

Queensland



**MINERAL RESOURCES AND
OTHER LEGISLATION
AMENDMENT ACT 2002**

Act No. 63 of 2002

Queensland



MINERAL RESOURCES AND OTHER LEGISLATION AMENDMENT ACT 2002

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**Mineral Resources and Other Legislation
Amendment Act 2002**

Act No. 63 of 2002

**An Act to amend the *Mineral Resources Act 1989*, and for other
purposes**

[Assented to 14 November 2002]

The Parliament of Queensland enacts—

PART 1—PRELIMINARY

1 Short title

This Act may be cited as the *Mineral Resources and Other Legislation Amendment Act 2002*.

2 Commencement

This Act commences on a day to be fixed by proclamation.

PART 2—AMENDMENT OF MINERAL RESOURCES ACT 1989

3 Act amended in pt 2

This part amends the *Mineral Resources Act 1989*.

4 Insertion of new pt 7A

After section 318—

insert—

‘PART 7A—ROADS

‘Division 1—Preliminary

‘318A Significant projects excluded from pt 7A

‘(1) This part does not apply for a mining lease that is, or is included in, a project declared under the *State Development and Public Works Organisation Act 1971*, section 26, to be a significant project.

‘(2) Subsection (1) does not limit or otherwise affect Coordinator-General’s conditions included in the mining lease, under the *State Development and Public Works organisation Act 1971*, part 4, division 5.¹

‘318B What is the “road authority” for a road

‘The “road authority”, for a road, is—

- (a) for a State-controlled road—the chief executive of the department in which the *Transport Infrastructure Act 1994* is administered; or
- (b) for another road—the local government having the control of the road.

‘318C What is a “notifiable road use”

‘(1) A “notifiable road use”, for a mining tenement, is the use of a road to haul loads at more than the following rate if the haulage relates to the transport of minerals produced on or from land subject to the tenement—

- (a) for a State-controlled road—50 000 t a year;
- (b) for another road—10 000 t a year.

‘(2) For subsection (1), a mineral is produced only if it is—

¹ *State Development and Public Works Organisation Act 1971*, part 4, division 5 (Relationship with Mineral Resources Act)

- (a) mined, or released by mining, on the land; or

Example of a mineral that may be ‘released’ by mining—

Coal seam methane.²

- (b) processed on the land, including, for example, by a process in a refinery or smelter on the land under which a mineral is changed to another substance.

‘(3) Subsection (1) applies even if the road is not on land subject to the mining tenement.’³

‘Division 2—Notifiable road uses

‘318D Notice of notifiable road use

‘(1) It is a condition of each mining tenement that its holder must not use a road for a notifiable road use unless the holder has given the road authority for the road written notice that the holder proposes to carry out the use.’⁴

‘(2) The notice must—

- (a) be given—

- (i) at least 10 business days before the use starts; or
(ii) within a shorter period agreed to by the authority in writing;
and

- (b) state each of the following—

- (i) the road proposed to be used;
(ii) the type of haulage under the use;

Examples of ‘type of haulage’—

- Vehicle type

2 See the schedule (Dictionary), definition “mineral”, paragraph (c).

3 See however section 736 (Exclusion of pt 7A for continuance of existing notifiable road uses).

4 See also section 318L (Compensation to be addressed before carrying out notifiable road use).

- Mineral hauled
 - Frequency of vehicle movements.
- (iii) the yearly or other rate at which the haulage is proposed to be carried out;
- (iv) when the use is proposed to start and end;
- (v) contact details for the holder or someone else the holder has authorised to discuss the matters stated in the notice.

‘318E Directions about notifiable road use

‘(1) The road authority for a road may, by written notice, give a mining tenement holder a direction (a “**road use direction**”) about the way the holder may use the road for notifiable road uses, being carried out, or proposed to be carried out, by the holder.

‘(2) A road use direction must—

- (a) be reasonable; and
- (b) only be about—
 - (i) preserving the condition of the road; or
 - (ii) the safety of road-users or the public; and
- (c) be accompanied by, or include, a statement—
 - (i) of reasons for giving the direction; and
 - (ii) that, under section 406,⁵ the holder may apply to the tribunal to review the direction; and
 - (iii) about how to apply for the review.

Examples of what a road use direction may be about—

1. When the road may be used.
2. The route for the movement of heavy vehicles.
3. Safety precautions the holder must take.

‘(3) The direction may also require the holder to—

- (a) carry out an assessment of the impacts likely to arise from the notifiable road use the subject of the notice; and

5 Section 406 (Tribunal may review direction or requirement)

(b) consult with the road authority in carrying out the assessment.

‘(4) However, the authority can not require an assessment of an impact to the extent it has already been assessed under an EIS under the Environmental Protection Act, or a similar document under another Act.

‘318F Obligation to comply with road use directions

‘It is a condition of each mining tenement that its holder must comply with any road use direction given to the holder relating to the tenement, unless the holder has a reasonable excuse.

‘Division 3—Compensation for notifiable road uses

‘318G Liability to compensate road authority

‘(1) The holder of each mining tenement is liable to compensate the road authority for a road for any cost, damage or loss it incurs, or will incur, that is or will be caused by notifiable road uses carried out by the holder that relate to the road.

Examples of a possible ‘cost’ for subsection (1)—

1. Repair costs to rectify damage to the road caused, or that will be caused, by any of the uses.
2. Capital costs for unplanned upgrades of the road incurred, or that will be incurred, because of any of the uses.
3. Bring-forward costs, including interest charges, for a planned upgrade of the road that, because of any of the uses, is or will be required earlier than planned.

‘(2) The holder’s liability under subsection (1) is called the holder’s **“compensation liability”** to the authority.

‘(3) The compensation liability—

- (a) applies whether or not the holder has, under section 318D, given notice of the use; and
- (b) is subject to section 318M;⁶ and

⁶ Section 318M (Compensation not affected by change in administration or holder)

- (c) is in addition to, and does not limit or otherwise affect, the holder's liability under another provision of this Act about compensating the authority or anyone else.

'318H Compensation agreement

'(1) A mining tenement holder and the road authority for a road may enter into an agreement (a "**compensation agreement**") about the holder's compensation liability to the authority relating to the road.

'(2) A compensation agreement may relate to the whole or part of the liability.

'(3) A compensation agreement must—

- (a) be signed by or for the holder and the authority; and
- (b) state whether it is for the whole or part of the liability; and
- (c) if it is for only part of the liability, state—
 - (i) each part of the notifiable road use to which the agreement relates; and
 - (ii) the period for which the agreement has effect; and
- (d) provide for how and when the liability will be met.

'(4) A compensation agreement may—

- (a) extend the holder's compensation liability to the authority relating to the road to any renewal of the mining tenement; and
- (b) provide for—
 - (i) monetary or non-monetary compensation; or
 - (ii) a process by which it may be amended or enforced.

Example for paragraph (b)—

A compensation agreement may provide for compensation under it to be reviewed on the happening of a material change in circumstances for the mining tenement, including a significant decrease or increase in the extent of the relevant notifiable road use.

'(5) Subsections (2) to (4) do not limit the matters that may be provided for in a compensation agreement.

‘318I Deciding compensation through tribunal

‘(1) The road authority for a road or a mining tenement holder may apply to the tribunal for it to decide the holder’s compensation liability to the authority relating to the road.

‘(2) The tribunal may decide the compensation liability only to the extent it is not subject to a compensation agreement.

‘(3) In making the decision, the tribunal may have regard to whether the applicant has attempted to mediate or negotiate the compensation liability.

‘318J Criteria for decision

‘(1) The criteria the tribunal must consider, in deciding a compensation application, include—

- (a) the reasonableness of the cost, damage or loss claimed; and
- (b) if the road authority is a local government—the extent to which the cost, damage or loss claimed has been, will be or ought reasonably to be or to have been, met from—
 - (i) amounts the mining tenement holder has paid, or agreed to pay, the authority for notifiable road uses; or
 - (ii) rates and charges under the *Local Government Act 1993* paid or payable from the mining tenement holder to the authority; and
- (c) any other relevant matter.

‘(2) In considering the reasonableness of any cost, damage or loss claimed, the tribunal must have regard to—

- (a) any action taken, or proposal by, the mining tenement holder to, or to attempt to, avoid, minimise or remedy the cost, damage or loss; and
- (b) any relevant act or omission of the road authority.

‘(3) Subsection (1)(b)(ii) applies whether or not the rates and charges relate to notifiable road uses.

‘318K Tribunal review of compensation

‘(1) This section applies if—

- (a) compensation has been agreed to under a compensation agreement or decided by the tribunal (the “**original compensation**”); and
- (b) there has, since the agreement or decision, been a material change in circumstances.

Example of a ‘material change in circumstances’—

A significant decrease or increase in the extent of the relevant notifiable road use.

‘(2) The relevant road authority or mining tenement holder may apply to the tribunal for it to review the original compensation.

‘(3) Sections 318I and 318J apply, with necessary changes, for the review as if the application were a compensation application.

‘(4) The tribunal may, after conducting the review, decide to confirm the original compensation or amend it in a way the tribunal considers appropriate.

‘(5) However, before making the decision, the tribunal must have regard to—

- (a) the original compensation; and
- (b) whether the applicant has attempted to mediate or negotiate an amendment of the original compensation; and
- (c) any change in the matters mentioned in section 318J(1) since the original compensation was agreed or decided.

‘(6) If the decision is to amend the original compensation, the original compensation, as amended under the decision, is for this Act, taken to be the original compensation.

‘318L Compensation to be addressed before carrying out notifiable road use

‘(1) It is a condition of each mining tenement that the holder of the tenement must not carry out a notifiable road use on a road unless—

- (a) the holder and the relevant road authority have signed a compensation agreement for the use; or
- (b) the authority has given written consent to the carrying out of the use; or

(c) a compensation application has been made to decide the holder's compensation liability to the authority relating to the road.⁷

'(2) A consent under subsection (1)(b) may be given for any renewal of the mining tenement.

'318M Compensation not affected by change in administration or holder

'(1) An agreement or decision under this part about compensation liability is binding on—

- (a) the relevant road authority and mining tenement holder; and
- (b) each of their personal representatives, successors and assigns.

'(2) Subsection (1) is subject to section 318K.⁸'.

5 Amendment of s 406 (Tribunal may review lawfulness of directions)

(1) Section 406, heading, '**lawfulness of directions**'—

omit, insert—

'direction or requirement'.

(2) Section 406(1)—

omit, insert—

'(1) A person dissatisfied with the following may, if no other right of appeal against the direction or requirement is given under this Act, apply in writing to the tribunal for a review of the direction or requirement—

- (a) a direction or requirement given or made by a mining registrar, field officer or other authorised officer;
- (b) a road use direction.'

6 Insertion of new pt 19, div 4

Part 19—

⁷ See section 318I(1) (Deciding compensation through tribunal).

⁸ Section 318K (Tribunal review of compensation)

insert—

***‘Division 4—Transitional provision for Mineral Resources and Other
Legislation Amendment Act 2002***

**‘736 Exclusion of pt 7A for continuance of existing notifiable road
uses**

‘(1) Part 7A does not apply for a notifiable road use (the **“continuing use”**) carried out by a mining tenement holder if—

- (a) at any time within 12 months before the commencement of section 318D,⁹ the holder carried out a notifiable road use (the **“existing use”**); and
- (b) the type of haulage under the continuing use is the same, or substantially the same, as the type of haulage under the existing use.

‘(2) Subsection (1) applies even if the continuing use stops and later starts again.’.

7 Amendment of schedule (Dictionary)

Schedule—

insert—

“compensation agreement”, for part 7A, see section 318H(1).

“compensation application”, for part 7A, means an application made under section 318I(1).

“notifiable road use”, for part 7A, see section 318C.

“road authority” for part 7A, see section 318B.

“road use direction” see section 318E(1).

“State-controlled road” see the *Transport Infrastructure Act 1994*, schedule 3.’.

9 Section 318D (Notice of notifiable road use)

PART 3—AMENDMENT OF LAND AND RESOURCES TRIBUNAL ACT 1999

8 Act amended in pt 3

This part amends the *Land and Resources Tribunal Act 1999*.

9 Amendment of sch 1 (Requirements for constituting tribunal)

Schedule 1, under heading ‘Mineral Resources Act 1989’, entry under sub-heading ‘Compensation’—

omit, insert—

‘318I	Deciding mining tenement holder’s compensation liability to road authority	presiding member
318K	Review of original compensation	presiding member
706 to 722	Decision about compensation	panel

Directions or requirements

406	Review of direction or requirement	presiding member’.
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