Mineral Resources Amendment Regulation (No. 1) 2016

Explanatory notes for SL 2016 No. 70

made under the

Mineral Resources Act 1989

General Outline

Short title

Mineral Resources Amendment Regulation (No. 1) 2016.

Authorising law

Sections 417(1) and 417(2)(d) of the *Mineral Resources Act 1989*.

Policy objectives and the reasons for them

The primary policy objective of the *Mineral Resources Amendment Regulation (No. 1) 2016* is to make an administrative amendment to the *Mineral Resources Regulation 2013* to increase the maximum area of a mining claim within Restricted Area 25, which encompasses the Yowah opal mining area near Quilpie, from 900 square metres to two hectares. The amendment regulation also corrects a minor drafting error that occurred when the regulation was remade in 2013.

A new type of mining authority, a 'prescribed mining claim', was introduced in 2013 through amendments to the *Mineral Resources Act 1989* by the *Mining and Other Legislation Amendment Act 2013.* A prescribed mining claim can be for an area of up to 20 hectares, but for Restricted Areas, the maximum size of a claim is set under the *Mineral Resources Regulation 2013*. For Restricted Area 25, the area of the claim is restricted to 900 square metres.

The primary policy intent of the *Mining and Other Legislation Amendment Act 2013* amendments in relation to small scale mining operations was to differentiate between small opal and gemstone mining and large scale mining operations and therefore, apply a more appropriate level of regulation to small scale mining. Prior to the *Mining and Other Legislation Amendment Act 2013*, small scale miners wishing to use machine mining required a mining lease and were regulated in the same way

and as intently as large scale mines. The regulatory requirements imposed on small scale miners represented a disproportionate burden, particularly since their operations are considered lower risk and with lower impacts, compared with large scale mining.

The new type of mining authority was designed to reduce the regulatory costs and regulatory burden on small scale opal and gem stone mining operations, including by allowing machine mining without an Environmental Authority. The eligibility criteria for a prescribed mining claim limit environmental risks, negating the need for the additional rigour of an Environmental Authority. The removal of the Environmental Authority requirement benefits opal and gemstone miners as they no longer need to make an application, pay annual fees or comply with ongoing administrative requirements such as annual returns associated with a mining lease.

Environmental protections are still retained following the *Mining and Other Legislation Amendment Act 2013* amendments, despite the removal of the requirement to hold an Environmental Authority. The prescribed mining claim tenure must comply with the Small Scale Mining Code, continue to provide financial assurance and rehabilitate disturbed areas, and comply with their general environmental duty. The framework for the Small Scale Mining Code enables mandatory conditions to be imposed if necessary. This acts like any other condition of tenure, in that the Minister is able to take compliance actions against the holder, which may include a fine or cancellation of tenement.

The *Mining and Other Legislation Amendment Act 2013* amendments also provided that a mining lease or contiguous leases of up to a total of 20 hectares could be converted to a prescribed mining claim. There was a limited conversion period of two years for this to occur, expiring on 31 March 2015. For conversions in a Restricted Area, claims were subject to the conditions and restrictions applying to the previous mining lease tenures. The restricted area conditions applying to Restricted Area 25 limit the area of mining leases to a maximum of two hectares. Following the *Mining and Other Legislation Amendment Act 2013* amendments, conversions of mining leases could be made, resulting in prescribed mining claims of up to two hectares in size. However, due to an administrative oversight, the existing Restricted Area 25 conditions limiting the size of new mining claim applications to 900 square metres, were not amended. Therefore any new application for a prescribed mining claim was also limited to 900 square metres.

This has created some prescribed mining claims, converted from mining leases, in Restricted Area 25 that are two hectares in area. For applications for a prescribed mining claim, however, the maximum area permitted within Restricted Area 25 is limited by regulation to 900 square metres. Consequently, since the end of the conversion period, there is inconsistency in the permitted size of a prescribed mining claim. Miners are now restricted to applying for a prescribed mining claim of 900 square metres, or applying for a more costly mining lease, with its inherent extra levels of regulatory burden, in order to mine an area that is greater than 900 square metres and up to two hectares.

The purpose and policy intent of the *Mining and Other Legislation Amendment Act 2013* amendments are not met by restricting the size of future prescribed mining

claims within Restricted Area 25 to 900 square metres. Miners wishing to establish a bigger scale and potentially more profitable (but still low risk) small scale mine would still need to apply for a mining lease with consequent higher cost and regulatory burden. This is contrary to the intent of the *Mining and Other Legislation Amendment Act 2013* amendments, which was to reduce red tape and regulatory burden on small scale miners through the new tenure type.

The Quilpie opal mining community has been seeking this change for some time in order to reap the benefits of the red tape reduction intended by the *Mining and Other Legislation Amendment Act 2013* amendments. Queensland gemstone miners are of the opinion that the administrative processes are discouraging participation in the industry. By their nature, small scale mining operations are often marginal economic operations, so the level of fees and the regulatory requirements being imposed on them represent a disproportionate burden.

An important additional reason for this amendment is to enhance miners' safety. Being able to mine a larger area allows miners to employ safer mining practices. Since the Yowah area has been shaft mined for a considerable period of time, the area is now honeycombed and deemed unsafe to continue with shaft mining. Miners are therefore, looking to utilise open-cut mining using machine mining. In order to machine mine within Restricted Area 25, either a mining lease or a prescribed mining claim is required. However, being only 900 square metres, the area of land attached to a prescribed mining claim is not sufficiently large to make open-cut mining possible or viable. The only option for those requiring to undertake open-cut mining on a two hectares tenement is to obtain a mining lease, which comes with increased cost and regulatory burden, making the lease less viable and subject to a level of regulation that is out of proportion with the lower risks posed by small scale mining operations of this nature.

Limits to the size of leases and claims in restricted areas are set in order to protect certain mining areas and to apply certain conditions to these areas. The conditions of Restricted Area 25 limit the size of permits and the number of permits held by the same entity in order to preserve the Yowah opal field for small scale miners. For example, a mining claim holder may only have direct or indirect interests in a maximum of two mining claims. However, increasing the size permitted from 900 square metres to two hectares does not pose a threat to the available mining land in Restricted Area 25, as there is only approximately five percent of Restricted Area 25 under claims at the moment. There are also economic benefits for the Quilpie district in attracting further viable opal mining.

The amendments in the *Mineral Resources Amendment Regulation (No. 1) 2016* will amend the *Mineral Resources Regulation 2013* to expand the maximum permitted size of a new mining claim in Restricted Area 25 from 900 square metres up to a maximum of two hectares. This will allow prospective applicants, who require a tenure area of more than 900 square metres for mining, to apply for a prescribed mining claim of up to two hectares rather than a mining lease, thereby not being subject to the higher costs and regulatory burdens of a mining lease.

The second purpose of this regulation amendment is to correct a minor drafting error from when the *Mineral Resources Regulation 2013* was remade in 2013. In section

16(2) of the *Mineral Resources Regulation 2013*, examples are given of standard industry-recognised scales. When the *Mineral Resources Regulation 2003* was remade in 2013, one of the scales was inadvertently changed from 1: 100,000 to 1: 1,000,000. While such a scale is still technically correct, it is a very small scale and not widely useful for the purpose of the section to which the example applies. Therefore, it is preferred to revert to the original scale as was shown in the *Mineral Resources Regulation 2003*. The other example scale, 1: 250,000, is being retained. Additionally, as part of this amendment, so as to update the drafting style to that currently used, the space inserted after the colon in each of the scales is being removed.

Achievement of policy objectives

To achieve its objectives, the *Mineral Resources Amendment Regulation (No. 1) 2016* amends Schedule 2, Item 1 of the *Mineral Resources Regulation 2013* to increase the maximum permitted size of a prescribed mining claim in Restricted Area 25 from 900 square metres to two hectares.

This is a reasonable and appropriate response as it provides consistency between the prescribed mining claims that were converted from mining leases and any new prescribed mining claims being applied for, such that both a claim arising from the conversion under the *Mining and Other Legislation Amendment Act 2013* amendments or a new claim will authorise mining on an area up to two hectares and allow machine mining, thus ensuring the policy objectives of the *Mining and Other Legislation Amendment Act 2013* are met. It also facilitates the adoption of safe mining practices, and delivers the intended benefits of a more appropriate level of regulation to the tenure type.

The *Mineral Resources Amendment Regulation (No. 1) 2016* also inserts the correct scales as examples of industry-recognised scales for the purposes of section 16(2) of the *Mineral Resources Regulation 2013*.

Consistency with policy objectives of authorising law

The amendments are consistent with the policy objectives of section 2 of the *Mineral Resources Act 1989*, in particular in regard to subsection (a) which is to ‘encourage and facilitate prospecting and exploring for, and mining of, minerals’.

Inconsistency with policy objectives of other legislation

There is no inconsistency with the policy objectives of other legislation.

Benefits and costs of implementation

The proposed amendments will allow prospective applicants, who require a tenure area of more than 900 square metres for mining within Restricted Area 25, to apply for a prescribed mining claim rather than a mining lease, thereby not being subject to the higher costs and regulatory burdens of a mining lease.

Any increased mining activity will benefit the community by providing economic participation opportunities in an area where there is a high level of unemployment and limited employment creation opportunities.

There will be a slight reduction in revenue for the State Government, being the difference between the fees for a mining lease and the fees for a prescribed mining claim. It is not known how many claims will be applied for, but there are only a limited number of claims available in Restricted Area 25. Any loss in revenue will be offset by savings in administrative costs for the State Government as the prescribed mining claim does not require the level of administration as for a mining lease.

Consistency with fundamental legislative principles

The amendments have been drafted with regard to the fundamental legislative principles outlined in the *Legislative Standards Act 1992* and are consistent with the principles.

Consultation

A meeting with the Yowah opal mining community was held on 27 May 2013 in response to the miners' submission requesting changes for Restricted Area 25. The Yowah opal mining community has expressed support for the proposed amendments.

The Queensland Productivity Commission was consulted and advised that a Regulatory Impact Statement was not required.

The Department of Natural Resources and Mines consulted internally with the Mines Safety and Health Inspectorate which supported the proposed amendments.