before inviting tenders for a mining lease to which this Division applies, the Minister must cause notice of the proposal to be served on any landholder of the land concerned". Under clause 22, "a landholder...may object to the granting of the mining lease...on the ground that the land, or any part of the land, over which the lease is sought is agricultural land".

There is a long definition of agricultural land in Schedule 2, clause 1. The definition includes (for example): "land that has been sown with not less than

2 crops of an annual species during the period of 10 years immediately preceding the relevant date".

Clause 23 outlines the position if land is determined to be agricultural land as a result of an objection:

- (1) If land is determined to be agricultural land as a consequence of an objection under this Division:
    - (a) in the case of an objection to the invitation of tenders [for a mining lease]—the invitation must not be made, or
    - (b) in the case of an objection to the granting of a mining lease—the lease must not be granted,
- except with the written consent of the landholder.
- (2) A written consent given under this clause is irrevocable.
  - (3) A mining lease may not be granted beneath the surface of any agricultural land except at such depths, and subject to such conditions, as the Minister considers sufficient to minimise damage to the surface.
  - (4) A mining lease may nevertheless be granted over any part of land that has been determined to be agricultural land, including the surface of any such land, if the Minister considers that the granting of the lease over that part of the land is necessary to give access to any other part of the land to which the lease applies.

#### **4. Petroleum and land access**

##### **4.1 Authority to access private land:**

The *Mining Act 1906* applied to a range of listed minerals (including

"mineral oils") and to "any other substance which may from time to time be declared a mineral within the meaning of this Act by proclamation of the Governor published in the Gazette". In 1916, petroleum and natural gas were proclaimed as minerals for the purposes of the Act.

From that time, persons could obtain an authority to enter, and a mining lease in respect of, private land in relation to these resources. However, there were difficulties in obtaining petroleum prospecting titles on private land and this led to the enactment of the *Petroleum Act 1955*. In his second reading speech on the 1955 *Petroleum* bill, the Secretary for Mines, William Gollan, explained:

Where the area required embraces Crown land only, it has been possible to issue a satisfactory title. However, where private land is applied for the warden may issue prospecting titles – authorities to enter – but the maximum area that may be granted for petroleum, natural gas and mineral oils is 640 acres, unless it is proved at an inquiry held by the warden that, by reason of the difficulties and cost of conducting prospecting operations, the grant of an authority over an area in excess of 640 acres is warranted. Under these circumstances, the Minister may direct the warden to grant an authority over an area that exceeds the prescribed maximum. This does not present any undue difficulties where the area applied for is not particularly large or where it has not been intensely subdivided. However, where very large areas are involved, or where the land has been intensely subdivided, the granting of prospecting titles is virtually impossible as, before an authority to enter is granted, the warden is obliged to hold an inquiry for the purpose of fixing rent and compensation, and so on, and is required to serve notice, by registered post, on all owners and

occupiers of the private land covered by the application.<sup>15</sup>

**4.2 Requirements for landholder consent:** When exploration and mining of petroleum was governed by the *Mining Act 1906* (i.e. from 1916 to 1955), it was subject to the same provisions as outlined above in relation to obtaining landholder consent for exploration and mining for minerals on private land. The *Petroleum Act 1955* contained similar provisions. Section 50 contained this provision in relation to land under cultivation:

The holder of any licence or lease under this Act shall not carry out any prospecting or mining operations or erect any works on the surface of any land which is under cultivation unless the owner or the owner and occupier, as the case may be, of such land has or have consented thereto:

Provided that—

- (a) the Minister may, if he considers that the circumstances so warrant, define an area of the surface of such cultivated land upon which prospecting or mining operations may be carried out or works may be erected, and may specify the nature of the operations to be carried out or the works to be erected, but before any such operations are commenced or works are erected, the warden shall assess the amount to be paid as compensation for any loss of or damage to any crop on such cultivated land;
- (b) cultivation for the growth and spread of pasture grasses shall not be deemed to be cultivation within the meaning of this section unless, in the opinion of the Minister, the circumstances so warrant; and

- (c) in the case of dispute as to whether land is or is not under cultivation within the meaning of this section the Minister's decision thereon shall be final.

The *Petroleum (Onshore) Act 1991* replaced the 1955 Act but it contained (in section 71) an almost identical provision in relation to "land under cultivation" (which is not defined).

**4.3 Reforms in 1994:** Amendments enacted in 1994 removed the requirement for landholder consent in section 71 in relation to *exploration licences* and *assessment leases* but not in relation to *production leases*. The amendments also inserted (into a new Part 4A) similar land access provisions to those introduced into the *Mining Act* in 1989.<sup>16</sup> The new Part 4A of the *Petroleum (Onshore) Act 1991* provided that the holder of a prospecting title may not carry out prospecting operations on any private land otherwise than in accordance with an access arrangement: (a) agreed between the title holder and the owner and occupier of the land; or (b) determined by an arbitrator. Since 1994, these provisions have been amended but they remain in force.

## 5. Parliamentary Committee report

Landholder rights and access issues were discussed in the recent [report](#) on *Coal Seam Gas* by the Legislative Council General Purpose Standing Committee No. 5.<sup>17</sup> Referring to the restriction in section 71 of the *Petroleum (Onshore) Act 1991*, the report noted that landholders have "the ability to refuse consent for coal seam gas production on 'cultivated land'" (p133). The Committee then noted that some submissions had called for this provision "to be expanded to allow landholders to refuse consent for *exploration* on cultivated land".

The Committee concluded:

The Committee acknowledges landholder concerns about their lack of veto power but notes the Government's position that landholders should not be able to veto access for exploration, as this would infer an ownership over resources that belong to the Crown. In addition, the exploration stage allows potential environmental impacts to be assessed.

However, while coal seam gas operators indicated that they will not enforce their access rights, the Committee cannot dismiss the evidence that some operators have attempted to pressure landholders for access, nor the possibility that these companies may force access in the future.

As such, the Committee believes that the *Petroleum (Onshore) Act 1991* must be reviewed with a view to strengthening landholder rights. The legislation must achieve a fair balance between the rights of landholders and coal seam gas operators in relation to land access. The Committee considers that a comprehensive template access agreement, to be discussed in the next section of this Chapter, will be a step forward in redressing the imbalance.

The Committee believes that, in reviewing the Act, the NSW Government should consider harmonisation with the *Mining Act 1992* if possible, particularly in addressing issues such as the definition of 'cultivated land'.<sup>18</sup>

Accordingly, the Committee recommended that "the NSW Government review the *Petroleum (Onshore) Act 1991* with a view to strengthening landholder rights and achieving a fair balance between the rights of landholders and coal seam gas operators in relation to land

access, and considering harmonisation with the *Mining Act 1992* if possible".<sup>19</sup>

## 6. Strategic regional land use policy

Following a consultation process, on 11 September 2012, the NSW Government released a [Strategic Regional Land Use Policy](#). The policy contains "a range of initiatives to better balance growth in the mining and coal seam gas (CSG) industries with the need to protect important agricultural land and water resources".<sup>20</sup> One of the main initiatives is:

Identification of Strategic Agricultural Land so that proposed projects must go through the new Gateway process, an independent, scientific and upfront assessment of the impacts of mining and CSG production proposals.

Another initiative is the development of a standard land access agreement "to ensure fair outcomes for landowners". The policy notes that the standard land access agreement:

...is currently being negotiated between key stakeholders including the NSW Farmers' Association and the Australian Petroleum Production and Exploration Association.<sup>21</sup>

## 7. Access provisions in other States

**7.1 Overview:** The Pro Bono Centre of the University of Queensland's TC Beirne School of Law recently published a [paper](#) which compared land access rights in the mainland Australian States as well as land access rights in Alberta, Canada.<sup>22</sup> In summary, the paper stated:

The key finding from this analysis is that none of these jurisdictions grant landholders an absolute right to exclude mining companies access to their land. However, all regimes contain exceptions...These generally

relate to proximity to dwellings or structures, although the Western Australian legislation contains a much broader list of exemptions, which includes 'land under cultivation (i.e. used for agricultural purposes including cropping or pasturing; whether cleared or uncleared, used for grazing stock in the ordinary course of management of the land)'. This provision has become known as the 'private landowner's veto', and since its inception there have been several attempts at removing or modifying it. A provision which affords such a broad form of protection to the farming industry has had a strong impact on the mining application process in Western Australia...<sup>23</sup>

The paper also noted that:

...even where legislative exemptions do not exist, there may be informal policies regarding land access. For example, in Queensland, Santos (a major mining company) opted to effectively observe a right of veto by refusing to bring an action against property owners in the Land Court if negotiations are unsuccessful.<sup>24</sup>

**7.2 Western Australia:** The Western Australian provision referred to above is section 29(2) of the *Mining Act 1978* (WA). Section 29(2) provides a right of veto in respect of certain land, including land under cultivation. The section states as follows:

(2) Except with the consent in writing of the owner and the occupier of the private land concerned, a mining tenement shall not be granted in respect of private land —

- (a) which is in *bona fide* and regular use as a yard, stockyard, garden, orchard, vineyard, plant nursery or plantation or is land under cultivation;
- (b) which is the site of a cemetery or burial ground; or

- (c) which is the site of a dam, bore, well or spring; or
- (d) on which there is erected a substantial improvement; or
- (e) which is situated within 100 m of any private land referred to in paragraph (a), (b), (c) or (d); or
- (f) which is a separate parcel of land and has an area of 2,000 m<sup>2</sup> or less,

unless the mining tenement is granted only in respect of that part of that private land which is not less than 30m below the lowest part of the natural surface of that private land.

A mining tenement includes a prospecting licence, exploration licence, and a mining lease.

Petroleum is covered by different legislation: the *Petroleum and Geothermal Energy Resources Act 1967* (WA). This Act contains a right of veto in relation to some but not all of the land uses referred to in section 29(2) of the *Mining Act*: it does not provide a right of veto in relation to exploration or mining on private land which is under cultivation.<sup>25</sup>

**7.3 Queensland:** In 2009, with the assistance of a Land Access Working Group, the Queensland Government developed a [Land Access Policy Framework](#). The framework proposed the introduction of new legislative provisions and supporting documents. The new legislative provisions came into effect in October 2010 for the petroleum and gas sectors; and in December 2010 for the minerals and coal exploration sectors.<sup>26</sup> The key features of the provisions are:

- a requirement that all resource authority holders must comply with a single [Land Access Code](#)
- an entry notice requirement for 'preliminary activities' i.e. those

that will have no or only a minor impact on landholders

- a requirement that a Conduct and Compensation Agreement be negotiated before a resource authority holder comes onto a landholder's property to undertake 'advanced activities' i.e. those likely to have a significant impact on a landholder's business or land use
- a graduated process for negotiation and resolving disputes about agreements which ensures matters are only referred to the Land Court as a last resort.<sup>27</sup>

In February 2012, an independent panel completed a one year [review](#) of the policy framework. In summary:

The panel concluded that while the Land Access Framework has changed the way resource companies must negotiate access with landholders for their activities it has often not improved working relationships. The report includes 12 recommendations developed to address the issues raised during consultation and to reflect best practice engagement in the 'optimal process' chapter of this report.<sup>28</sup>

In addition to land access reforms, it is important to note the enactment in December 2011 of the *Strategic Cropping Land Act 2011* (Qld). The Act's objectives are to protect land that is highly suitable for cropping, to manage the impacts of development on that land, and to preserve the productive capacity of that land for future generations. When introducing the bill, the former Minister for Natural Resources, Rachel Nolan, said:

Queensland is a vast state with precious little high-quality agricultural soil. In recent times, as the economics of mining have changed, the best

quality cropping lands have begun to experience significant pressure from mining development...We believe that Queensland's best farmland is a precious resource that must be protected for future generations. That is why we are the first government in the country to protect farmland by law.<sup>29</sup>

Any resource activities that will have a permanent or temporary impact on actual or potential strategic cropping land must have their impact assessed under the Act.<sup>30</sup> Strategic cropping land is categorised into "protection areas" and "management areas" and different development assessment rules apply to resource activities that are located in each of these areas.

## 8. Conclusion

In order to promote the exploration and mining of minerals and petroleum belonging to the Crown, since the end of the 19<sup>th</sup> century mining and petroleum legislation has adopted a general policy of permitting access to private land. This right of access has been subject to the right of the landholder to receive compensation.

Landholder consent has also been required in relation to certain private land such as agricultural land. However, the consent provisions in relation to agricultural land have not given land holders a complete right of veto. This is because the Minister has had the power to override the landholder's withdrawal of consent.

The most significant changes to land access provisions were the reforms enacted in 1989 (with respect to minerals) and 1994 (with respect to petroleum). In both cases, the agricultural land consent provisions were removed in relation to *exploration activities*; and new land access

provisions were introduced, which required mining companies to enter into negotiated (or arbitrated) access agreements with landholders. A standard land access agreement is currently being developed under the Strategic Regional Land Use policy.

Of the other States, only Western Australia grants landholders a right of veto in relation to land under cultivation. However this only applies in relation to minerals, and not in relation to petroleum. Queensland has recently developed a Land Access Policy Framework but a recent review suggested that more needs to be done in that State to resolve tensions between miners and landholders.

<sup>1</sup> See S Smith, [Mining and the Environment](#), Briefing Paper 06/2009; L Roth, [Regulation of the coal seam gas industry in NSW](#), e-brief 1/2011. See also, [Key Issues and Regional Profiles for the 55<sup>th</sup> Parliament](#), Background Paper 2/2011

<sup>2</sup> A Bradbrook et al, *Australian Real Property Law*, 5<sup>th</sup> edition, Lawbook Co, 2011, p794

<sup>3</sup> *Crown Lands Act 1884*, s3

<sup>4</sup> J Forbes and A Lang, *Australian Mining and Petroleum Laws*, 2<sup>nd</sup> edition, Butterworths, 1987, p20

<sup>5</sup> Forbes and Lang, note 4. [18-20]

<sup>6</sup> Bradbrook, note 2, p796

<sup>7</sup> *Petroleum Act 1955 (NSW)*

<sup>8</sup> *Coal Acquisition Act 1981 (NSW)*

<sup>9</sup> *Mining Legislation Amendment (Uranium Exploration) Act 2012*

<sup>10</sup> *Wade v New South Wales Rutile Mining Company Pty Ltd* (1969) 121 CLR 177 at 188-189 (Windeyer J)

<sup>11</sup> See *Mining Act 1992 (NSW)*, ss 31, 62.

<sup>12</sup> As outlined in Forbes and Lang, note 4, p118, "prospecting licences and exploration licences have a similar function, that is to authorize the holder to search for minerals and remove samples for testing: however, an exploration licence may be granted in respect of a much larger area, although it is confined to searching for minerals in one of six prescribed groups...".

<sup>13</sup> I Causley, *NSW Parliamentary Debates (LA)*, [9 May 1989](#), p7656-7657

<sup>14</sup> I Causley, note 13

<sup>15</sup> W Gollan, *NSW Parliamentary Debates (LA)*, 31 March 1955, p3635

<sup>16</sup> These amendments were "miscellaneous amendments" introduced by the *Native Title (New South Wales) Act 1994*.

<sup>17</sup> Legislative Council, General Purpose Standing Committee No. 2, *Coal Seam Gas*, May 2012

<sup>18</sup> GPSC No 2, note 17, p137

<sup>19</sup> GPSC No. 2, note 17, p137 (Rec 16)

<sup>20</sup> NSW Government, *Strategic Land Use Policy: Summary Brochure*, September 2012, p3

<sup>21</sup> NSW Government, note 20, p6

<sup>22</sup> J Bodenmann et al, *A Comparative Study into the Rights of Landholders to Prevent Access to Land by Mining Companies*, Research Note, T.C Beirne School of Law, University of Queensland, 2012

<sup>23</sup> J Bodenmann et al, note 22, p4

<sup>24</sup> J Bodenmann et al, note 22, p4. Note that the paper does not refer to the current NSW provisions in relation to agricultural land and land under cultivation that were discussed above: *Mining Act 1992*, Sch 1, Div 4; *Petroleum (Onshore) Act 1991*, s71.

<sup>25</sup> *Petroleum and Geothermal Energy Resources Act 1967* s16

<sup>26</sup> Queensland Government, *Land Access Policy Framework*, [Online]

<sup>27</sup> Department of Employment, Economic Development and Innovation, [Guide to Queensland's new land access laws](#), November 2010, p1-2

<sup>28</sup> D Watson et al, *Land Access Framework 12 Month Review: Report of the Land Access Review Panel*, February 2012, p1

<sup>29</sup> R Nolan, *Queensland Parliamentary Debates*, 25 October 2011, [p3369](#)

<sup>30</sup> Queensland Government, *Strategic Cropping Land*, [Online]

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