

# Proposed legislative amendments to the *Mining Act 1971* as amended by the *Statutes Amendment (Mineral Resources) Bill 2018*.

Updated to reflect the passage of the Bill through the House of Assembly.

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## Foreword

This document is intended to provide a guide to better balance agriculture and competing land interests as part of South Australia's mining law, in accordance with the legislative amendments adopted by the House of Assembly on 3 July 2019.

The substantive parts of this document considers changes to the *Mining Act 1971* (SA) and the *Statutes Amendment (Mineral Resources) Bill 2018* (SA).

GPSA notes there are a range of other aspects of the legal framework that need to be considered, including:

- Ministerial directions and regulations, which at the time of writing have not been publicly provided. GPSA contends that this information is critical to a better balance between agriculture and competing land interests, and must therefore be made available for consultation prior to entering into force.  
GPSA strongly believes that substantive detail must be included in legislation and not in Ministerial directions and regulations.
- A mandatory mining/resource/prospecting code of practice.
- The exact scope and terms under which an independent advisory service is established.

## Other submissions by GPSA

This document should be read in context with previous GPSA submissions, including those on the *Draft Mining Regulations 2018 (land access framework)* and the *Fair Trading (Mining and Resources Industry Land Access Dispute Resolution Code) Regulations 2018 – draft for comment*. [These are available on GPSA's website.](#)

## Passage through the House of Assembly

GPSA acknowledges the Bill's passage through the House of Assembly, noting the following policy developments in respect to the Bill clarified through Parliamentary debate:

- Minister van Holst Pellekaan's commitment to conduct further consultation on the successive tranches of reform to the *Mining Act 1971*, as well as on the way in which rehabilitation bonds will operate.
- Minister van Holst Pellekaan's commitment to fund an up-front, free, independently delivered advisory service to landholders about their rights, responsibilities, and related information with respect to mining on agricultural land.
- Legislative amendments that:
  - Remove the obligation for landholders to prove the commercial value of buildings, land, and assets for them to be classified as exempt.

- Clarify that tenement holders are the party required to advise the registrar of a waiver.
- Increase the notification period from three to 6 weeks for a notice of intention to enter land or to commence advanced exploration operations.

[Further information can be found in GPSA's media release concerning the passage of the Bill.](#)

Minister van Holst Pellekaan highlighted improvements for landowners under this bill in his second reading speech. In addition to the amendments these include:

- Increasing the contribution for legal advice to \$2,500;
- Extending the exempt land radius from a structure from 400 metres to 600 metres for invasive exploration;
- Allowing free access to tenement information;
- Providing greater clarity over proposed activities in notices to landowners; and
- Giving the Small Business Commissioner the power to mediate land access disputes.

However, GPSA believes these changes fail to meaningfully address the balance between agriculture and competing land interests. Accordingly, GPSA will continue to advocate for further reform as the Bill now progresses to the Upper House.

For example, while the exempt land radius increases for invasive exploration, the overall exempt land radius decreases to 200 metres. This places commercially significant buildings and family homes at the forefront of mineral development.

Landholders will also receive little meaningful legal advice from the \$2500 contribution. As discussed below, a similar system to the way in which legal costs are dealt with when dealing with native title interests should be adopted.

## **Independent Review**

GPSA continues to seek a full independent review of laws governing mineral exploration and mining activity on agricultural land, currently established under the *Mining Act 1971* (SA). This review should, among other things, thoroughly examine best practice land access frameworks in New South Wales, Queensland and Western Australia. An independent review is supported by stakeholders across industry including GPSA and the South Australian Chamber of Minerals and Energy (SACOME).

GPSA understands that the Hon Geoff Brock MP has sought to establish a Commission of Inquiry under the *Commission of Inquiry (Land Access in the Mining Industry) Bill 2019* (SA). The proposed terms of reference for the Commission in the draft bill seeks to enact an Independent Review as it relates to land access regimes and other provisions that deal with land access. GPSA welcomes these efforts.

GPSA recommends that any review consider aspects of mining law which do not neatly fall within the category of land access. Inter alia these include compensation, bonds, and a mandatory code of conduct.

## **A mandatory mining/resource/prospecting code of practice.**

A balanced land access regime requires a comprehensive approach which extends beyond legislative frameworks. GPSA supports the introduction of a mandatory code of practice based around the National Farmers' Federation's Industry Engagement Guidelines for On-farm Activities.

These Guidelines are designed to foster a respectful and trusted relationship between farmers and those seeking land access through a general set of principles. These sit alongside the legislative framework, and cover issues such as the interests of landowners, communication, and engagement between the parties.

## **Practical changes not covered by legislation**

GPSA has received extensive feedback from members on a range of simple measures that can be undertaken to improve the land access process, but which do not form part of this legislation.

These changes include:

- Establishing contact points within the Department of Energy and Mining to facilitate and investigate complaints by landholders concerning behaviour or conduct which might trigger the payment of bond money.
- Automatically providing landowners with information concerning tenements that exist over their land.
- Providing fast and inexpensive court access as a priority for landowners and tenement holders by holding hearings in a location that is convenient and cost effective for both parties.

While GPSA will continue to advance improvements to the existing regulatory framework, we contend that an independent review is needed to properly assess the performance of the Department in monitoring and enforcement activities, and restore confidence of landholders.

## **Policy positions not covered in this document**

The amendments provided in this document are indicative in nature. GPSA believes that a whole-of-government independent review will be best placed to ascertain specific amendments needed to bring about a better balance between agriculture and competing land uses, including through planning law (such as in Queensland) and more appropriate compensation arrangements (such as in Western Australia).

GPSA stands ready to provide a comprehensive submission to an Independent Review.

## Amendments

### Increasing the distance from structures

#### Section 9(5)

This section sets out that land which is exempt from authorised operations, unless that exemption is waived. This section also prescribed the distances from a building or structure in which authorised operations can take place.

GPSA believes that the distances proposed in the *Statutes Amendment* fall far short of community expectations and do not recognise the fact that the privacy and amenity of a place of residence can be severely hampered by exploration and recovery operations. GPSA's members rightly expect that due consideration is given to this and adequate buffer zones are established. GPSA's amendments to section 9(5) are designed to increase the allowed distance between operations and places of residence.

Mining Act 1971	Statutes Amendment	GPSA proposed amendment
<p>(5) In this section— <i>mining operations</i> include any operations or activity for which a miscellaneous purposes licence may be granted.</p>	<p>(5) In this section— <i>Minister of Public Works</i> means the Minister to whom the administration of the Water Industry Act 2012 is committed; <i>prescribed amount</i> means—     (a) \$2 500; or     (b) If a greater amount is prescribed by regulation for the purposes of this definition—that amount; <i>prescribed distance</i> means—     (a) in relation to low impact exploration operations—200 metres; and     (b) in relation to advanced exploration operations or any operations for the recovery of extractive minerals—400 metres; and     (c) in relation to any other authorised operations—         (i) a distance prescribed by the regulations (which may make different provision according to the circumstances or thing to</p>	<p>(5) In this section— <i>Minister of Public Works</i> means the Minister to whom the administration of the Water Industry Act 2012 is committed; <i>prescribed amount</i> means—     (a) \$2 500; or     (b) If a greater amount is prescribed by regulation for the purposes of this definition—that amount; <i>prescribed distance</i> means—     (a) in relation to low impact exploration operations—<del>200</del> 400 metres; and     (b) in relation to advanced exploration operations or any operations for the recovery of extractive minerals—<del>400</del> 600 metres; and     (c) in relation to any other authorised operations—         (i) a distance prescribed by the regulations (which may make 20 different provision according to the circumstances or thing to</p>

	which it is expressed to apply); or (ii) if no distance is prescribed under subparagraph (i)—600 metres	which it is expressed to apply); or (ii) if no distance is prescribed under subparagraph (i)— <del>600 metres</del> 1.5 kilometres
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## Expanding legal costs indemnity and providing further court guidance when seeking to waive an exemption

### Section 9AA(14)

Section 9AA(14) currently indemnifies legal costs up to \$500. Under the Statutes Amendment, this increases to \$2,500.

GPSA considers this unreasonable and proposes that tenement holders indemnify the totality of a landowner’s reasonable legal and mediation (with reference to the Small Business Commissioner) costs. For the avoidance of doubt, mediation through the Small Business Commissioner shall be taken to mean that process under the Fair Trading (Mining & Resources Industry Land Access Dispute Resolution Code) Regulations 2018.

GPSA’s position is that fees for mediation under Regulation 7 should be met by the resources company. These costs should be paid in addition to those paid to indemnify farmers for legal assistance under Section 9AA(14) of the *Mining Act 1971*. The notion of payment of such costs is a mechanism which resources companies are accustomed to when dealing with traditional owners and Native Title holders.

### Section 9AA(16)

S9AA provides the process by which a tenement holder can seek court approval to enter and conduct authorised operations in exempt land against the owners wishes.

The fact is that most court decisions have allowed the tenement holder to access exempt land which shows that courts have usually rejected the landowners concerns as to the impact of the mining on the landowner, and his/her land and business. GPSA acknowledges that some factors are considered by courts, but submits this amendment to ensure that these factors are universally considered in any land access dispute.

This amendment provides additional factors which a tenement holder will be required to address before a court is able to waive the benefit of an exemption. These factors help to realign the balance between the interests of existing land owners and their family and business, with tenement holders.

<b>Mining Act 1971</b>	<b>Statutes Amendment</b>	<b>GPSA proposed amendment</b>
(14) A mining operator is liable to indemnify a person to whom the operator gives a notice under this section for the reasonable costs of obtaining legal assistance relating	(14) A tenement holder is liable to indemnify an owner of land—	(14) A tenement holder is liable to indemnify an owner of land—

<p>to the operation of this section up to \$500 or, if some other amount is prescribed by regulation, that amount.</p>	<p>(a) to whom the tenement holder gives a notice under subsection (1); or  (b) who gives the tenement holder a notice under subsection (1a); or  (c) who makes application for orders to the appropriate court under subsection (8a) in connection with an application made for a production tenement or a miscellaneous purposes licence made by the tenement holder,  for the reasonable costs of obtaining legal assistance relating to the operation of this section up to \$2 500 or, if some other amount is prescribed by regulation, that amount.</p> <p>(14a) An application under this section may be made to the Supreme Court only with the permission of the Court.</p> <p>(14b) If an agreement is entered into under this section, the parties to the agreement must give notice of the agreement to the Mining Registrar for registration on the mining register.</p> <p>(14c) Nothing in this section derogates from the jurisdiction of the Warden's Court under section 67 to determine whether or not land is exempted from authorised operations under section 9</p>	<p>(a) to whom the tenement holder gives a notice under subsection (1); or  (b) who gives the tenement holder a notice under subsection (1a); or  (c) who makes application for orders to the appropriate court under subsection (8a) in connection with an application made for a production tenement or a miscellaneous purposes licence made by the tenement holder,  for the reasonable costs of obtaining legal assistance relating to the operation of this section <b>and mediation costs through the Small Business Commission relating to the operation of this section up to \$2 500 or, if some other amount is prescribed by regulation, that amount.</b></p> <p><b>For the avoidance of doubt, mediation through the Small Business Commissioner shall be taken to mean that process under the <i>Fair Trading (Mining &amp; Resources Industry Land Access Dispute Resolution Code) Regulations 2018.</i></b></p> <p>(14a) An application under this section may be made to the Supreme Court only with the permission of the Court.</p> <p>(14b) If an agreement is entered into under this section, the parties to the agreement must give notice of the agreement to the Mining Registrar for registration on the mining register.</p> <p>(14c) Nothing in this section derogates from the jurisdiction of the Warden's Court under section 67 to determine whether or not land is exempted from authorised operations under section 9.</p> <p>Insert new section –</p>
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		<p>(16) For the purpose of subsection (9), the court shall consider the following, without limiting the generality of, in determining the adverse effects of the proposed authorised operations:</p> <ul style="list-style-type: none"> <li>(a) any negative business impact; and</li> <li>(b) any negative reputational impact; and</li> <li>(c) any negative impact on a residence and residential amenity; and</li> <li>(d) any negative impact on neighbouring property, including a residence and residential amenity; and</li> <li>(e) any loss in property value; and</li> <li>(f) any anxiety or stress imposed on the landowner; and</li> <li>(g) any other consideration that the court thinks necessary.</li> </ul>
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## Notice of entry requirements

### Section 58

This section sets out the process as to how land may be entered, including the notice period required. GPSA’s longstanding policy position has been that this notice period requirement does not reflect seasonal pressures (such as harvest) that agricultural land owners experience.

GPSA’s proposal that a longer notice period apply in recognition of these seasonal pressures was adopted by Minister van Holst Pellekaan. This additional time period allows land owners to properly inform themselves of their legal rights and obligations and helps to reduce any pressure that a land owner may experience. This is highlighted in the below section

In addition, GPSA proposes amendments that require a court to consider the interests of the landowner, their business, and the impact of the proposed operations prior to granting entry where the landowner and tenement holder cannot reach agreement. This further helps to appropriately restore the balance between land owner and tenement holder.

Mining Act 1971	Statutes Amendment	GPSA proposed amendment
58A—Notice of entry	58A—Notice requirements	58A—Notice requirements

<p>(1) A mining operator must, at least 21 days before first entering land to carry out mining operations, serve on the owner of the land notice of intention to enter the land (the prescribed notice of entry) describing the nature of the operations to be carried out on the land.</p> <p>(2) The notice must be served—</p> <p>(a) in the case of native title land—as prescribed by <i>the Native Title (South Australia) Act 1994</i>; or</p> <p>(b) in other cases—personally or by post.</p> <p>(2a) If the land is subject to a licence under the <i>Petroleum and Geothermal Energy Act 2000</i>, a copy of the notice must also be served (within the time required under subsection (1)) on the holder of that licence.</p> <p>(3) If the land is held under a form of title (other than a pastoral lease or a licence under the <i>Petroleum and Geothermal Energy Act 2000</i>) that confers a right to exclusive possession of the land—</p> <p>(a) the notice must contain a statement of the owner's rights of objection and compensation under this Act; and</p> <p>(b) the owner may, within three months after service of the notice, lodge a notice of objection with the appropriate court objecting—</p> <p>(i) to entry on the land by the mining operator; or</p> <p>(ii) to the use, or the unconditional use, of the land, or a portion of the land, for mining operations.</p>	<p>(1) A person who is—</p> <p>(a) intending to prospect for minerals under section 20; or</p> <p>(b) the holder of an exploration licence or a mineral claim,</p> <p>must, at least 28 42 days before first entering land to carry out authorised operations, serve on the owner of the land notice of intention to enter the land in accordance with this section. Maximum penalty: \$20 000.</p> <p>(2) A person who is intending to commence advanced exploration operations that are not within the ambit of a notice under subsection (1) must, at least 28 42 days before first commencing those operations, serve on the owner of the relevant land notice of intention to commence those operations. Maximum penalty: \$20 000.</p> <p>(3) A person who is intending to apply for a mineral lease, retention lease or miscellaneous purposes licence must serve on the owner of the land to which the application relates notice of intention to apply for the lease or licence.</p> <p>(4) A notice under subsection (3)—</p> <p>(a) must inform the owner of the land of the person's intention to enter the land to carry out authorised operations if the application is granted; and</p> <p>(b) is of no effect for the purposes of this section if the person who served the notice does not apply for the lease or licence within 12 months of serving the notice on the owner of the land or if the application is refused.</p>	<p>(1) A person who is—</p> <p>(a) intending to prospect for minerals under section 20; or</p> <p>(b) the holder of an exploration licence or a mineral claim,</p> <p>must, at least 28 42 days before first entering land to carry out authorised operations, serve on the owner of the land notice of intention to enter the land in accordance with this section. Maximum penalty: \$20 000.</p> <p>(2) A person who is intending to commence advanced exploration operations that are not within the ambit of a notice under subsection (1) must, at least 28 42 days before first commencing those operations, serve on the owner of the relevant land notice of intention to commence those operations. Maximum penalty: \$20 000.</p> <p>(3) A person who is intending to apply for a mineral lease, retention lease or miscellaneous purposes licence must serve on the owner of the land to which the application relates notice of intention to apply for the lease or licence.</p> <p>(4) A notice under subsection (3)—</p> <p>(a) must inform the owner of the land of the person's intention to enter the land to carry out authorised operations if the application is granted; and</p> <p>(b) is of no effect for the purposes of this section if the person who served the notice does not apply for the lease or licence within 12 months of serving the notice on the owner of the land or if the application is refused.</p>
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<p>(4) The court must send a copy of a notice of objection received under subsection (3) to the mining operator.</p> <p>(5) If the court is satisfied on the hearing of an objection that the conduct of the mining operations on the land would be likely to result in substantial hardship or substantial damage to the land, the court may—</p> <ul style="list-style-type: none"> <li>(a) determine that the land, or a particular part of the land, should not be used by the mining operator for the purpose of mining operations; or</li> <li>(b) determine conditions on which operations may be carried out on the land by the mining operator with least detriment to the interests of the owner and least damage to the land.</li> </ul> <p>(6) A mining operator who contravenes or fails to comply with a determination under this section is guilty of an offence. Maximum penalty: \$50 000.</p> <p>(7) The prescribed notice of entry is not required if—</p> <ul style="list-style-type: none"> <li>(a) the land to be entered is in a precious stones field; or</li> <li>(b) the mining operator is authorised to enter the land by agreement with the owner of the land; or</li> <li>(c) the mining operator is authorised to enter the land under a native title mining determination; or</li> <li>(ca) the mining operator is authorised to enter the land under an indigenous land use agreement registered under the <i>Native Title Act 1993 (Cwth)</i>; or</li> <li>(d) the mining operator enters the land to continue mining operations</li> </ul>	<p>(5) A notice must be served in accordance with the regulations.</p> <p>(6) A copy of a notice must be served on the Mining Registrar (for registration on the mining register) in accordance with the regulations.</p> <p>(7) If the land is subject to a licence under the <i>Petroleum and Geothermal Energy Act 2000</i>, a copy of any notice required under a preceding subsection must also be served (within the time required under the subsection) on the holder of that licence.</p> <p>(8) However, a notice is not required under subsection (7) if the holder of the licence under the <i>Petroleum and Geothermal Energy Act 2000</i> has waived the requirement for notice to be given under that subsection.</p> <p>(9) If the land is held under a form of title (other than a licence under the <i>Petroleum and Geothermal Energy Act 2000</i>) that confers a right to exclusive possession of the land or under a pastoral lease—</p> <ul style="list-style-type: none"> <li>(a) the notice must contain a statement of the owner's rights of objection and compensation under this Act; and</li> <li>(b) the owner may, within 3 months after service of the notice, lodge a notice of objection with the appropriate court objecting— <ul style="list-style-type: none"> <li>(i) to entry on the land by the person who served the notice; or</li> <li>(ii) to the use, or the unconditional use, of the land, or a portion of the</li> </ul> </li> </ul>	<p>(5) A notice must be served in accordance with the regulations.</p> <p>(6) A copy of a notice must be served on the Mining Registrar (for registration on the mining register) in accordance with the regulations.</p> <p>(7) If the land is subject to a licence under the <i>Petroleum and Geothermal Energy Act 2000</i>, a copy of any notice required under a preceding subsection must also be served (within the time required under the subsection) on the holder of that licence.</p> <p>(8) However, a notice is not required under subsection (7) if the holder of the licence under the <i>Petroleum and Geothermal Energy Act 2000</i> has waived the requirement for notice to be given under that subsection.</p> <p>(9) If the land is held under a form of title (other than a licence under the <i>Petroleum and Geothermal Energy Act 2000</i>) that confers a right to exclusive possession of the land or under a pastoral lease—</p> <ul style="list-style-type: none"> <li>(a) the notice must contain a statement of the owner's rights of objection and compensation under this Act; and</li> <li>(b) the owner may, within <del>3</del> <b>6</b> months after service of the notice, lodge a notice of objection with the appropriate court objecting— <ul style="list-style-type: none"> <li>(i) to entry on the land by the person who served the notice; or</li> <li>(ii) to the use, or the unconditional use, of the land, or a portion of the</li> </ul> </li> </ul>
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<p>that had been lawfully commenced on the land before the commencement of this section.</p> <p>(8) A notice is not required under subsection (2a) if the holder of the licence under the <i>Petroleum and Geothermal Energy Act 2000</i> has waived the requirement for notice to be given under that subsection.</p> <p>(9) A notice under this section must be in a form determined or approved by the Minister.</p>	<p>land, for authorised operations.</p> <p>(10) The court must send a copy of a notice of objection received under subsection (9) to the person who served the notice.</p> <p>(11) The court may, if the court thinks fit, postpone the hearing of an objection to entry on land by a person who has given notice under subsection (3) of an intention to apply for a lease or licence until after the application has been made.</p> <p>(12) If the court is satisfied on the hearing of an objection that the conduct of the authorised operations on the land would be likely to result in substantial hardship or substantial damage to the land, the court may—</p> <p>(a) determine that the land, or a particular part of the land, should not be used for the purposes of the proposed authorised operations; or</p> <p>(b) determine conditions on which operations may be carried out on the land with least detriment to the interests of the owner and least damage to the land.</p> <p>(13) A person who conducts authorised operations in contravention of a determination under this section is guilty of an offence.</p> <p>Maximum penalty: \$150 000.</p> <p>(14) A notice under this section is not required if—</p> <p>(a) the land to be entered is in a precious stones field; or</p> <p>(b) the person who would otherwise be required to give such a notice is</p>	<p>land, for authorised operations.</p> <p>(10) The court must send a copy of a notice of objection received under subsection (9) to the person who served the notice.</p> <p>(11) The court may, if the court thinks fit, postpone the hearing of an objection to entry on land by a person who has given notice under subsection (3) of an intention to apply for a lease or licence until after the application has been made.</p> <p>(12) If the court is satisfied on the hearing of an objection that the conduct of the authorised operations on the land would be likely to result in substantial hardship, or substantial damage to the land <b>or the landowner or a lessee's business</b> the court may—</p> <p>(a) determine that the land, or a particular part of the land, should not be used for the purposes of the proposed authorised operations; or</p> <p>(b) determine conditions <b>(including the payment of compensation)</b> on which operations may be carried out on the land with the least detriment to the interests of the owner <b>or any business operating on that land</b> and least damage to the land <b>or any structure on that land.</b></p> <p>(13) A person who conducts authorised operations in contravention of a determination under this section is guilty of an offence.</p> <p>Maximum penalty: \$150 000.</p> <p>(14) A notice under this section is not required if—</p>
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	<p>authorised to enter the land by agreement with the owner of the land; or</p> <p>(c) the person who would otherwise be required to give such a notice is authorised to enter the land under a native title mining determination; or</p> <p>(d) the person who would otherwise be required to give such a 30 notice is authorised to enter the land under an indigenous land use agreement registered under the <i>Native Title Act 1993</i> of the Commonwealth; or</p> <p>(e) the person who would otherwise be required to give such a notice, or a related body corporate, has previously given notice under this section as a prospective applicant under subsection (3) or as the holder of an earlier mineral tenement over the land to be entered (whether or not other land was also subject to the same application or tenement).</p> <p>(15) A notice under this section must be in a form determined or approved by the Minister.</p> <p>(16) Nothing in this section requires a tenement holder to serve a new notice if or when there is a change in ownership of land.</p>	<p>(a) the land to be entered is in a precious stones field; or</p> <p>(b) the person who would otherwise be required to give such a notice is authorised to enter the land by agreement with the owner of the land; or</p> <p>(c) the person who would otherwise be required to give such a notice is authorised to enter the land under a native title mining determination; or</p> <p>(d) the person who would otherwise be required to give such a 30 notice is authorised to enter the land under an indigenous land use agreement registered under the <i>Native Title Act 1993</i> of the Commonwealth; or</p> <p>(e) the person who would otherwise be required to give such a notice, or a related body corporate, has previously given notice under this section as a prospective applicant under subsection (3) or as the holder of an earlier mineral tenement over the land to be entered (whether or not other land was also subject to the same application or tenement).</p> <p>(15) A notice under this section must be in a form determined or approved by the Minister.</p> <p>(16) Nothing in this section requires a tenement holder to serve a new notice if or when there is a change in ownership of land.</p>
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## Compensation arrangements

### Section 61 – Compensation

This section sets out the right of compensation for land owners and the process in which that compensation is determined. This section is of critical importance if land owners are to be put in their rightful place following authorised operations by a tenement holder.

GPSA believes that compensation to land owners is currently inadequate. These amendments to section 61 strengthen the rights of land owners to compensation for legal advice and other such advice incurred reasonably as a result of a land access dispute. Further, GPSA believes that additional factors (as outlined above in s9AA(16)(a)-(g)) ought to be considered by a court when determining compensation payable to a land owner.

In addition, GPSA believes that nearby properties affected by authorised operations ought to be able to be explicitly eligible for compensation for loss suffered.

Mining Act 1971	Statutes Amendment	GPSA proposed amendment
<p>61—Compensation</p> <p>(1) The owner of any land upon which mining operations are carried out in pursuance of this Act shall be entitled to receive compensation for any economic loss, hardship and inconvenience suffered by him in consequence of mining operations.</p> <p>(2) In determining the compensation payable under this section, the following matters shall be considered:</p> <ul style="list-style-type: none"> <li>(a) any damage caused to the land by the person carrying out the mining operations; and</li> <li>(b) any loss of productivity or profits as a result of the mining operations; and</li> <li>(c) any other relevant matters.</li> </ul> <p>(2a) The compensation may include an additional component to cover reasonable costs reasonably incurred by an owner of land in connection with any negotiation or dispute related to—</p>	<p>61—Compensation</p> <p>(1) The owner of any land on which authorised operations are carried out under this Act is entitled to receive compensation for any economic loss, hardship or inconvenience suffered by the owner in consequence of authorised operations.</p> <p>(2) In determining the compensation payable under this section, the following matters shall be considered:</p> <ul style="list-style-type: none"> <li>(a) any damage caused to the land by the person carrying out the authorised operations; and</li> <li>(b) any loss of productivity or profits as a result of the authorised operations; and</li> <li>(c) any other relevant matters.</li> </ul> <p>(2a) The compensation may include an additional component to cover reasonable costs reasonably incurred by an owner of land in connection with any negotiation or dispute related to—</p>	<p>61—Compensation</p> <p>(1) The owner of any land on which, <b>or in reasonable proximity to which</b> authorised operations are carried out under this Act is entitled to receive compensation for any economic loss, hardship or inconvenience suffered by the owner in consequence of authorised operations.</p> <p>(2) In determining the compensation payable under this section, the following matters shall be considered:</p> <ul style="list-style-type: none"> <li>(a) any damage caused to the land by the person carrying out the authorised operations; and</li> <li>(b) any loss of productivity or profits as a result of the authorised operations; and</li> <li>(c) any other relevant matters <b>including, but without limiting the generality:</b> <ul style="list-style-type: none"> <li><b>(i) the actual value of the subject land;</b></li> </ul> </li> </ul>

<p>(a) the licensee gaining access to the land; and  (b) the activities to be carried out on the land; and  (c) the compensation to be paid under subsection (1).</p> <p>(3) The amount of the compensation shall be an amount determined by agreement between the owner and the mining operator or, in default of agreement, an amount determined, upon application by an interested party, by the appropriate court.</p> <p>(4) The appropriate court, in determining compensation under this section, shall take into consideration any work that the mining operator has carried out, or undertakes to carry out, to rehabilitate the land.</p> <p>(5) Upon the hearing of an application for compensation under this section, the appropriate court may order a mining operator to carry out such work to rehabilitate the land as the Court thinks fit.</p> <p>(5a) In assessing compensation under subsection (2a), costs in connection with any negotiation or dispute will not be taken to be reasonably incurred if they arise during any period when a reasonable offer of compensation is open to be accepted by the relevant owner of land.</p> <p>(6) For the purposes of this section—  (a) a reference to mining operations will be taken to include a reference to any investigation or survey under section 15; and  (b) a reference to a mining operator will be taken to include a reference to the Director (in relation to any investigation or survey under section 15).</p>	<p>(a) the tenement holder gaining access to the land; and  (b) the activities to be carried out on the land; and  (c) the compensation to be paid under subsection (1).</p> <p>(3) The amount of the compensation shall be an amount determined by agreement between the owner and the tenement holder or, in default of agreement, an amount determined, upon application by an interested party, by the appropriate court.</p> <p>(4) The appropriate court, in determining compensation under this section, shall take into consideration any work that the tenement holder has carried out, or undertakes to carry out, to rehabilitate the land.</p> <p>(5) Upon the hearing of an application for compensation under this section, the appropriate court may order a tenement holder to carry out such work to rehabilitate the land as the Court thinks fit.</p> <p>(5a) In assessing compensation under subsection (2a), costs in connection with any negotiation or dispute will not be taken to be reasonably incurred if they arise during any period when a reasonable offer of compensation is open to be accepted by the relevant owner of land.</p> <p>(5b) It will be a condition of a mineral tenement that the Minister may, at any time, require the tenement holder to pay to any person an amount of compensation, specified by the Minister, to which the person is, in the opinion of the Minister, entitled on account of loss or damage suffered by the person as a</p>	<p>(ii) any loss occasioned by reasons of severance, disturbance or injurious affection;  (iii) maintenance and repair of access roads, fences and other infrastructure;  (iv) the relocation of dams, water points, fences and other infrastructure;  (v) impact of any remaining farming activities, including productivity loss, impacts on whole farm operations/rotations and yield loss;  (vi) stock impacts (including consequential losses);  (vii) biosecurity control matters;  (viii) time spent by the landowner;  (ix) professional fees; and  (x) any other relevant matters.</p> <p>(2a) The compensation <del>may</del> shall include an additional component to cover reasonable costs reasonably incurred by an owner of land in connection with any negotiation or dispute related to—  (a) the tenement holder gaining access to the land; and  (b) the activities to be carried out on the land; and  (c) the compensation to be paid under subsection (1).</p>
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	<p>result of operations carried out under the tenement.</p> <p>(5c) Subsection (5b) operates in addition to any other provision made by this or any other section.</p> <p>(6) For the purposes of this section—</p> <p>(a) a reference to authorised operations will be taken to include a reference to any investigation or survey under section 15; and</p> <p>(b) a reference to a tenement holder will be taken to include a reference to the Director (in relation to any investigation or survey under section 15).</p>	<p>(3) The amount of the compensation shall be an amount determined by agreement between the owner and the tenement holder or, in default of agreement, an amount determined, upon application by an interested party, by the appropriate court.</p> <p>(4) The appropriate court, in determining compensation under this section, shall take into consideration any work that the tenement holder has carried out, or undertakes to carry out, to rehabilitate the land.</p> <p>(5) Upon the hearing of an application for compensation under this section, the appropriate court may order a tenement holder to carry out such work to rehabilitate the land as the Court thinks fit.</p> <p>(5a) In assessing compensation under subsection (2a), costs in connection with any negotiation or dispute will not be taken to be reasonably incurred if they arise during any period when a reasonable offer of compensation is open to be accepted by the relevant owner of land.</p> <p>(5b) It will be a condition of a mineral tenement that the Minister may, at any time, require the tenement holder to pay to any person an amount of compensation, specified by the Minister, to which the person is, in the opinion of the Minister, entitled on account of loss or damage suffered by the person as a result of operations carried out under the tenement.</p> <p>(5c) Subsection (5b) operates in addition to any other provision made by this or any other section.</p> <p>(6) For the purposes of this section—</p>
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		<p>(a) a reference to authorised operations will be taken to include a reference to any investigation or survey under section 15; and</p> <p>(b) a reference to a tenement holder will be taken to include a reference to the Director (in relation to any investigation or survey under section 15).</p>
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## Tenement holder bonds

### Section 62

Section 62 allows for the Minister to establish bonds payable by a tenement holder in order to compensate for any liability owed by the tenement holder or to rehabilitate land affected by authorised operations.

Currently, this bond is discretionary. GPSA believes that landowners deserve certainty in relation to compensation owed to them. GPSA’s amendments seek to make this bond mandatory on all tenement holders conducting any form of authorised operation under the Act. GPSA is aware of land owners who have not been paid compensation for mining operations, despite there being a legal obligation to do so. A compulsory bond would mitigate this risk and ensure that land owners are able to access any compensation owed, even in the event of default.

GPSA recognises that this will add an upfront layer of cost to tenement holders, but it must be recognised that tenement holders should not be conducting any form of activity without the financial resources to rectify the impact of that activity and compensate the land owner for any costs or inconvenience incurred.

<b>Mining Act 1971</b>	<b>Statutes Amendment</b>	<b>GPSA proposed amendment</b>
<p>62—Bond and security</p> <p>(1) The Minister may, by notice in writing served on an applicant for, or the holder of, a mining tenement, require him to enter into a bond in such sum and subject to such terms and conditions as ensure, in the opinion of the Minister, that—</p> <p>(a) any civil or statutory liability likely to be incurred by that person in</p>	<p>62—Bond and security</p> <p>(1) The Minister may, by notice in writing served on an applicant for, or the holder of, a mineral tenement, require them to enter into a bond in such sum and subject to such terms and conditions as ensure, in the opinion of the Minister, that—</p> <p>(a) any civil or statutory liability likely to be incurred by that person in</p>	<p>62—Bond and security</p> <p>(1) The Minister <del>may</del> <b>shall</b>, by notice in writing served on an applicant for, or the holder of, a mineral tenement, require them to enter into a bond in such sum and subject to such terms and conditions as ensure, in the opinion of the Minister, that—</p> <p>(a) any civil or statutory liability likely to be incurred by that person in</p>

<p>the course of carrying out mining operations; and  (b) the present and future obligations of that person in relation to the rehabilitation of land disturbed by mining operations, will be satisfied.</p> <p>(2) The Minister may require such security for the satisfaction of the bond as the Minister thinks fit.</p> <p>(3) If the holder of a mining tenement fails to comply with a requirement under this section—</p> <p>(a) the Minister may, if the requirement has not been complied with at the expiration of one month from the end of the time allowed for compliance, prohibit mining operations in the area of the tenement; and  (b) the Minister may, if the requirement has not been complied with at the expiration of three months from the end of the time allowed for compliance, cancel the tenement.</p> <p>(4) If a person conducts mining operations in contravention of a prohibition under subsection (3), he shall be guilty of an offence.  Maximum penalty: \$120 000.</p> <p>(5) Where the Minister holds, or is entitled to, any money under a bond entered into by a mining operator, the Minister may, in his discretion, expend any portion of that money in compensating any person who has suffered, or is likely to suffer, financial loss as a result of mining operations carried out by</p>	<p>the course of carrying out authorised operations; and  (b) the present and future obligations of that person in relation to the rehabilitation of land disturbed by authorised operations, will be satisfied.</p> <p>(2) The Minister may require such security for the satisfaction of the bond as the Minister thinks fit.</p> <p>(2a) If an applicant for a mineral tenement fails to comply with a requirement under this section, the Minister may refuse the application.</p> <p>(3) If the holder of a mineral tenement fails to comply with a requirement under this section—</p> <p>(a) the Minister may, if the requirement has not been complied with at the expiration of one month from the end of the time allowed for compliance, prohibit mining operations in the area of the tenement; and  (b) the Minister may, if the requirement has not been complied with at the expiration of three months from the end of the time allowed for compliance, cancel the tenement.</p> <p>(4) The liability to pay an amount under this section is a debt due to the Crown.</p> <p>(5) A person must not contravene a prohibition under subsection (3).  Maximum penalty: \$150 000.</p> <p>(6) If the Minister holds, or is entitled to hold, any money under a bond entered into by a tenement holder, the Minister may, in the</p>	<p>the course of carrying out authorised operations; and  (b) the present and future obligations of that person in relation to the rehabilitation of land disturbed by authorised operations, will be satisfied.</p> <p>(2) The Minister may require such security for the satisfaction of the bond as the Minister thinks fit.</p> <p>(2a) If an applicant for a mineral tenement fails to comply with a requirement under this section, the Minister may refuse the application.</p> <p>(3) If the holder of a mineral tenement fails to comply with a requirement under this section—</p> <p>(a) the Minister may, if the requirement has not been complied with at the expiration of one month from the end of the time allowed for compliance, prohibit mining operations in the area of the tenement; and  (b) the Minister may, if the requirement has not been complied with at the expiration of three months from the end of the time allowed for compliance, cancel the tenement.</p> <p>(4) The liability to pay an amount under this section is a debt due to the Crown.</p> <p>(5) A person must not contravene a prohibition under subsection (3).  Maximum penalty: \$150 000.</p> <p>(6) <del>If the Minister holds, or is entitled to hold, any money under a bond entered into by a tenement holder,</del> the Minister may, in the</p>
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<p>that mining operator or in rehabilitating any land disturbed by any such operations. (6) No action shall lie against the Minister in respect of the expenditure of money under this section.</p>	<p>Minister's discretion, expend any portion of that money— (a) to compensate any person who has suffered, or is likely to suffer, financial loss as a result of authorised operations carried out by that tenement holder or in rehabilitating any land disturbed by any such authorised operations; or (b) to satisfy any liability to pay an amount that is due to the Crown under this Act. (7) The Minister may, on application under this subsection, (in the Minister's absolute discretion) agree to the assignment of a liability or obligation under this section to a third party on terms or conditions determined by the Minister. (8) No action lies against the Minister in respect of the expenditure of money under this section.</p>	<p>Minister's discretion, expend any portion of <del>that money</del> any money under a bond entered into by a tenement holder— (a) to compensate any person who has suffered, or is likely to suffer, financial loss as a result of authorised operations carried out by that tenement holder or in rehabilitating any land disturbed by any such authorised operations; or (b) to satisfy any liability to pay an amount that is due to the Crown under this Act. (7) The Minister may, on application under this subsection, (in the Minister's absolute discretion) agree to the assignment of a liability or obligation under this section to a third party on terms or conditions determined by the Minister. (8) No action lies against the Minister in respect of the expenditure of money under this section.</p>
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## Rehabilitation funds

### Section 62AA

Section 62AA enables the Minister to establish a rehabilitation fund payable by a tenement holder in order to reinstate or rehabilitate land affected by authorised operations.

This fund is discretionary under the Statutes Amendment (Mineral Resources) Bill 2018. GPSA believes, for the reasons outlined above (see section 62) that such funds should be mandatory on all tenement holders conducting authorised operations.

Mining Act 1971	Statutes Amendment	GPSA proposed amendment
N/A	62AA—Mining Rehabilitation Fund	62AA—Mining Rehabilitation Fund

	<p>(1) The Minister must establish a fund entitled the Mining Rehabilitation Fund.</p> <p>(2) The fund will consist of—</p> <ul style="list-style-type: none"> <li>(a) amounts required to be paid under subsections (3) and (4); and</li> <li>(b) amounts required to be paid into the fund under any other section; and</li> <li>(c) amounts required to be paid into the fund under the regulations; and</li> <li>(d) amounts required to be paid into the fund under any other Act; and</li> <li>(e) any income or accretions produced by the investment of money from the fund (and the Minister is authorised to invest any amount standing to the credit of the fund in such 5 manner as the Minister thinks fit).</li> </ul> <p>(3) The Minister may, after taking into account the matters specified in subsection (4), require a tenement holder (or former tenement holder) to pay an amount determined by the Minister into the fund—</p> <ul style="list-style-type: none"> <li>(a) before the relevant mineral tenement is cancelled, surrendered or expires under this Act; or</li> <li>(b) within the prescribed period after the relevant mineral tenement is cancelled, surrendered or expires under this Act.</li> </ul> <p>(4) The following matters are specified:</p> <ul style="list-style-type: none"> <li>(a) the extent to which it appears that resources may be required to achieve appropriate environmental outcomes on the closure of authorised operations on land comprised in the relevant mineral tenement;</li> </ul>	<p>(1) The Minister must establish a fund entitled the Mining Rehabilitation Fund.</p> <p>(2) The fund will consist of—</p> <ul style="list-style-type: none"> <li>(a) amounts required to be paid under subsections (3) and (4); and</li> <li>(b) amounts required to be paid into the fund under any other section; and</li> <li>(c) amounts required to be paid into the fund under the regulations; and</li> <li>(d) amounts required to be paid into the fund under any other Act; and</li> <li>(e) any income or accretions produced by the investment of money from the fund (and the Minister is authorised to invest any amount standing to the credit of the fund in such 5 manner as the Minister thinks fit).</li> </ul> <p>(3) The Minister <del>may</del> <b>shall</b>, after taking into account the matters specified in subsection (4), require a tenement holder (or former tenement holder) to pay an amount determined by the Minister into the fund—</p> <ul style="list-style-type: none"> <li>(a) before the relevant mineral tenement is cancelled, surrendered or expires under this Act; or</li> <li>(b) within the prescribed period after the relevant mineral tenement is cancelled, surrendered or expires under this Act.</li> </ul> <p>(4) The following matters are specified:</p> <ul style="list-style-type: none"> <li>(a) the extent to which it appears that resources may be required to achieve appropriate environmental outcomes on the closure of authorised operations on land comprised in the relevant mineral tenement;</li> </ul>
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	<p>(b) without limiting paragraph (a), the extent and likelihood of action that may be required—</p> <ul style="list-style-type: none"> <li>(i) to reinstate, supplement or improve rehabilitation of land that fails to establish a safe, stable and self-contained environment; and</li> <li>(ii) to maintain environmental management processes; and</li> <li>(iii) to take further action to restore the environment because of environmental damage or impairment resulting from authorised operations.</li> </ul> <p>(5) The Minister may impose a requirement under this section even if a mineral tenement has been reinstated under Part 8B Division 9.</p> <p>(6) The imposition of a requirement under this section does not limit any other action or requirement that may be taken or arise under any other section.</p> <p>(7) The Minister may impose a requirement under this section by notice served on the relevant tenement holder (or former tenement holder).</p> <p>(8) An amount required to be paid into the fund under subsection (3) must be paid within a period (of at least 28 days) specified by the Minister in a notice under subsection (7). Maximum penalty: \$20 000.</p> <p>(9) The liability to pay an amount under this section is a debt due to the Crown.</p>	<p>(b) without limiting paragraph (a), the extent and likelihood of action that may be required—</p> <ul style="list-style-type: none"> <li>(i) to reinstate, supplement or improve rehabilitation of land that fails to establish a safe, stable and self-contained environment; and</li> <li>(ii) to maintain environmental management processes; and</li> <li>(iii) to take further action to restore the environment because of environmental damage or impairment resulting from authorised operations.</li> </ul> <p>(5) The Minister may impose a requirement under this section even if a mineral tenement has been reinstated under Part 8B Division 9.</p> <p>(6) The imposition of a requirement under this section does not limit any other action or requirement that may be taken or arise under any other section.</p> <p>(7) The Minister may impose a requirement under this section by notice served on the relevant tenement holder (or former tenement holder).</p> <p>(8) An amount required to be paid into the fund under subsection (3) must be paid within a period (of at least 28 days) specified by the Minister in a notice under subsection (7). Maximum penalty: \$20 000.</p> <p>(9) The liability to pay an amount under this section is a debt due to the Crown.</p>
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	<p>(10) Money standing to the credit of the fund may be used by the Minister for all or any of the following purposes:</p> <ul style="list-style-type: none"> <li>(a) to fund monitoring and maintenance of any land in relation to which a requirement under this section has been imposed;</li> <li>(b) to fund programs, including as to the collection or provision of information and the carrying out of work, relating to the rehabilitation of any land in relation to which a requirement under this section has been imposed;</li> <li>(c) to achieve any other environmental outcomes that are related to the ceasing of authorised operations;</li> <li>(d) to fund other programs, or to achieve other outcomes, prescribed by the regulations;</li> <li>(e) to provide for the costs of administering the fund.</li> </ul> <p>(11) For the purposes of carrying out any operations associated with using money for a purpose under subsection (10), the Minister or the Director of Mines, or any person authorised in writing by the Minister or the Director of Mines, may—</p> <ul style="list-style-type: none"> <li>(a) enter and remain on any land with such assistants, vehicles and equipment as may be necessary or expedient for any such purpose; and</li> <li>(b) carry out tests or any work.</li> </ul> <p>(12) A person who interferes with or obstructs any person in the exercise of a</p>	<p>(10) Money standing to the credit of the fund may be used by the Minister for all or any of the following purposes:</p> <ul style="list-style-type: none"> <li>(a) to fund monitoring and maintenance of any land in relation to which a requirement under this section has been imposed;</li> <li>(b) to fund programs, including as to the collection or provision of information and the carrying out of work, relating to the rehabilitation of any land in relation to which a requirement under this section has been imposed;</li> <li>(c) to achieve any other environmental outcomes that are related to the ceasing of authorised operations;</li> <li>(d) to fund other programs, or to achieve other outcomes, prescribed by the regulations;</li> <li>(e) to provide for the costs of administering the fund.</li> </ul> <p>(11) For the purposes of carrying out any operations associated with using money for a purpose under subsection (10), the Minister or the Director of Mines, or any person authorised in writing by the Minister or the Director of Mines, may—</p> <ul style="list-style-type: none"> <li>(a) enter and remain on any land with such assistants, vehicles and equipment as may be necessary or expedient for any such purpose; and</li> <li>(b) carry out tests or any work.</li> </ul> <p>(12) A person who interferes with or obstructs any person in the exercise of a</p>
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	power under subsection (11) is guilty of an offence. Maximum penalty: \$20 000 or imprisonment for 6 months.	power under subsection (11) is guilty of an offence. Maximum penalty: \$20 000 or imprisonment for 6 months.
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## Section 62A

This section allows a land owner to, following a court order, have a tenement holder purchase land where the landowner's use of it is substantially impaired.

GPSA believes that there should be an uplift in the value of this in order to appropriately compensate the landowner for the inconvenience, as well as costs, tax, or other liabilities that may result from the acquisition.

<b>Mining Act 1971</b>	<b>Statutes Amendment</b>	<b>GPSA proposed amendment</b>
<p><b>62A—Right to require acquisition of land</b></p> <p>(1) If the activities of a mining operator on land substantially impair the owner's use and enjoyment of the land, the owner may apply to the Land and Valuation Court for an order under this section.</p> <p>(2) The Court may, on an application under this section, if the Court considers it to be just and appropriate in the circumstances of the particular case—</p> <p>(a) make an order transferring the owner's land to the holder of the relevant mining tenement; and</p> <p>(b) order the holder of the relevant mining tenement to pay to the owner, by way of compensation, after taking into account (to such extent as the Court considers appropriate) any compensation or other amounts that have been paid to the owner under the other provisions of this Act—</p> <p>(i) an amount equivalent to the market value of the land; and</p>	<p><b>62A—Right to require acquisition of land</b></p> <p>(1) If the activities of a tenement holder on land substantially impair the owner's use and enjoyment of the land, the owner may apply to the Land and Valuation Court for an order under this section.</p> <p>(2) The Court may, on an application under this section, if the Court considers it to be just and appropriate in the circumstances of the particular case—</p> <p>(a) make an order transferring the owner's land to the holder of the relevant mineral tenement; and</p> <p>(b) order the holder of the relevant mineral tenement to pay to the owner, by way of compensation, after taking into account (to such extent as the Court considers appropriate) any compensation or other amounts that have been paid to the owner under the other provisions of this Act—</p>	<p><b>62A—Right to require acquisition of land</b></p> <p>(1) If the activities of a tenement holder on land substantially impair the owner's use and enjoyment of the land, the owner may apply to the Land and Valuation Court for an order under this section.</p> <p>(2) The Court may, on an application under this section, if the Court considers it to be just and appropriate in the circumstances of the particular case—</p> <p>(a) make an order transferring the owner's land to the holder of the relevant mineral tenement; and</p> <p>(b) order the holder of the relevant mineral tenement to pay to the owner, by way of compensation, after taking into account (to such extent as the Court considers appropriate) any compensation or other amounts that have been paid to the owner under the other provisions of this Act—</p>

<p>(ii) a further amount the Court considers just by way of compensation for disturbance; and  (c) make such other ancillary or related orders as the Court thinks fit.  (3) This section does not apply in relation to an exploration licence.</p>	<p>(i) an amount equivalent to the market value of the land; and  (ii) a further amount the Court considers just by way of compensation for disturbance; and  (c) make such other ancillary or related orders as the Court thinks fit.  (3) This section does not apply in relation to an exploration licence.</p>	<p>(i) an amount equivalent to <b>3 (three) times</b> the market value of the land; and  (ii) a further amount the Court considers just by way of compensation for disturbance; and  (c) make such other ancillary or related orders as the Court thinks fit.  (3) This section does not apply in relation to an exploration licence.  <b>(4) For the purposes of this section, <i>land</i> shall be taken to include related parcels owned by related entities.</b>   Explanatory note: Land in regional areas (and especially in agriculture) can be held by different legal entities but ultimately controlled by the same person or family. Subsection (4) is intended to ensure that these related parcels can also be included in any acquisition.</p>
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