

South Australia

# Mining Act 1971

An Act to regulate and control mining operations; and for other purposes.

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**The Parliament of South Australia enacts as follows:**

## **Part 1—Preliminary**

### **1—Short title**

This Act may be cited as the *Mining Act 1971*.

### **6—Interpretation**

(1) In this Act, unless the contrary intention appears—

*Adelaide Dolphin Sanctuary* has the same meaning as in the *Adelaide Dolphin Sanctuary Act 2005*;

*appropriate court* means—

- (a) the Supreme Court; or
- (b) the ERD Court; or
- (c) if proceedings do not involve a monetary claim, or a claim for more than \$150 000—the Warden's Court;<sup>1</sup>

*authorised person* means a person authorised in writing by the Director of Mines to exercise the powers conferred by the provisions of this Act in which the expression is used;

*baseline* means the baseline adjacent to the coast of the State (including the coast of any island forming part of the State) for the time being determined under section 7(1)(b) of the *Seas and Submerged Lands Act 1973* of the Commonwealth;

*council* means a municipal or district council within the meaning of the *Local Government Act 1934* and includes a body corporate that is, by virtue of any Act, deemed to be, or vested with the powers of, a municipal or district council;

*Crown lands* means lands that are Crown lands within the meaning of the *Crown Lands Act 1929*;

*declared equipment* means—

- (a) a trench digger or excavator; or
- (b) mechanically driven equipment, equipped with a blade or bucket of a width exceeding 750 mm, capable of ripping, gouging, scooping or digging earth or rock material; or
- (c) equipment that is capable of digging, boring or tunnelling underground, generally in a horizontal plane, with a cross sectional dimension greater than 750 mm;

*the Director of Mines* or *the Director* means the person assigned by the Minister to exercise the powers and discharge the duties of the officer so designated by this Act;

*ERD Court* means the Environment, Resources and Development Court established under the *Environment, Resources and Development Court Act 1993*;<sup>2</sup>

*exempt land* means land that is exempt from mining operations under section 9;

***exploration authority*** means—

- (a) a miner's right;
- (c) a mineral claim;
- (d) an exploration licence;
- (e) a retention lease (but only if the mining operations to which the lease relates are limited to exploratory operations);

***exploring*** means operations of any kind in the course of—

- (a) exploring for minerals; or
- (b) establishing the extent of a mineral deposit,

and includes prospecting, and *to explore* and *exploratory* have corresponding meanings;

***extractive minerals*** means sand, gravel, stone, shell, shale or clay, but does not include—

- (a) any such minerals that are mined for a prescribed purpose; or
- (b) fire clay, bentonite or kaolin;

***fossicking*** means the gathering of minerals—

- (a) as a recreation; and
- (b) without any intention to sell the minerals or to utilise them for a commercial or industrial purpose,

but does not include the gathering of minerals by any means involving disturbance of land or water by machinery or explosives;

***inspector*** means a person for the time being holding or acting in the office of inspector of mines under this Act, and includes the Chief Inspector;

***the Land and Valuation Court*** means the Land and Valuation Court constituted under the *Supreme Court Act 1935*;

***machinery*** means any device operated otherwise than by muscular force exerted by the operator;

***marine park*** has the same meaning as in the *Marine Parks Act 2007*;

***mine*** means any place in which mining operations are carried out;

***mineral land*** means any land that is mineral land in consequence of a declaration under this Act;

***minerals*** means—

- (a) any naturally occurring deposit of metal or metalliferous ore, precious stones or any other mineral (including sand, gravel, stone, shell, coal, oil shale, shale and clay); or
- (b) any metal, metalliferous substance or mineral recoverable from the sea or a natural water supply; or
- (c) any metal, metalliferous ore or mineral that has been dumped or discarded—



- (i) in the course of mining operations or operations incidental to mining operations; or
- (ii) in other prescribed circumstances;

but does not include—

- (d) soil; or
- (e) petroleum or any other substance, the recovery of which is governed by the *Petroleum Act 1940*;

**mining** or **mining operations** means all operations carried on in the course of prospecting, exploring or mining for minerals, or quarrying, and includes operations by means of which minerals are recovered from the sea or a natural water supply, but does not include any investigation or survey under section 15, or fossicking, and **to mine** has a corresponding meaning;

**mining operator** means a person by whom, or on whose behalf, mining operations are carried out under this Act;

**Mining Register** means the register kept by the Mining Registrar under section 15A;

**a mining registrar** means a person appointed as a mining registrar under section 13 and includes the Mining Registrar;

**the Mining Registrar** means a person appointed as the Mining Registrar under section 13 and includes a person who is acting in the position of Mining Registrar;

**mining tenement** means a claim, lease or licence under this Act;

**Murray-Darling Basin** has the same meaning as in the *Murray-Darling Basin Act 1993*;

**native title**, **native title holder** and **native title land**—see *Native Title (South Australia) Act 1994*;<sup>3</sup>

**native title mining determination** means a determination authorising a mining operator to enter land and carry out mining operations on the land under Part 9B;

**opal development area** means an area within a precious stones field declared by the Minister under section 8A to be an opal development area;

**owner** of land means—

- (a) a person who holds a registered estate or interest in the land conferring a right to immediate possession of the land; or
- (b) a person who holds native title in the land; or
- (c) a person who has, by statute, the care, control or management of the land; or
- (d) a person who is lawfully in occupation of the land;

**precious stones** has the same meaning as in the *Opal Mining Act 1995*;

**precious stones field** means a precious stones field under the *Opal Mining Act 1995*;

**prescribed notice of entry**—see section 58A(1);

**production tenement** means—

- (b) a mining lease;

- (c) a retention lease (if the mining operations to which the lease relates are not limited to exploratory operations);

**proprietor**, in relation to a private mine, means a person who was, on the commencement of this Act, divested of property in the minerals for the recovery of which the mine is operated, or a person lawfully claiming under that person;

**prospecting** means operations of any kind in the course of exploring for minerals except such as involve the disturbance of land or water by machinery or explosives, and **to prospect** has a corresponding meaning;

**radioactive mineral** means uranium or any other prescribed radioactive mineral;

**registered representative** of native title holders—see Part 4 *Native Title (South Australia) Act 1994*;

**relevant Act** means—

- (a) in relation to the Adelaide Dolphin Sanctuary—the *Adelaide Dolphin Sanctuary Act 2005*; or
- (b) in relation to a marine park—the *Marine Parks Act 2007*; or
- (c) in relation to a River Murray Protection Area or the Murray-Darling Basin—the *River Murray Act 2003*;

**relevant Minister** means—

- (a) in relation to the Adelaide Dolphin Sanctuary—the Minister to whom the administration of the *Adelaide Dolphin Sanctuary Act 2005* is committed; or
- (b) in relation to a marine park—the Minister to whom the administration of the *Marine Parks Act 2007* is committed; or
- (c) in relation to a River Murray Protection Area or the Murray-Darling Basin—the Minister to whom the administration of the *River Murray Act 2003* is committed;

**the repealed Act** means the *Mining Act 1930* repealed by this Act;

**River Murray Protection Area** means a River Murray Protection Area under the *River Murray Act 2003*;

**specially protected area** means—

- (a) the Adelaide Dolphin Sanctuary; or
- (b) a marine park; or
- (c) a River Murray Protection Area;

**subsurface stratum** means a stratum resulting from the division of mineral land into strata under this Act, being a stratum that lies beneath a surface stratum;

**surface stratum** means a stratum resulting from the division of mineral land into strata under this Act, being a stratum of which the upper surface is the surface of those lands;

**warden** means a magistrate nominated by the Attorney-General to exercise the jurisdiction and powers of a warden under this Act;

**the Warden's Court** means the Warden's Court constituted under Part 10.

- (2) Where mineral land is divided into strata under this Act, a reference to land, or an area, shall, where appropriate, be construed as a reference to the surface stratum or a subsurface stratum, as the case may require.
- (3) An explanatory note to a provision of this Act forms part of the provision to which it relates.

**Notes—**

- 1 All native title questions arising in proceedings before the Warden's Court must be referred to the ERD Court—see Part 3 *Native Title (South Australia) Act 1994*.
- 2 The *Environment, Resources and Development Court Act 1993* and the *Native Title (South Australia) Act 1994* contain provisions under which the ERD Court may refer cases to the Supreme Court, or the Supreme Court may remove cases commenced before the ERD Court into the Supreme Court.
- 3 Part 5 of the *Native Title (South Australia) Act 1994* sets out the method of service on native title holders.

## **7—Application of Act**

- (1) Except as otherwise provided, this Act applies only in respect of mineral land.
- (2) This Act does not regulate mining operations for the recovery of extractive minerals, or require payment of royalty in respect of extractive minerals recovered in the course of such operations, where the operations are authorised under some other Act.
- (3) Except where the operations are being carried out in an opal development area, this Act does not regulate mining operations for the recovery of precious stones if those operations are carried out under the authority of a permit or tenement issued under the *Opal Mining Act 1995*.

## **8—Declaration of mineral land etc**

- (1) The Governor may, by proclamation—
  - (a) declare any land in the State or any land under coastal waters on the landward side of the baseline to be mineral land; or
  - (ba) divide mineral land into a surface stratum and one or more subsurface strata and fix the depth of the surface stratum and the depth of any subsurface stratum below which lies any further subsurface stratum resulting from the division; or
  - (c) reserve from the operation of this Act, or any provisions of this Act, any land specified in the proclamation,and the proclamation shall have effect according to its terms.
- (2) The Governor may, by subsequent proclamation, vary or revoke any proclamation made pursuant to this section.
- (3) The depth of strata into which mineral land is divided under this section may vary from place to place but, where the mineral land constitutes a precious stones field or part of a precious stones field, the depth of the surface stratum must be at least 50 metres.

- (4) Land that is subject to a mining tenement but is on the seaward side of the baseline because of a change in the position of the baseline after the tenement was granted will be taken to be mineral land until it ceases to be subject to the tenement and to all successive tenements (if any).
- (5) This Act applies to and in relation to land referred to in subsection (4) to the exclusion of the *Offshore Minerals Act 2000*.
- (6) A mining tenement is a successive tenement in relation to another tenement if—
  - (a) it applies to the same land or to part of the land covered by the other tenement; and
  - (b) it takes effect immediately after the other tenement expires or, where there are two or more successive tenements, immediately after the tenement immediately preceding it expires; and
  - (c) it is granted to the person who held the other tenement.

### **8A—Opal development areas**

- (1) The Minister may, by notice in the Gazette, declare mineral land within a precious stones field to be an opal development area for the purposes of this Act, and the declaration will have effect according to its terms.
- (2) A person must not carry out mining operations in an opal development area except under the authority of miner's right, exploration licence or mining lease under this Act.
- (3) The Minister may, by subsequent notice in the Gazette, vary or revoke a declaration under subsection (1).

### **9—Exempt land**

- (1) Subject to this section—
  - (a) land that is lawfully and genuinely used—
    - (i) as a yard, garden, cultivated field, plantation, orchard or vineyard;
    - (ii) as an airfield, railway or tramway;
    - (iii) as the grounds of a church, chapel, school, hospital or institution; or
  - (b) land that constitutes any parklands or recreation grounds under the control of a council; or
  - (ba) land—
    - (i) that is dedicated or reserved, pursuant to statute, for the purpose of waterworks; or
    - (ii) that is vested in the Minister of Public Works for the purpose of waterworks; or
    - (iii) that is comprised within an easement in favour of the Minister of Public Works; or
  - (bb) land that constitutes a forest reserve under the *Forestry Act 1950*; or
  - (c) any separate parcel of land of less than 2 000 square metres within any city, town or township; or

(d) land that is situated—

- (i) within 400 metres of a building or structure used as a place of residence (except a building or structure of a class excluded by regulation from the ambit of this paragraph); or
- (ii) within 150 metres of—
  - (A) a building or structure, with a value of \$200 or more, used for an industrial or commercial purpose; or
  - (B) a spring, well, reservoir or dam,

(but not if it is an improvement made for the purposes of mining operations),

shall be exempt from mining operations in pursuance of this Act and, unless the land ceases to be so exempt, no miner's right, claim, lease or licence shall authorise prospecting, exploring or mining upon such land (but this section does not prevent the pegging out of a claim upon such land).

- (2) Where any land is subject to a claim, lease or licence under this Act and that land would, but for this subsection, be land exempt from mining operations in pursuance of this Act by reason only of a fact or circumstance occurring or arising subsequent to the pegging out, or granting, of the claim, lease or licence, that land shall not be exempt from operations in pursuance of this Act.
- (3) Where—
  - (a) the person who has the benefit of an exemption under this section, by agreement with a mining operator, waives the exemption; or
  - (b) the appropriate court, on the application of a mining operator, determines compensation to be paid by the mining operator to the person or persons who have the benefit of the exemption,

the land shall cease to be exempt land, but the exemption shall revive upon completion of the mining operations in respect of which the agreement or determination was made or at such earlier time as may be stipulated in that agreement or determination.

- (3a) An agreement or determination under subsection (3) may be made upon such terms and conditions as the parties or the appropriate court thinks fit.
- (3b) The following persons shall, for the purposes of this section, be regarded as having the benefit of an exemption under this section:
  - (a) the owner of the exempt land; and
  - (b) in the case of land that is exempt from mining operations under subsection (1)(d) by reason of its proximity to other land on which a building, structure, spring, well, reservoir or dam is situated—the owner of that other land.
- (3c) An agreement or determination under subsection (3) is binding on—
  - (a) successors in title to those owners of land who had the benefit of the former exemption; and
  - (b) the holders from time to time of any mining tenement in pursuance of which mining operations (being mining operations in respect of which the agreement or determination was made) are carried out.

- (4) This section does not affect any provision of the *Pastoral Act 1936* prohibiting or restricting the conduct of mining operations on lands subject to that Act.
- (5) In this section—  
*mining operations* include any operations or activity for which a miscellaneous purposes licence may be granted.

## 10—Mining in respect of public roads and places

Subject to the appropriate regulations for preventing undue interference with public use, the rights conferred by this Act may be exercised in respect of any public road, reserve or place.

### 10A—Special conditions attaching to mining of radioactive minerals

- (1) Subject to this section, no person shall carry out mining operations (other than exploratory operations) for the recovery of any radioactive mineral unless he is the holder of a mining lease or retention lease upon which the Minister has endorsed an authorisation to carry out mining operations for that purpose.
- (2) An authorisation to carry out mining operations for the recovery of a radioactive mineral may be granted upon such conditions as the Minister thinks fit and may be revoked upon breach of any condition.
- (3) This section does not prevent the recovery of any radioactive mineral in the course of mining operations carried out for the recovery of other minerals provided that the radioactive mineral—
  - (a) is stockpiled in accordance with conditions stipulated by the Minister; or
  - (b) is of such low concentration that it may, in the opinion of the Minister, be safely discarded as waste and is in fact discarded as waste.
- (4) Notwithstanding any other provision of this Act, the property in any radioactive mineral—
  - (a) stockpiled in pursuance of conditions imposed by the Minister under subsection (2); or
  - (b) stockpiled in pursuance of subsection (3)(a),

does not pass from the Crown unless and until the Minister, by instrument in writing, authorises the person by whom the radioactive mineral was mined to sell and dispose of the mineral.

### 10B—Interaction with other legislation

The Minister must, in acting in the administration of this Act, take into account the following insofar as they may be relevant:

- (a) the objects and objectives of the *Adelaide Dolphin Sanctuary Act 2005*;
- (b) the objects of the *Marine Parks Act 2007*;
- (c) the objects of the *Natural Resources Management Act 2004*;
- (d) the objects of the *River Murray Act 2003* and the *Objectives for a Healthy River Murray* under that Act.

## Part 2—Administration

### 11—The Minister and the Director to be corporations sole

The Minister and the Director of Mines shall each be a corporation sole.

### 12—Delegation

- (1) The Minister may delegate any power or function vested in or conferred on the Minister under this Act.
- (2) The Director of Mines may, with the Minister's consent, delegate any power or function (including a delegated power or function) vested in or conferred on the Director under this Act.
- (3) A delegation under this section—
  - (a) may be absolute or conditional; and
  - (b) may be made—
    - (i) to a particular person or body; or
    - (ii) to the person for the time being occupying a particular office or position; and
  - (c) does not derogate from the power of the delegator to act in any matter; and
  - (d) is revocable at will by the delegator.
- (4) In any legal proceedings an apparently genuine certificate, purportedly signed by the Minister or the Director, containing particulars of a delegation under this section, will, in the absence of proof to the contrary, be accepted as proof that the delegation was made in accordance with the particulars.

### 13—Officers and employees

- (1) For the purposes of the administration of this Act, officers and employees—
  - (a) may be appointed to the Public Service subject to, and in accordance with, the *Government Management and Employment Act 1985*; or
  - (b) may be appointed on some other basis determined by the Governor or the Minister.
- (2) A person who is appointed pursuant to subsection (1)(b) is not a member of the Public Service.
- (3) The Minister must (from time to time as occasion requires) appoint an officer or employee as the Mining Registrar and may, as the Minister thinks fit, appoint other officers or employees as mining registrars.
- (4) An appointment under subsection (3)—
  - (a) may be made for a term specified by the Minister;
  - (b) may be made on, or subject to, conditions specified by the Minister.
- (5) The Mining Registrar may delegate a power or function of the Mining Registrar to another mining registrar.

- (6) A delegation—
  - (a) may be made subject to conditions or limitations; and
  - (b) is revocable at will and does not prevent the Mining Registrar from acting personally in a matter.
- (7) The Mining Registrar may, with the approval of the Minister, appoint another mining registrar to act in the position of Mining Registrar while the Mining Registrar is absent from the duties of office.

### **15—Powers of Minister, Director and authorised persons**

- (1) For the purpose of making any geological, geophysical or geochemical investigation or survey, the Minister or the Director of Mines, or any person authorised in writing by the Minister or the Director, may—
  - (a) enter and remain upon any land with such assistants, vehicles and equipment as may be necessary or expedient for the purposes of the investigation or survey; and
  - (b) conduct such an investigation or survey on the land; and
  - (c) take, and remove from the land, any geological specimens or samples.
- (2) A person exercising a power under this section—
  - (a) must not recover from any land more minerals than are reasonably necessary for the purpose of making the relevant investigation or survey; and
  - (b) must not unnecessarily impede or obstruct the lawful use or enjoyment of any land by an owner of the land.
- (3) A person who interferes with or obstructs any person in the exercise of any power conferred by this section shall be guilty of an offence.  
Maximum penalty: \$2 500.
- (4) The Minister may publish, in such manner as he thinks fit, the results of an investigation or survey under this section.
- (5) At least 14 days before the Minister or the Director of Mines, or any authorised person, undertakes an investigation or survey under this section, the Minister may publish in the Gazette a notice—
  - (a) describing the area of land in which the investigation or survey will be undertaken; and
  - (b) setting out a completion date in respect of the investigation or survey.
- (6) The Minister may extend the completion date from time to time by publishing a further notice in the Gazette.
- (7) If a notice is published under subsection (5), the Minister may refuse to receive and consider an application for a mining tenement in respect of the land described in the notice until the completion date set out in the notice.

### **15A—Register of mining tenements etc**

- (1) The Mining Registrar shall keep a register of—
  - (a) miner's rights issued under this Act; and



- (b) registered claims; and
  - (c) leases and licences issued under this Act; and
  - (d) instruments registered under this Act.
- (2) Subject to this Act, a person may, upon payment of the prescribed fee, inspect the register.
- (3) The register may be kept in such forms as the Mining Registrar thinks fit.



## Part 3—Reservation of minerals and royalty

### 16—Reservation of minerals

- (1) Notwithstanding the provisions of any other Act or law, or of any land grant or other instrument, the property in all minerals is vested in the Crown.
- (2) This section applies in respect of all mineral land and in respect of all other land (including reserved land) in the State or under coastal waters on the landward side of the baseline.

### 17—Royalty

- (1) Subject to this Act, royalty is payable to the Minister on all minerals recovered from mineral land and—
  - (a) sold or intended for sale; or
  - (b) utilised, or to be utilised, for any commercial or industrial purpose.
- (2) Royalty is not payable on minerals recovered from mineral land that are removed from the area of a mining tenement for the purpose of any testing of a kind approved by the Minister.
- (3) Royalty is only payable on precious stones if the precious stones are recovered under this Act.
- (4) Subject to this or any other relevant section, royalty will be equivalent to—
  - (a) in the case of extractive minerals—35 cents per tonne, or such lesser amount as may be prescribed by the regulations, as assessed at the mine gate; or
  - (b) in any other case—3.5% of the value of the minerals, as assessed in accordance with subsection (5) (the *royalty assessment principles*).
- (5) For the purposes of subsection (4)(b) (and any other relevant section), the value of minerals will be the value (the *ex-mine gate value*) that fairly represents the market value (excluding GST) of the minerals at the time that the minerals leave the area of—
  - (a) unless paragraph (b) applies, the mining tenement from which the minerals were recovered; or
  - (b) if the minerals have been transported to mineral land the subject of a miscellaneous purposes licence—that mineral land.
- (6) Without limiting any other relevant matter, the market value of particular minerals will be determined according to—
  - (a) any contract price obtained for the minerals if the sale is to a genuine purchaser at arms length and taking into account the point of sale; or
  - (b) if there is not a contract with a genuine purchaser at arms length as contemplated by paragraph (a) in a particular case—
    - (i) any price quoted or obtained on any market recognised by the Minister (by notice published in the Gazette) as being a relevant industry market for the purposes of determining the market value of minerals of that kind; or

- (ii) if subparagraph (i) does not apply in a particular case—the price (if any) declared by the Minister by notice in the Gazette as being an indicative price for the minerals; or
  - (c) if neither paragraph (a) nor (b) applies in a particular case, any price obtained by other parties within the industry in relation to similar sales on the open market within a period determined by the Minister.
- (7) For the purposes of subsection (6)(a), **contract price** means—
  - (a) the amount to be paid under the contract; plus
  - (b) the value of any consideration, set-off, concession or other factor otherwise taken into account by the parties to the contract in determining the amount to be paid under the contract.
- (8) Any costs of a prescribed kind are not to be included in the market value of particular minerals at the gate of the relevant tenement.
- (9) The Minister may, under an agreement between the Minister and the person liable to pay royalty on any minerals other than extractive minerals, determine that royalty will be payable according to the weight or volume of minerals recovered or some other basis, and royalty will be payable by the person in accordance with the determination.
- (10) The Minister may, on the application of a person liable to pay royalty under this section, having regard to the effect that payment of such royalty would be likely to have on the viability or profitability of mining operations carried on by the person, waive payment of royalty wholly or in part, or reduce the rate at which royalty is payable, on minerals recovered in the course of those operations.
- (11) Royalty may be recovered by the Crown as a debt due to the Crown in any court of competent jurisdiction.
- (12) The holder of a tenement from which minerals are recovered is liable to pay the royalty.

**Note—**

For private mines see section 73E.

### **17A—Reduced royalty for new mines**

- (1) The Minister may, on the application of a person liable to pay royalty (other than on extractive minerals), by notice in the Gazette, declare that a mine will be taken to be a **new mine** for the purposes of this section.
- (2) Despite section 17, for the period of 5 years commencing on the date of paying the first royalty payment under this Act, royalty payable in relation to minerals (other than extractive minerals) recovered from mineral land at a new mine will be equivalent to 1.5 per cent of the value of the minerals (as assessed in accordance with the royalty assessment principles under section 17).
- (3) The Minister may, by subsequent notice in the Gazette, vary or revoke a declaration under subsection (1).
- (4) An application under this section must be made in a manner and form determined by the Minister and must be lodged with the Director of Mines.
- (5) An applicant must provide any information reasonably required by the Minister to determine the application.

- (6) In determining whether or not to make a declaration under this section, the Minister may have regard to the following matters (insofar as they may be relevant):
- (a) the extent to which the mining operations to be carried on at the mine can be viewed as constituting an extension of existing mining operations, or the revival of mining operations that have been previously carried on;
  - (b) the nature of the mining operations to be carried on at the mine when compared to any existing operations carried on, or previously carried on, at the same tenement, or a tenement within the vicinity of the relevant mine;
  - (c) the relationship of the applicant to any other person carrying on mining operations within the vicinity of the relevant mine (including, in the case of a body corporate, mining operations carried on by a related body corporate within the meaning of section 50 of the *Corporations Act 2001* of the Commonwealth);
  - (d) such other matters as the Minister thinks fit.

### **17B—Assessments by Minister**

- (1) The Minister may make an assessment of royalty under this Act if the Minister is of the opinion that a person liable to pay royalty—
- (a) has not made a payment of royalty when it falls due; or
  - (b) has not paid royalty in accordance with the royalty assessment principles (and any related provision under this Act); or
  - (c) has not paid royalty in accordance with any agreement or determination that applies under section 17 or 17A; or
  - (d) has not paid royalty in accordance with any other relevant requirement.
- (2) Without limiting subsection (1), the Minister may, on application or on the Minister's own initiative, review and revise an earlier assessment of royalty (and that revision will then be taken to be a new assessment for the purposes of this Act).
- (3) The Minister must cause a copy of any assessment under this section to be served on the person liable to pay the royalty.
- (4) A person on whom a copy of an assessment is served may, within 1 month after the date of service, appeal against the assessment to the ERD Court.
- (5) On the hearing of an appeal, the ERD Court may vary the assessment of the Minister to such extent as it thinks fit.
- (6) In this section—

*royalty assessment principles* means the royalty assessment principles that apply under section 17.

### **17C—Recovery of royalty where appeal lodged**

The fact that an appeal has been lodged under section 17B but not yet determined does not in the meantime affect the assessment to which the appeal relates, and the amount of any royalty or civil penalty amount determined as being payable under this Act as a result of the assessment may be recovered as if no appeal had been lodged.

## 17D—When royalty falls due

- (1) Subject to this Act, royalty will fall due—
  - (a) in respect of minerals with an ex-mine gate value calculated during the period between 1 January and 30 June (both dates inclusive) in any year—on 31 July of that year;
  - (b) in respect of minerals with an ex-mine gate value calculated during the period between 1 July and 31 December (both dates inclusive) in any year—on 31 January of the following year,

(but the Minister may, on application by the person liable to pay the royalty or of his or her own motion, extend the date on which the royalty will fall due).
- (2) Despite subsection (1), any royalty on minerals recovered from land within a mining tenement or private mine will be due and payable (including for the purposes of the imposition of a penalty amount for unpaid royalty under this Act)—
  - (a) in the case of a mining tenement—
    - (i) when the mining tenement is being transferred or surrendered; or
    - (ii) when the mining tenement is suspended or cancelled; or
    - (iii) when the mining tenement expires; or
  - (b) in the case of a private mine—when the declaration of the relevant area as a private mine is revoked; or
  - (c) at any other time in accordance with the regulations.
- (3) The Minister may, on application by a person liable to pay royalty or of his or her own motion, exempt (on such conditions as the Minister thinks fit) a person from the operation of subsection (1) or (2) if the Minister is satisfied that it is not reasonably practicable for the person to strictly comply with the requirements of this section.
- (4) In this section—

*ex-mine gate value* means a value calculated in accordance with section 17(5).

## 17E—Penalty for unpaid royalty

- (1) If royalty payable on minerals under this Act (other than extractive minerals recovered from a private mine) is not paid on or by the day on which it fell due, the person liable to pay the royalty is liable to pay a penalty amount, in addition to the amount of royalty unpaid, equal to \$1 000 plus the prescribed amount for each month (or part of a month) for which the royalty remains unpaid.
- (2) The Minister may, at the Minister's discretion, remit a penalty amount payable under subsection (1) by any amount.
- (3) A penalty amount may be recovered by the Crown as a debt due to the Crown in any court of competent jurisdiction.
- (4) In this section—

*prescribed amount* is to be calculated as follows:

$$PA = R \left( \frac{CLRR + 3\%}{12} \right)$$

where—

*PA* is the prescribed amount;

*R* is the amount of unpaid royalty;

*CLRR* is the corporate loan reference rate applied by the Commonwealth Bank of Australia for corporate lending on the day on which the royalty fell due.

### **17F—Processed minerals**

For the purposes of the imposition of royalty under this Act, a reference to minerals includes a reference to processed minerals.

### **17G—Means of payment**

Royalty must be paid in accordance with any requirement prescribed or authorised by or under the regulations.

### **18—Passing of property in minerals**

The property in minerals shall pass to the person by whom the minerals are lawfully mined upon, and in consideration of, payment of royalty or, if royalty is not payable in respect of the minerals, upon recovery of the minerals.





## **Part 4—Prospecting for minerals**

### **20—Issue, transfer, surrender etc of miner's right**

- (1) A mining registrar may, upon receipt of an application in the prescribed form containing the prescribed particulars, issue to any person a miner's right.
- (2) An application for a miner's right must be accompanied by the prescribed fee.
- (3) A person shall not hold more than 1 miner's right.
- (4) A miner's right is not transferable.
- (5) A person shall not—
  - (a) lend a miner's right to any other person; or
  - (b) permit any other person to make use, or take the benefit, of his miner's right.Maximum penalty: \$1 250.
- (6) A miner's right may, subject to this Act and in accordance with the regulations, be surrendered.

### **21—Term and renewal of miner's right**

- (1) A miner's right shall, subject to this Act, remain in operation for a period of 3 years from the date of issue.
- (2) A mining registrar may, upon receipt of an application in the prescribed form lodged with him within 1 month before the date on which a miner's right is due to expire and accompanied by the prescribed fee, renew the miner's right for a further period of 3 years.

### **22—Rights attaching to miner's right**

- (1) A miner's right shall, subject to this Act, authorise the holder to prospect for minerals and to peg out a mineral claim in accordance with the regulations.
- (1a) Subject to subsection (1b), where mineral land is divided into strata, a mineral claim may be pegged out, in accordance with the regulations, in respect of land within either the surface stratum or a subsurface stratum.
- (1b) A mineral claim shall not be pegged out in respect of land within a subsurface stratum except by a person who holds an exploration licence in respect of that land.
- (2) A miner's right does not authorise the conduct of mining operations that involve disturbance of land by machinery or explosives.
- (3) A miner's right does not authorise the pegging out of a mineral claim in respect of land within a precious stones field but, where a precious stones field consists of the surface stratum of land that is divided into strata, this subsection does not prevent the pegging out on the precious stones field of a claim in respect of land within a subsurface stratum.
- (4) Any number of claims may be pegged out by virtue of a single miner's right.

### **23—Area of claim**

- (1) The area of a mineral claim must not exceed the maximum permissible area stipulated by the regulations.
- (2) The maximum permissible area of a mineral claim may vary according to the nature of the minerals in respect of which the claim is pegged out.

### **24—Registration of claim**

- (1) Application for registration of a mineral claim must be lodged at the office of the Mining Registrar within 30 days after the day on which the claim is pegged out.
- (3) A mining registrar shall, subject to this Act and any order of the Warden's Court, register a mineral claim upon receipt of due application for registration of the claim in the prescribed form and accompanied by the prescribed particulars.
- (4) A mining registrar may refuse to register a mineral claim (other than a claim that relates solely to extractive minerals) if satisfied that—
  - (a) before the claim was pegged out, an application had been lodged for an exploration licence for an area comprising the area of the claim or portion of the area of the claim; and
  - (b) the application has not been refused.
- (4a) A mining registrar cannot register a mineral claim if to do so would be inconsistent with a public undertaking by the Minister to the mining industry.
- (5) If application for registration of a mineral claim is not made as required by this section, or if the mining registrar lawfully refuses to register the claim, the claim shall lapse.

### **25—Rights conferred by ownership of mineral claim**

- (1) A mineral claim confers on the owner of the claim an exclusive right, subject to the provisions of this Act—
  - (a) to prospect for minerals in the land comprised in the claim; and
  - (b) to carry out such other exploratory operations on, or in respect of, the land comprised in the claim as are approved in writing by the Director of Mines; and
  - (c) to apply for a mining lease or a retention lease in respect of the whole or part of the land comprised in the claim.
- (2) A person shall not remove from the area of a mineral claim minerals, or soil and minerals, exceeding a mass of 1 tonne unless authorised to do so by the Director of Mines.  
Maximum penalty: \$750.
- (3) The ownership of a mineral claim does not confer any right—
  - (a) to sell or dispose of any minerals recovered in the course of mining operations; or
  - (b) to utilise any such minerals for any commercial or industrial purpose.

## **26—Mineral claim not transferable etc**

- (1) A mineral claim is not transferable.
- (2) Where an application has not been made for a mining lease or a retention lease in respect of land comprised in a mineral claim within 12 months after registration of the claim, the claim shall lapse.
- (3) Where an application is made for a mining lease or a retention lease in respect of land comprised in a mineral claim, and the application is refused, the claim shall lapse.
- (4) A mineral claim may, subject to this Act and in accordance with the regulations, be surrendered.

## **27—Land not to be repegged where claim lapses etc**

Where a mineral claim lapses or is surrendered or forfeited, no claim covering any of the area of that previous claim shall, without the authority of the Warden's Court, be pegged out by, or on behalf of, the person who held the previous claim within 2 years of its lapse, surrender or forfeiture.



## Part 5—Exploration licence

### 28—Grant of exploration licence

- (1) Subject to this Act, the Minister may grant an exploration licence to any person.
- (2) An exploration licence authorises the licensee to carry out exploratory operations of a kind described in the licence in respect of land described, or referred to, in the licence.
- (2a) However, an exploration licence does not (and cannot) authorise the licensee to carry out exploratory operations for precious stones on land within a precious stones field that is outside an opal development area, or on land within an exclusion zone under the *Opal Mining Act 1995*.
- (3) An exploration licence shall not be granted in respect of extractive minerals.
- (5) At least 28 days before the Minister grants an exploration licence, a notice describing the land over which the licence is to be granted and, if the licence is to relate to a particular stratum, specifying the stratum, must be published by the Minister—
  - (a) in the Gazette; and
  - (b) in a newspaper circulating generally in the State; and
  - (c) if there is a regional or local newspaper circulating in the part of the State in which the licence area is situated—in the regional or local newspaper.
- (7) The Minister must not grant an exploration licence that authorises the licensee to carry out exploratory operations for precious stones if to do so would be inconsistent with a public undertaking by the Minister to the mining industry.
- (8) If an application for an exploration licence relates to an area within the Murray-Darling Basin, the Minister must, in considering the application, take into account the objects of the *River Murray Act 2003* and the *Objectives for a Healthy River Murray* under that Act.
- (9) If an application for an exploration licence relates to an area within or adjacent to a specially protected area, the Minister must, before making his or her decision on the application, refer the application to the relevant Minister and consult with the relevant Minister in relation to the matter.
- (10) If an application for an exploration licence is referred to a relevant Minister and the Minister to whom the administration of this Act is committed and the relevant Minister cannot agree—
  - (a) on whether an exploration licence should be granted; or
  - (b) if an exploration licence is granted, on the conditions to which the exploration licence should be subject,

the Ministers must take steps to refer the matter to the Governor and the Governor will determine the matter (and any decision taken by the Governor will be taken to be a decision of the Minister under this Act).

### 29—Application for exploration licence

- (1) An application for an exploration licence must be made in a manner and form determined by the Minister and must be lodged with the Director of Mines.

- (2) The applicant shall forward with an application for an exploration licence—
  - (a) the prescribed application fee; and
  - (b) a map on which are delineated the boundaries of the land in respect of which the licence is sought; and
  - (c) a statement outlining the exploratory operations that the applicant proposes to carry out in pursuance of the licence, showing the estimated expenditure to be incurred in carrying out those operations; and
  - (d) a statement of the technical and financial resources available to the applicant; and
  - (e) a statement of the nature of the minerals for which the applicant proposes to explore.
- (3) An applicant shall, at the request of the Minister, furnish such further information in relation to his application, or such evidence in support of his application, as the Minister may require.

### **30—Incidents of licence etc**

- (1) An exploration licence shall—
  - (a) describe or delineate the lands in respect of which it is granted; and
  - (b) be subject to such conditions as may be prescribed and to such additional conditions as the Minister thinks fit and specifies in the licence.
- (2) The Minister shall, in determining the conditions subject to which a licence is to be granted under this Part, give proper consideration to the protection of—
  - (a) the natural beauty of any locality or place that may be affected by the conduct of operations in pursuance of the licence;
  - (b) flora and fauna that may be endangered or disturbed by those operations;
  - (c) buildings of architectural or historical interest, and objects and features of scientific or historical interest, that may be affected by those operations;
  - (d) any Aboriginal sites or objects within the meaning of the *Aboriginal Heritage Act 1988* that may be affected by those operations,and may take into consideration such other factors as he considers appropriate in the particular case.
- (3) It shall be a condition of an exploration licence that the Minister may, at any time, require the holder of the licence to pay to any person an amount of compensation, stipulated by the Minister, to which that person is, in the opinion of the Minister, entitled in consequence of loss or damage suffered by him as a result of operations conducted in pursuance of the licence.

### **30AA—Area of licence**

- (1) The area of the land in respect of which an exploration licence is granted must not exceed 1 000 square kilometres unless, in the opinion of the Minister, circumstances exist that justify the grant of a licence in respect of a greater area.

- (2) However, if the exploration licence allows for exploratory operations for precious stones in an opal development area, the area of land in respect of which a licence is granted cannot exceed 20 square kilometres unless, in the opinion of the Minister, circumstances exist that justify the grant of a licence in respect of a greater area.

### **30A—Term and renewal of licence**

- (1) An exploration licence is to be granted for a term decided by the Minister of up to five years.
- (2) If an exploration licence is granted for a term of less than five years, the licence may include a right of renewal but not so the aggregate term of the licence exceeds five years.
- (3) An exploration licence that does not include in its terms a right of renewal may be renewed at the discretion of the Minister from time to time, but not so the aggregate term of the licence exceeds five years.
- (4) An application for renewal of an exploration licence must be made to the Minister in a manner and form determined by the Minister at least one month before the date of expiry of the licence.
- (4a) An application under subsection (4) must be accompanied by—
- (a) the prescribed application fee; and
  - (b) any information that the Minister may require.
- (5) If an application for the renewal of an exploration licence is not decided before the date on which the licence is due to expire, the licence continues in operation until the application is decided and, if the licence is renewed, the renewal dates from the date on which the licence would, but for this subsection, have expired.
- (6) The Minister may, on renewing an exploration licence or, with the consent of the licensee, at any other time, alter an exploration licence in one or more of the following ways:
- (a) by adding, varying or revoking a term or condition of the licence; or
  - (b) by reducing the licence area.
- (7) If an application for the renewal of an exploration licence relates to an area within or adjacent to a specially protected area, the Minister must, before making his or her decision on the application, refer the application to the relevant Minister and consult with the relevant Minister in relation to the matter.
- (8) If an application for the renewal of an exploration licence is referred to a relevant Minister and the Minister to whom the administration of this Act is committed and the relevant Minister cannot agree—
- (a) on whether a renewal should be granted; or
  - (b) if a renewal is granted, on the conditions to which the exploration licence should be subject,

the Ministers must take steps to refer the matter to the Governor and the Governor will determine the matter (and any decision taken by the Governor will be taken to be a decision of the Minister under this Act).

### 30AB—Subsequent exploration licence

- (1) The Minister may, on the expiration of an exploration licence the term or aggregate term of which was five years, grant to the licensee an exploration licence (a *subsequent exploration licence*) over the area of land, or a part of the area of land, to which the former licence applied.
- (2) An application for a subsequent exploration licence must include the following:
  - (a) a statement outlining the exploratory operations that the licensee has carried out in pursuance of the licence since it was granted (or since it was renewed, if the licence has been renewed), showing the expenditure incurred in carrying out those operations; and
  - (b) a statement that the licensee will—
    - (i) carry out exploratory operations of a kind and to an extent agreed between the Minister and the licensee; and
    - (ii) spend an amount of money agreed between the Minister and the licensee in carrying out those operations.
- (3) The holder of a subsequent exploration licence must spend (when considered on an annual basis) at least an amount of money agreed between the Minister and the licensee in carrying out operations under the licence.
- (4) However—
  - (a) the Minister may, subject to any terms and conditions as the Minister thinks fit, exempt a licensee from the application of subsection (2) or (3); and
  - (b) the Minister may not, in entering into an agreement with a licensee under subsection (3) require the licensee to spend—
    - (i) if the subsequent exploration licence is granted over the area of land to which the former licence applied—more than double the amount agreed between the Minister and the licensee in relation to the last year of the former licence;
    - (ii) if the subsequent exploration licence is granted over a part of the area of land to which the former licence applied—more than an amount that bears the same proportion to double the amount agreed between the Minister and the licensee in relation to the last year of the former licence as the area of land over which the subsequent exploration licence is granted bears to the area of the former licence.
- (5) To avoid doubt, section 30A extends to a subsequent exploration licence under this section.

### 31—Fee

- (1) The holder of an exploration licence shall pay to the Minister, annually and in advance, such fee as may be prescribed.
- (1a) A regulation made for the purposes of subsection (1) may—
  - (a) fix various methods for the calculation of a fee (including according to the total area of land in respect of which an exploration licence is granted);
  - (b) fix differential fees on a basis prescribed by the regulations.



- (2) The Minister may reduce, remit or refund a fee under this section if, in his opinion, it is necessary or expedient so to do.

### **32—Licensee to keep and, on request, furnish Director with geological records etc**

- (1) The holder of an exploration licence shall keep complete and detailed records of the surveys and other operations conducted in pursuance of the licence and shall, at the request of the Director of Mines, produce the records for the inspection of the Director or an inspector.

Maximum penalty: \$250.

- (2) The holder of an exploration licence shall furnish the Director of Mines with such information relating to the surveys and other operations conducted by him in pursuance of the licence, and such geological samples obtained by him in the course of those operations, as the Director may require.

Maximum penalty: \$250.

### **33—Cancellation, suspension etc of licence**

- (1) Where the holder of an exploration licence has contravened, or failed to comply with, any provision of this Act or any condition of the licence, the Minister may suspend the licence (in which case the licence shall, during the period of suspension, be of no force or effect) or cancel the licence.
- (2) Where a licence is cancelled or suspended under subsection (1), the licensee may, within 28 days after the cancellation or suspension, appeal to the ERD Court and the Court may, if it is satisfied that there is no proper ground for the cancellation or suspension, declare that cancellation or suspension void.
- (4) Where, in the opinion of the Minister, any land comprised in an exploration licence is required for a public purpose, the Minister may, by notice published in the Gazette, excise that land from the total area comprised in the licence, and the licence shall then cease to apply to that land.
- (5) Where the Minister exercises his powers under subsection (4), the holder of the licence may apply to the ERD Court for an order that the Minister compensate him for the money expended by him in prospecting for minerals in the area excised from the total area comprised in the licence, and the ERD Court, upon the hearing of any such application, may determine what amount would fairly compensate the holder of the licence for such expenditure and order that the amount so determined be paid by the Minister to the holder of the licence.
- (6) The Minister shall pay any amount that he is ordered to pay under subsection (5) out of money provided by Parliament.
- (7) The holder of an exploration licence may, with the consent of the Minister, surrender any land comprised in the licence, and the licence shall then cease to apply to that land.

### **33A—Minister may describe or delineate land in any manner**

- (1) Subject to the requirements of this Act, the Minister may describe or delineate the land in respect of which an exploration licence is granted in such manner as the Minister deems appropriate.

- (2) Section 80 does not apply to the extent that an alteration in the manner in which land is described or delineated results in part of the licence area of one exploration licence being superimposed over land comprising part of the licence area of another licence (as described or delineated immediately before the alteration).
- (3) The regulations may, in connection with the operation of subsection (2), prescribe terms and conditions governing the coexistence of exploration licences that have been granted over the same land as a result of the Minister altering the manner in which the land is described or delineated.
- (4) If part of the licence area of one exploration licence is superimposed over land comprising part of the licence area of another licence under this section, and rights of one of the licensees in respect of the part are suspended in accordance with the regulations, the suspension of the rights will continue until either of the following occurs:
  - (a) the part ceases to comprise part of the licence area of the other licence; or
  - (b) the other licence expires.

## Part 6—Mining leases

### 34—Grant of mining lease

- (1) Subject to Part 9B, the Minister may grant a mining lease—
  - (a) to the holder of a registered mineral claim, in respect of the whole or part of the land comprised in the claim; or
  - (b) to the holder of a retention lease, in respect of the whole or part of the land comprised in the lease.
- (1a) Where the registered mineral claim relates to a particular stratum, the lease shall, if granted, relate to the same stratum.
- (1b) A mining lease shall not be granted in respect of land within a subsurface stratum except upon the authority of a resolution passed by both Houses of Parliament.
- (3) Mining leases shall be of prescribed classes and subject to prescribed terms and conditions appropriate to each class.
- (4) A mining lease shall, in addition to such terms and conditions as may be prescribed, be subject to such additional terms and conditions (if any) as the Minister thinks fit and specifies in the lease.
- (5) The maximum permissible area of the land in respect of which a mining lease may be granted shall be as prescribed.
- (6) The Minister shall, in determining the terms and conditions subject to which a lease is to be granted under this Part, give proper consideration to the protection of—
  - (a) the natural beauty of any locality or place that may be affected by the conduct of operations in pursuance of the lease;
  - (b) flora and fauna that may be endangered or disturbed by those operations;
  - (c) buildings of architectural or historical interest, and objects and features of scientific or historical interest, that may be affected by those operations;
  - (d) any Aboriginal sites or objects within the meaning of the *Aboriginal Heritage Act 1988* that may be affected by those operations,and may take into consideration such other factors as he considers appropriate in the particular case.
- (7) It shall be a condition of a mining lease that the Minister may, at any time, require the holder of the lease to pay to any person an amount of compensation, stipulated by the Minister, to which that person is, in the opinion of the Minister, entitled in consequence of the conduct of mining operations in pursuance of the lease.

### 35—Application for lease

- (1) An application for a mining lease must be in the prescribed form and must be accompanied by—
  - (a) a statement of—
    - (i) the mining operations that the applicant proposes to carry out in pursuance of the lease; and

- (ii) the measures that the applicant proposes to take to remedy damage to land that may result from the proposed mining operations; and
  - (iii) such other information as is prescribed; and
- (b) the prescribed fee.
- (2) The Minister may require the applicant to furnish him with such information and surveys as the Minister thinks fit.
- (2a) If an application for a mining lease relates to an area within the Murray-Darling Basin, the Minister must, in considering the application, take into account the objects of the *River Murray Act 2003* and the *Objectives for a Healthy River Murray* under that Act.
- (2b) If an application for a mining lease relates to an area within or adjacent to a specially protected area, the Minister must, before making his or her decision on the application, refer the application to the relevant Minister and consult with the relevant Minister in relation to the matter.
- (2c) If an application for a mining lease is referred to a relevant Minister and the Minister to whom the administration of this Act is committed and the relevant Minister cannot agree—
  - (a) on whether a mining lease should be granted; or
  - (b) if a mining lease is granted, on the conditions to which the mining lease should be subject,

the Ministers must take steps to refer the matter to the Governor and the Governor will determine the matter (and any decision taken by the Governor will be taken to be a decision of the Minister under this Act).

- (3) The Minister shall not grant a mining lease unless he is satisfied that there is a reasonable prospect that the land in respect of which the lease is sought could be effectively and efficiently mined.

### **35A—Representations in relation to grant of lease**

- (1) The Minister must not grant a mining lease unless he or she has caused to be published in a newspaper circulating generally throughout the State a notice—
  - (a) describing the land to which the application relates and, if relevant, the particular stratum to which a lease would relate; and
  - (b) specifying a place at which the application may be inspected; and
  - (c) inviting members of the public to make written submissions in relation to the application to the Minister within a period specified in the notice (which must be a period of at least 14 days from the date of publication of the notice).
- (1a) The Minister must, within 14 days after receiving an application for a mining lease, give written notice of the application to the owner of the land to which the application relates together with an invitation to submit written representations on the application within a specified time.
- (2) Where application is made for a mining lease in respect of land within the area of a council, the Minister shall, within 14 days after receiving the application, send a copy of the application to the council and invite it to submit written representations on the application to the Minister within a time fixed in the invitation.

- (3) In determining whether to grant or refuse an application for a mining lease and, if so, the terms and conditions on which it should be granted, the Minister shall have regard to any representations made in response to an invitation under this section.

### **36—Approval of application**

- (1) Where a person has applied for a mining lease and has been notified in writing by or on behalf of the Minister that the Minister has approved the application, the applicant shall be liable for the payment of rent, and any other sum, payable by the holder of a mining lease of the kind for which approval has been granted, and shall be deemed to be the holder of such a lease comprising the land in respect of which the lease is sought as from the date of the notification.
- (2) Where written notification that the Minister has approved an application for a lease is given under subsection (1), the term of the lease shall commence from the date of the notification.

### **37—Nature of lease**

- (1) A mining lease must describe or delineate the land in respect of which it is granted with as much particularity as is reasonably practicable.
- (2) A mining lease is not required to be registered under the *Real Property Act 1886*.

### **38—Term and renewal of mining lease**

- (1) A mining lease may be granted for such term, not exceeding 21 years, as may be determined by the Minister and specified in the lease.
- (2) Subject to the terms and conditions of a mining lease, the holder of the lease shall, if he has complied with the provisions of this Act, and the terms and conditions of the lease during the term for which the lease was granted or last renewed, be entitled, at the expiration of that term, to the renewal of the lease for a further term.
- (3) Where a person who is entitled to the renewal of a mining lease under this section makes due application in the prescribed form for the renewal of the lease not more than 6 months, and not less than 3 months, before the date of its expiry, the Minister shall renew the lease for a term, not exceeding 21 years, determined by the Minister.
- (4) If an application for the renewal of a mining lease is not decided before the date of expiry, the lease continues in operation until the application is decided and, if the lease is renewed, the renewal dates from the date on which the lease would, but for this subsection, have expired.
- (5) If an application for the renewal of a mining lease relates to an area within or adjacent to a specially protected area, the Minister must, before making his or her decision on the application, refer the application to the relevant Minister and consult with the relevant Minister in relation to the matter.
- (6) If an application for the renewal of a mining lease is referred to a relevant Minister and the Minister to whom the administration of this Act is committed and the relevant Minister cannot agree—
  - (a) on whether a renewal should be granted; or
  - (b) if a renewal is granted, on the conditions to which the mining lease should be subject,

the Ministers must take steps to refer the matter to the Governor and the Governor will determine the matter (and any decision taken by the Governor will be taken to be a decision of the Minister under this Act).

### **39—Rights conferred by lease**

A mining lease—

- (a) confers an exclusive right upon the holder of the lease to conduct mining operations subject to the provisions of this Act and the terms and conditions of the lease for the recovery of minerals from the land comprised in the lease; and
- (b) authorises the holder of the lease to sell, or dispose of, minerals recovered in the course of mining operations conducted in pursuance of the lease or to utilise any such minerals for any commercial or industrial purpose.

### **40—Rental**

- (1) A mining lease shall provide for the payment, by way of rental, of such sum as may be prescribed.
- (2) If a mining lease is granted over land consisting of, or including, land subject to a relevant interest (ie an estate of fee simple or native title conferring a right to exclusive possession of the land), the amount paid to the Minister by way of rental under the lease must, after deduction of 5%,<sup>1</sup> be dealt with in accordance with the following principles—
  - (a) the proportionate entitlement of each holder of a relevant interest in the land must be worked out by determining what proportion of the total area of the land subject to the lease is represented by land in which the holder holds a relevant interest; and
  - (b) a proportion of the net amount available for distribution, equivalent to the holder's proportionate entitlement, must be paid to each holder of a relevant interest in land subject to the lease; and
  - (c) if a balance remains after distribution under paragraph (b), the balance is to be retained by the Minister.
- (3) If no-one is registered under the law of the State or the Commonwealth as the holder of native title in native title land over which a mining lease has been granted, the Minister must establish a trust fund and pay the amount to which the holder of native title is entitled under subsection (2) into the trust fund until a determination is made of who is entitled to the payment.
- (4) If no valid claim has been made on the trust fund within five years after its establishment, the Minister may dissolve the fund and pay the amount standing to its credit into the Consolidated Account but, if the fund is dissolved, any claim that might have been made against the fund assuming that it had continued in existence may be made instead against the State.

#### **Note—**

- 1 The net amount remaining after the 5% deduction is referred to subsequently as the net amount available for distribution.

#### **41—Suspension or cancellation of lease**

- (1) The Minister may suspend or cancel a mining lease if the lessee contravenes or fails to comply with a term or condition of the lease or a provision of this Act.
- (2) Before exercising powers under subsection (1), the Minister must comply with any stipulations in the lease relating to the taking of such action.
- (3) If a mining lease is suspended or cancelled under this section, the lessee may, within 28 days of the suspension or cancellation, appeal to the ERD Court and the Court may, if satisfied that there is no proper ground for the suspension or cancellation, declare the suspension or cancellation void.





## Part 6A—Retention leases

### 41A—Grant of retention lease

- (1) The Minister may, subject to this section and Part 9B, grant to the holder of a registered mineral claim a retention lease of the whole or part of the land comprised in the claim.
- (1a) Where the registered mineral claim relates to a particular stratum, the lease shall, if granted, relate to the same stratum.
- (2) A retention lease may, subject to subsection (3), be granted in any of the following cases:
  - (a) where for economic or other reasons the applicant is, in the opinion of the Minister, justified in not proceeding immediately to mine the land in pursuance of a mining lease; or
  - (b) where in the opinion of the Minister sufficient investigation has not yet been carried out to enable him to determine the terms and conditions upon which a mining lease should be granted; or
  - (c) where the applicant seeks an authorisation to carry out mining operations for the recovery of a radioactive mineral and the Minister thinks it desirable to defer the granting of a mining lease endorsed with such an authorisation.
- (3) The Minister shall not grant a retention lease unless he is satisfied that there is a reasonable prospect that the land in respect of which the lease is sought could be effectively and efficiently mined.
- (3a) If an application for a retention lease relates to an area within the Murray-Darling Basin, the Minister must, in considering the application, take into account the objects of the *River Murray Act 2003* and the *Objectives for a Healthy River Murray* under that Act.
- (3b) If an application for a retention lease relates to an area within or adjacent to a specially protected area, the Minister must, before making his or her decision on the application, refer the application to the relevant Minister and consult with the relevant Minister in relation to the matter.
- (3c) If an application for a retention lease is referred to a relevant Minister and the Minister to whom the administration of this Act is committed and the relevant Minister cannot agree—
  - (a) on whether a retention lease should be granted; or
  - (b) if a retention lease is granted, on the conditions to which the retention lease should be subject,the Ministers must take steps to refer the matter to the Governor and the Governor will determine the matter (and any decision taken by the Governor will be taken to be a decision of the Minister under this Act).
- (4) A retention lease shall be subject to—
  - (a) such terms and conditions as may be prescribed; and

- (b) such additional terms and conditions (if any) as the Minister thinks fit and specifies in the lease.
- (5) The Minister shall, in determining terms and conditions subject to which a lease is to be granted under this Part, give proper consideration to the protection of—
- (a) the natural beauty of any locality or place that may be affected by the conduct of operations in pursuance of the lease;
  - (b) flora and fauna that may be endangered or disturbed by those operations;
  - (c) buildings of architectural or historical interest, and objects and features of scientific or historical interest, that may be affected by those operations;
  - (d) any Aboriginal sites or objects within the meaning of the *Aboriginal Heritage Act 1988* that may be affected by those operations,
- and may take into consideration such other factors as he considers appropriate in the particular case.

#### **41B—Application for retention lease**

- (1) An application for a retention lease must be in the prescribed form and accompanied by the prescribed fee.
- (2) The Minister may require the applicant to furnish him with such information and surveys as the Minister thinks fit.

#### **41C—Nature of lease**

- (1) A retention lease must describe or delineate the land in respect of which it is granted with as much particularity as is reasonably practicable.
- (2) A retention lease is not required to be registered under the *Real Property Act 1886*.

#### **41D—Term and renewal of retention lease**

- (1) A retention lease shall be granted for a term, not exceeding 5 years, specified in the lease.
- (2) The holder of a retention lease may, not later than 3 months before the expiration of the term of the lease, apply, in the prescribed manner and form, to the Minister for the renewal of the lease.
- (3) If the applicant has complied with this Act and with the terms and conditions to which the lease is subject, the Minister may renew the lease for a further term, not exceeding 5 years, on such terms and conditions as he thinks fit.
- (4) If an application for the renewal of a retention lease is not decided before the date of expiry, the lease continues in operation until the application is decided and, if the lease is renewed, the renewal dates from the date on which the lease would, but for this subsection, have expired.
- (5) If an application for the renewal of a retention lease relates to an area within or adjacent to a specially protected area, the Minister must, before making his or her decision on the application, refer the application to the relevant Minister and consult with the relevant Minister in relation to the matter.

- (6) If an application for the renewal of a retention lease is referred to a relevant Minister and the Minister to whom the administration of this Act is committed and the relevant Minister cannot agree—
- (a) on whether a renewal should be granted; or
  - (b) if a renewal is granted, on the conditions to which the retention lease should be subject,

the Ministers must take steps to refer the matter to the Governor and the Governor will determine the matter (and any decision taken by the Governor will be taken to be a decision of the Minister under this Act).

#### **41E—Rental**

- (1) A retention lease shall provide for the payment, by way of rental, of such sum as may be prescribed.
- (2) If a retention lease is granted over land consisting of, or including, land subject to a relevant interest (ie an estate of fee simple or native title conferring a right to exclusive possession of the land), the amount paid to the Minister by way of rental under the lease must, after deduction of 5%,<sup>1</sup> be dealt with in accordance with the following principles—
  - (a) the proportionate entitlement of each holder of a relevant interest in the land must be worked out by determining what proportion of the total area of the land subject to the lease is represented by land in which the holder holds a relevant interest; and
  - (b) a proportion of the net amount available for distribution, equivalent to the holder's proportionate entitlement, must be paid to each holder of a relevant interest in land subject to the lease; and
  - (c) if a balance remains after distribution under paragraph (b), the balance is to be retained by the Minister.
- (3) If no-one is registered under the law of the State or the Commonwealth as the holder of native title in native title land over which a retention lease has been granted, the Minister must establish a trust fund and pay the amount to which the holder of native title is entitled under subsection (2) into the trust fund until a determination is made of who is entitled to the payment.
- (4) If no valid claim has been made on the trust fund within five years after its establishment, the Minister may dissolve the fund and pay the amount standing to its credit into the Consolidated Account but, if the fund is dissolved, any claim that might have been made against the fund assuming that it had continued in existence may be made instead against the State.

**Note—**

- 1 The net amount remaining after the 5% deduction is referred to subsequently as the net amount available for distribution.

#### **41F—Rights conferred by lease**

A retention lease shall—

- (a) confer an exclusive right upon the holder of the lease to prospect for minerals in the land comprised in the lease; and

- (b) confer on the holder of the lease such other rights to conduct mining operations in respect of the land comprised in the lease as may be stipulated in the lease; and
- (c) confer on the holder of the lease an exclusive right to apply for a mining lease in respect of the land comprised in the lease.

## Part 8—Miscellaneous purposes licence

### 52—Grant of miscellaneous purposes licence

- (1) The Minister may grant to any person a miscellaneous purposes licence under this Part in respect of mineral land.
- (3) A licence may be granted for any of the following purposes:
  - (a) for the carrying on of any business that may conduce to the effective conduct of mining operations or provide amenities for persons engaged in the conduct of mining operations; or
  - (b) for establishing and operating plant for the treatment of ore recovered in the course of mining operations; or
  - (c) for drainage from a mine; or
  - (d) for the disposal of overburden or any waste produced by mining operations; or
  - (e) any other purpose ancillary to the conduct of mining operations,and may be granted upon such terms and conditions as may be determined by the Minister and specified in the licence.
- (3a) If an application for a miscellaneous purpose licence relates to an area within the Murray-Darling Basin, the Minister must, in considering the application, take into account the objects of the *River Murray Act 2003* and the *Objectives for a Healthy River Murray* under that Act.
- (3b) If an application for a miscellaneous purposes licence relates to an area within or adjacent to a specially protected area, the Minister must, before making his or her decision on the application, refer the application to the relevant Minister and consult with the relevant Minister in relation to the matter.
- (3c) If an application for a miscellaneous purposes lease is referred to a relevant Minister and the Minister to whom the administration of this Act is committed and the relevant Minister cannot agree—
  - (a) on whether a miscellaneous purposes lease should be granted; or
  - (b) if a miscellaneous purposes lease is granted, on the conditions to which the miscellaneous purposes lease should be subject,the Ministers must take steps to refer the matter to the Governor and the Governor will determine the matter (and any decision taken by the Governor will be taken to be a decision of the Minister under this Act).
- (4) The Minister shall, in determining the terms and conditions subject to which a licence is to be granted under this Part, give proper consideration to the protection of—
  - (a) the natural beauty of any locality or place that may be affected by the conduct of operations in pursuance of the licence;
  - (b) flora and fauna that may be endangered or disturbed by those operations;
  - (c) buildings of architectural or historical interest, and objects and features of scientific or historical interest, that may be affected by those operations;

- (d) any Aboriginal sites or objects within the meaning of the *Aboriginal Heritage Act 1988* that may be affected by those operations,
- and may take into consideration such other factors as he considers appropriate in the particular case.
- (5) A miscellaneous purposes licence cannot be granted over an area of land exceeding the maximum permissible area prescribed by the regulations.
- (6) A miscellaneous purposes licence must provide for the payment, by way of rental, of such sums as may be prescribed.
- (7) If a miscellaneous purposes licence is granted over land consisting of, or including, land subject to a relevant interest (ie an estate of fee simple or native title conferring a right to exclusive possession of the land), the amount paid to the Minister by way of rental under the licence must, after deduction of 5%,<sup>1</sup> be dealt with in accordance with the following principles—
- (a) the proportionate entitlement of each holder of a relevant interest in the land must be worked out by determining what proportion of the total area of the land subject to the licence is represented by land in which the holder holds a relevant interest; and
  - (b) a proportion of the net amount available for distribution, equivalent to the holder's proportionate entitlement, must be paid to each holder of a relevant interest in land subject to the licence; and
  - (c) if a balance remains after distribution under paragraph (b), the balance is to be retained by the Minister.
- (8) If no-one is registered under the law of the State or the Commonwealth as the holder of native title in native title land over which a miscellaneous purposes licence has been granted, the Minister must establish a trust fund and pay the amount to which the holder of native title is entitled under subsection (7) into the trust fund until a determination is made of who is entitled to the payment.
- (9) If no valid claim has been made on the trust fund within five years after its establishment, the Minister may dissolve the fund and pay the amount standing to its credit into the Consolidated Account but, if the fund is dissolved, any claim that might have been made against the fund assuming that it had continued in existence may be made instead against the State.

**Note—**

- 1 The net amount remaining after the 5% deduction is referred to subsequently as the net amount available for distribution.

### **53—Application for licence**

- (1) An application for a miscellaneous purposes licence must be in the prescribed form and—
- (a) must include a statement of—
    - (i) the nature and extent of the operations or activity to be carried on in pursuance of the licence; and

- (ii) the measures (if any) that the applicant proposes to take to remedy damage to land that may result from the proposed operations or activity; and
  - (iii) such information as is prescribed; and
- (b) must be accompanied by the prescribed fee.
- (2) The Minister must not grant a miscellaneous purposes licence unless he or she has caused to be published in a newspaper circulating generally throughout the State a notice—
  - (a) describing the area in respect of which the licence is sought; and
  - (b) specifying the purpose for which the licence is sought; and
  - (c) inviting members of the public to make written submissions in relation to the matter to the Minister within a period specified in the notice (which must be at least 14 days from the date of publication of the notice).
- (3) The Minister may require the applicant to furnish further information and surveys.
- (4) The Minister must within 14 days after receiving an application for a miscellaneous purposes licence send a copy of the application—
  - (a) to the owner of the land over which the licence is sought; and
  - (b) if the land is within the area of a council—to the council,together with an invitation to submit written representations on the application within a specified time.
- (5) In determining whether to grant or refuse an application for a miscellaneous purposes licence and, if so, the terms and conditions on which it should be granted, the Minister must have regard to any representations made in response to an invitation under this section.
- (6) Where the Minister approves an application for a miscellaneous purposes licence, the licence will, subject to any contrary provision in the licence, take effect from the date on which the applicant is notified of the Minister's approval.

#### **54—Compensation**

The owner of any land in respect of which a miscellaneous purposes licence is granted shall be entitled to such compensation as may be mutually agreed upon by the owner and the licensee or as may, in the event of a dispute, be determined, upon the application of any interested person, by the appropriate court.

#### **55—Term and renewal of miscellaneous purposes licence**

- (1) A miscellaneous purposes licence may be granted for such term, not exceeding 21 years, as may be determined by the Minister and specified in the licence.
- (2) The holder of a miscellaneous purposes licence shall, if he has complied with the provisions of this Act and the terms and conditions of the licence during the term for which the licence was granted or last renewed, be entitled, at the expiration of that term, to the renewal of the licence for a further term.

- (3) Where a person who is entitled to the renewal of a miscellaneous purposes licence under this section makes due application for the renewal of the licence not more than 6 months and not less than 3 months before the date of its expiry, the Minister shall renew the licence for a term, not exceeding 21 years, determined by the Minister.
- (4) If an application for the renewal of a miscellaneous purposes licence is not decided before the date of expiry, the licence continues in operation until the application is decided and, if the licence is renewed, the renewal dates from the date on which the licence would, but for this subsection, have expired.
- (5) If an application for the renewal of a miscellaneous purposes licence relates to an area within or adjacent to a specially protected area, the Minister must, before making his or her decision on the application, refer the application to the relevant Minister and consult with the relevant Minister in relation to the matter.
- (6) If an application for the renewal of a miscellaneous purposes licence is referred to a relevant Minister and the Minister to whom the administration of this Act is committed and the relevant Minister cannot agree—
  - (a) on whether a renewal should be granted; or
  - (b) if a renewal is granted, on the conditions to which the miscellaneous purposes licence should be subject,

the Ministers must take steps to refer the matter to the Governor and the Governor will determine the matter (and any decision taken by the Governor will be taken to be a decision of the Minister under this Act).

## **56—Suspension and cancellation of licence**

- (1) The Minister may suspend or cancel a miscellaneous purposes licence if the licensee contravenes, or fails to comply with, any term or condition of the licence or any provision of this Act.
- (2) Before exercising powers under subsection (1), the Minister must comply with any stipulations in the licence relating to the taking of such action.
- (3) If a licence is suspended or cancelled under this section, the licensee may, within 28 days of the suspension or cancellation, appeal to the ERD Court and the Court may, if satisfied that there is no proper ground for the suspension or cancellation, declare the suspension or cancellation void.



## Part 8A—Special mining enterprises

### 56A—Object of this Part

The object of this Part is to facilitate the establishment, development or expansion of mining enterprises of major significance to the economy of this State by allowing greater security and flexibility of tenure.

### 56B—Special mining enterprises

- (1) For the purposes of this Part, a mining enterprise (whether existing or proposed) is a *special mining enterprise* if—
  - (a) the person who conducts or proposes to establish the enterprise has made application to the Minister for the exercise of powers under this Part; and
  - (b) the Governor is satisfied that the enterprise is of major significance to the economy of this State; and
  - (c) the Minister and the applicant have entered into an agreement, ratified by the Governor, for the exercise of powers under this Part and the grant of appropriate mining tenements in relation to the enterprise.
- (2) An application under subsection (1) must be made in the form approved by the Minister and must be accompanied by a written proposal containing full particulars of the mining enterprise, including—
  - (a) a sufficient delineation of the land to which the proposal relates; and
  - (b) a statement of the nature, extent and proposed scheduling of the mining operations and related or ancillary operations or works that the applicant carries out or proposes to carry out under the enterprise; and
  - (c) an economic analysis of the enterprise, including financial projections and details of the financial resources available to the applicant for the purposes of the enterprise; and
  - (d) an assessment of the benefits to the State derived or expected to be derived from the enterprise; and
  - (e) an assessment of the expected social and environmental effects of the enterprise; and
  - (f) a statement of the measures that the applicant considers appropriate to protect the environment, and to remedy environmental damage that may result on account of operations or activities carried out for the purposes of the enterprise; and
  - (g) a statement of the measures that the applicant considers appropriate for the protection of any Aboriginal sites or objects within the meaning of the *Aboriginal Heritage Act 1988* that may be affected by the enterprise; and
  - (h) any other information required by the regulations.
- (3) The Minister may require the applicant to provide other information or documents, and to comply with any requirement specified by the Minister.

- (4) An applicant must, in accordance with the regulations, pay an application fee prescribed or determined under the regulations.
- (5) An application under this section—
  - (a) may be made in respect of an area of land of any size, and whether or not a mineral claim has been pegged out or registered over the land in relation to the enterprise; and
  - (b) will, in relation to any mining tenement subsequently granted to the applicant, be taken to be an application duly made under this Act for that tenement.
- (6) The Minister may (at any time before entering into an agreement under this Part), by notice in writing given personally or by post to the applicant, refuse an application under this section on any reasonable ground, and an application will be taken to be refused if the Governor indicates that the Governor is not satisfied that the enterprise is of major significance to the economy of this State or refuses to ratify an agreement entered into under this Part with the applicant.
- (7) No mineral claim may be pegged out by or mining tenement granted to any other person over the land to which an application under this section relates until—
  - (a) 28 days after the application is refused or withdrawn; or
  - (b) a mining tenement, or tenements, is, or are, granted to the applicant over the land.

### **56C—Power to exempt from or modify Act**

- (1) The Minister may, in accordance with the terms of an agreement under this Part (as ratified by the Governor)—
  - (a) exempt a special mining enterprise from any provision of this Act; or
  - (b) modify the application of a requirement of this Act in relation to the enterprise.
- (2) An exemption or modification may only be granted or made under subsection (1) in respect of—
  - (a) the requirement to peg out or register a mineral claim; or
  - (b) the maximum area of land over which a mining tenement may be granted; or
  - (c) the maximum term for which a mining tenement may be granted; or
  - (d) the period within which an application for renewal of a mining tenement must be made, and the term for which the renewal may be granted; or
  - (e) the rate of royalty required to be paid under this Act; or
  - (f) the rental payable under a mining tenement; or
  - (g) any other prescribed requirement of this Act (except a requirement under Part 9B).
- (3) An exemption or modification may be subject to conditions stipulated in the agreement.
- (4) An exemption or modification may not be granted or made under this section so as to discriminate against the holders of native title in land.

- (5) The Minister may vary or revoke an exemption or modification in accordance with and subject to the terms of the agreement.
- (6) The Minister must cause notice of an exemption or modification, and of any subsequent variation or revocation of it, to be published in the Gazette.
- (7) A person who contravenes or fails to comply with a condition of an exemption or modification under this section is guilty of an offence.

Maximum penalty: \$50 000.

#### **56D—Existing tenements**

- (1) If land comprised in a mining tenement granted in relation to a special mining enterprise pursuant to an agreement under this Part was, immediately before the granting of the tenement, comprised in a lease or licence held under this Act in respect of the same enterprise—
  - (a) the lease or licence is, by force of this subsection, subsumed into the new mining tenement; and
  - (b) subject to a determination of the Minister or a court—
    - (i) an interest (whether legal or equitable) in, or affecting, the lease or licence so subsumed (being an interest in force immediately before the granting of the mining tenement) continues to have the same effect in respect of the mining tenement as it had before the tenement was granted; and
    - (ii) a liability of the holder of the mining tenement in existence immediately before the granting of the tenement is not affected by the granting of the tenement; and
    - (iii) an approval, consent, licence or exemption granted under another Act or law with respect to the carrying out of an operation or activity under the lease or licence will be taken to have been granted with respect to the carrying out of the same operation or activity under the new mining tenement if the extent of the operation or activity, and the area of land over which it is to be carried out, are not to be substantially increased.
- (2) If—
  - (a) an existing lease or licence is to be subsumed into a new mining tenement under this Part; and
  - (b) the existing lease or licence is subject to a term or condition that has been included to protect—
    - (i) the natural beauty of a locality or place; or
    - (ii) flora or fauna; or
    - (iii) buildings of architectural or historical interest, or objects or features of scientific or historical interest; or
    - (iv) Aboriginal sites or objects within the meaning of the *Aboriginal Heritage Act 1988*,

then the Minister must ensure that a comparable term or condition is included in the new tenement.

## Part 9—Entry upon land, compensation and restoration

### 57—Entry on land

Subject to this Part, a person authorised to prospect, explore or mine for minerals under this Act—

- (a) may enter any mineral land (except exempt land) for the purpose of prospecting, exploring or mining for minerals in accordance with the authorisation; and
- (b) may enter exempt land for the purpose of pegging out a claim.

### 58—How entry on land may be authorised

A mining operator may enter land to carry out mining operations on the land—

- (a) if the mining operator has an agreement<sup>1</sup> with the owner of the land authorising the mining operator to enter the land to carry out mining operations on the land; or
- (b) if the mining operator is authorised by a native title mining determination to enter the land to carry out mining operations on the land; or
- (ba) if the mining operator is authorised by an indigenous land use agreement registered under the *Native Title Act 1993* (Cwth) to enter the land to carry out mining operations on the land; or
- (c) if—
  - (i) the mining operator has given the prescribed notice of entry; and
  - (ii) the mining operations will not affect native title in the land; and
  - (iii) the mining operator complies with any determination made on objection to entry on the land, or the use or unconditional use of the land, or portion of the land, for mining operations;<sup>2</sup> or
- (d) if the land to be entered is in a precious stones field and the mining operations will not affect native title in the land; or
- (e) if the mining operator enters the land to continue mining operations that had been lawfully commenced on the land before the commencement of this section.

#### Explanatory note—

A mining operator's right to enter land to carry out mining operations on the land is contingent on the operator holding the relevant mining tenement.

#### Notes—

- 1 If the land is native title land, the agreement is to be negotiated under Part 9B.
- 2 See section 58A(5).

### **58A—Notice of entry**

- (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.
- (2) The notice must be served—
  - (a) in the case of native title land—as prescribed by the *Native Title (South Australia) Act 1994*; or
  - (b) in other cases—personally or by post.
- (3) If the land is held under a form of title (other than a pastoral lease) that confers a right to exclusive possession of the land—
  - (a) the notice must contain a statement of the owner's rights of objection and compensation under this Act; and
  - (b) the owner may, within three months after service of the notice, lodge a notice of objection with the appropriate court objecting—
    - (i) to entry on the land by the mining operator; or
    - (ii) to the use, or the unconditional use, of the land, or a portion of the land, for mining operations.
- (4) The court must send a copy of a notice of objection received under subsection (3) to the mining operator.
- (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—
  - (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
  - (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.
- (6) A mining operator who contravenes or fails to comply with a determination under this section is guilty of an offence.  
Maximum penalty: \$1 250.
- (7) The prescribed notice of entry is not required if—
  - (a) the land to be entered is in a precious stones field; or
  - (b) the mining operator is authorised to enter the land by agreement with the owner of the land; or
  - (c) the mining operator is authorised to enter the land under a native title mining determination; or
  - (ca) the mining operator is authorised to enter the land under an indigenous land use agreement registered under the *Native Title Act 1993* (Cwth); or

- (d) the mining operator enters the land to continue mining operations that had been lawfully commenced on the land before the commencement of this section.

### **59—Use of declared equipment**

- (1) Subject to this section, a mining operator shall not use declared equipment in the course of mining operations under this Act except—
  - (a) upon land subject to a lease or licence granted under this Act; or
  - (c) in pursuance of an authorisation granted by the Director of Mines under subsection (1a).

Maximum penalty: \$1 250.

- (1a) The Director of Mines may, upon the application of the holder of a claim, authorise him, subject to the provisions of this section and the conditions (if any) specified in the authorisation, to use declared equipment upon land comprised in the claim.
- (1aa) If an application for an authorisation to use declared equipment relates to an area within the Murray-Darling Basin the Director of Mines must, in considering the application, take into account the objects of the *River Murray Act 2003* and the *Objectives for a Healthy River Murray* under that Act.
- (1ab) If an application for an authorisation to use declared equipment relates to an area within or adjacent to a specially protected area, the Director of Mines must, before making his or her decision on the application, refer the application to the relevant Minister and consult with the relevant Minister in relation to the matter.
- (1ac) If an application for an authorisation is referred to a relevant Minister and the Minister to whom the administration of this Act is committed and the relevant Minister cannot agree—
  - (a) on whether an authorisation should be granted; or
  - (b) if an authorisation is granted, on the conditions to which the authorisation should be subject,

the Minister to whom the administration of this Act is committed and the relevant Minister must take steps to refer the matter to the Governor and the Governor will determine the matter (and any decision taken by the Governor will be taken to be a decision of the Director of Mines under this Act).

- (1b) A mining operator shall not use declared equipment in the course of mining operations upon land comprised in a registered access claim within a precious stones field unless he has first served on the Director of Mines—
  - (a) notice, in the prescribed form, of his intention to use that equipment; and
  - (b) prescribed particulars of the equipment and where it will be used.

Maximum penalty: \$1 250.

- (2) A mining operator shall, at least 21 days before he uses declared equipment upon land (not being land comprised in a mining lease), serve personally or by post on the owner of the land, written notice, in the prescribed form, of his intention to use declared equipment in the course of mining operations on the land.

- (3) The owner may, at any time within 3 months after the service of a notice under subsection (2), by notice in writing lodged with the Warden's Court, object to the use, or the unconditional use, of declared equipment upon his land.
- (4) A copy of a notice of objection under subsection (3) must, within 7 days after lodgment with the Warden's Court, be served on the mining operator.
- (5) Subject to subsection (6), the Warden's Court may, upon the hearing of an objection under this section—
  - (a) determine that declared equipment should not be used in the course of mining operations upon the land to which the objection relates or any part of that land; or
  - (b) determine upon what conditions declared equipment may be used upon the land with least detriment to the interests of the owner and least injury to the land.
- (6) In any proceedings under this section, the objector must establish that the use of declared equipment upon the land would be likely to result in severe or unjustified hardship or substantial damage to the land.
- (7) If a mining operator—
  - (a) uses declared equipment upon land without prior service of a notice as required by subsection (2); or
  - (b) fails to comply with a determination, or any condition contained in a determination, under this section,he shall be guilty of an offence.  
Maximum penalty: \$1 250.
- (8) Subsections (2) to (7) do not apply to the use of declared equipment on land if—
  - (a) the land is a precious stones field; or
  - (b) there is an agreement between the mining operator and the owner of the land about the use of declared equipment on the land and the mining operator complies with the terms of the agreement; or
  - (c) the Warden's Court or the ERD Court has determined conditions on which declared equipment may be used on the land and the mining operator complies with the terms of the determination.

## **60—Restoration of land**

- (1) Subject to the terms and conditions of any relevant lease, licence, authorisation, agreement or determination under this Act, where a mining operator uses declared equipment in the course of mining operations, an inspector or authorised person may direct the operator, in writing, to restore the ground disturbed by the operations to a condition that is, in the opinion of the inspector or authorised person, satisfactory.
- (2) A mining operator shall comply with a direction under subsection (1).  
Maximum penalty: \$750.
- (3) The Warden's Court may order that no further claim shall be pegged out by a person named in the order until he has complied with a direction under subsection (1).



- (4) Where an order has been made under subsection (3), the person named in the order shall not be entitled to peg out any claim until he has complied with the direction or the order has been revoked.

## **61—Compensation**

- (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.
- (2) In determining the compensation payable under this section, the following matters shall be considered:
  - (a) any damage caused to the land by the person carrying out the mining operations; and
  - (b) any loss of productivity or profits as a result of the mining operations; and
  - (c) any other relevant matters.
- (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.
- (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.
- (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.
- (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).

## **62—Bond and security**

- (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—
  - (a) any civil or statutory liability likely to be incurred by that person in 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.
- (2) The Minister may require such security for the satisfaction of the bond as the Minister thinks fit.

- (3) If the holder of a mining tenement fails to comply with a requirement under this section—
- (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.

- (4) If a person conducts mining operations in contravention of a prohibition under subsection (3), he shall be guilty of an offence.

Maximum penalty: \$1 250.

- (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 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.

### **63—Extractive Areas Rehabilitation Fund**

- (1) The Minister shall establish a fund entitled the "Extractive Areas Rehabilitation Fund".
- (2) From the royalty received or recovered by the Minister on extractive minerals, the Minister will pay the prescribed rate into the fund.
- (3) Subject to subsection (4), the Minister may expend any portion of the fund for any of the following purposes:
- (a) the rehabilitation of land disturbed by mining operations for the recovery of extractive minerals (or any costs associated with ensuring that such land is rehabilitated in accordance with the requirements under this Act); and
  - (b) the implementation of measures designed to prevent, or limit, damage to or impairment of, any aspect of the environment by mining operations for the recovery of extractive minerals (or any costs associated with ensuring that such measures are implemented or with monitoring such measures); and
  - (c) the promotion of research into methods of mining engineering and practice by which environmental damage or impairment resulting from mining operations for the recovery of extractive minerals may be reduced.
- (4) The total expenditure in a single financial year of costs associated with ensuring that—
- (a) the land referred to in subsection (3)(a) is rehabilitated in accordance with the requirements under this Act; and
  - (b) the measures referred to in subsection (3)(b) are implemented or monitored,

must not exceed an amount equal to 4 cents per tonne for each tonne of extractive minerals on which royalty is payable into the fund for the financial year preceding that year.

(5) In this section—

*prescribed rate* means 25 cents per tonne of extractive minerals, or such lesser amount as may be prescribed by the regulations.



## **Part 9A—Access to subsurface strata**

### **63A—Pegging out of access claim**

- (1) A person who holds a mining tenement in respect of a subsurface stratum may peg out an access claim, in accordance with the regulations, on land above the land comprised in the tenement.
- (2) The dimensions of an access claim must conform with the requirements of the regulations.
- (3) No more than 4 access claims may be held at the same time in respect of the same mining tenement.

### **63B—Access claim may be pegged by agreement, or by authority of the Warden's Court, over land comprised in mining tenement**

- (1) Subject to subsection (2), a person is not entitled to peg out an access claim on or above land held under a mining tenement by some other person unless that other person has consented to the pegging out of the access claim or the Warden's Court has, in pursuance of subsection (2), authorised the pegging out of the claim.
- (2) Where a person desiring to peg out an access claim satisfies the Warden's Court that there is proper cause for the Court to authorise the pegging out of the claim, notwithstanding absence of the consent of the holder of a mining tenement, the Court may, on such conditions as it thinks just, authorise the pegging out of the access claim.

### **63C—Registration of access claim**

- (1) Application for registration of an access claim—
  - (a) must be in the prescribed form; and
  - (b) must be lodged at the office of the Mining Registrar within 14 days after the day on which the claim is pegged out; and
  - (c) must be accompanied by the prescribed particulars.
- (2) A Mining Registrar shall, upon receipt of due application for registration of an access claim that has been lawfully pegged out, register the claim.
- (3) If application for registration of an access claim is not made as required by this section, or if the Mining Registrar lawfully refuses to register the claim, the claim shall lapse.

### **63D—Rights conferred by access claim**

- (1) An access claim confers on the owner of the claim an exclusive right, subject to the provisions of this Act, to conduct mining operations of the kind authorised by the mining tenement to which the claim relates on the land comprised in the claim.
- (2) The rights conferred by an access claim are exclusive of the rights of any other person to conduct mining operations on, or in respect of, the land comprised in the claim.

### **63E—Term etc of access claim**

- (1) An access claim has a renewable term of 12 months.

- (1a) If an application is made in accordance with the regulations for renewal of an access claim, the owner of the claim is entitled to renewal of the claim for a further term of 12 months.
- (2) An access claim shall lapse if, for any reason, the mining tenement to which it relates ceases to be in force.
- (3) The holder of an access claim may, subject to this Act, surrender the claim at any time.

## Part 9B—Native title land

### Division 1—Exploration

#### 63F—Qualification of rights conferred by exploration authority

- (1) An exploration authority confers no right to carry out mining operations on native title land unless—
  - (a) the mining operations do not affect native title (ie they are not wholly or partly inconsistent with the continued existence, enjoyment or exercise of rights deriving from native title<sup>1</sup>); or
  - (b) a declaration is made under the law of the State or the Commonwealth to the effect that the land is not subject to native title;<sup>2</sup> or
  - (c) an indigenous land use agreement registered under the *Native Title Act 1993* (Cwth) provides that statutory rights to negotiate are not intended to apply in relation to the mining operations.<sup>3</sup>
- (2) However, a person who holds an exploration authority that would, if land were not native title land, authorise mining operations on the land may acquire the right to carry out mining operations on the land (that affect native title) from an agreement or determination authorising the operations under this Part.
- (3) An agreement or determination under this Part need not be related to a particular exploration authority.
- (4) However, a mining operator's right to carry on mining operations that affect native title is contingent on the existence of an exploration authority that would, if the land were not native title land, authorise the mining operator to carry out the mining operations on the land.

#### Notes—

- 1 Cf. *Native Title Act 1993* (Cwth), section 227.
- 2 A declaration to this effect may be made under Part 4 of the *Native Title (South Australia) Act 1994* or the *Native Title Act 1993* (Cwth). The effect of such a declaration is that the land ceases to be native title land.
- 3 Cf. *Native Title Act* (Cwth), section 24EB(1)(c).

#### 63G—Exploration rights to be held in escrow in certain circumstances

- (1) If an exploration authority is granted in respect of native title land, and the holder of the authority has no right or no substantial right to explore for minerals on the land because of the absence of an agreement or determination authorising mining operations on the land, the exploration authority does nevertheless, while it remains in force, prevent the grant of registration of another exploration authority for exploring for minerals of the same class within the area to which the authority relates.
- (2) The Minister may revoke an exploration authority that is granted entirely or substantially in respect of native title land if it appears to the Minister that the holder of the authority is not proceeding with reasonable diligence to obtain the agreement or determination necessary to authorise the effective conduct of mining operations on the land to which the authority relates.

## Division 2—Production

### 63H—Limits on grant of production tenement

A production tenement may not be granted or registered over native title land unless—

- (a) the mining operations to be carried out under the tenement are authorised by a pre-existing agreement or determination registered under this Part; or
- (ab) an indigenous land use agreement registered under the *Native Title Act 1993* (Cwth) provides that statutory rights to negotiate are not intended to apply in relation to the mining operations to be carried out under the tenement;<sup>1</sup> or
- (b) a declaration is made under the law of the State or the Commonwealth to the effect that the land is not subject to native title.<sup>2</sup>

#### Notes—

- 1 Cf. *Native Title Act* (Cwth), section 24EB(1)(c).
- 2 A declaration to this effect may be made under Part 4 of the *Native Title (South Australia) Act 1994* or the *Native Title Act 1993* (Cwth). The effect of the declaration is that the land ceases to be native title land.

### 63I—Applications for production tenements

- (1) The Minister may agree with an applicant for a production tenement over native title land that the tenement will be granted or registered contingent on the registration of an agreement or determination under this Part.
- (2) The Minister may refuse an application for a production tenement over native title land if it appears to the Minister that the applicant is not proceeding with reasonable diligence to obtain the agreement or determination necessary to the grant or registration of the tenement to which the application relates (and if the application is refused, the applicant's claim lapses).

## Division 3—Application for declaration

### 63J—Application for declaration

A person who seeks to carry out mining operations on native title land may apply to the ERD Court for a declaration that the land is not subject to native title.<sup>1</sup>

#### Note—

- 1 The application is to be made under the *Native Title (South Australia) Act 1994*.

## Division 4—Negotiating procedure

### 63K—Types of agreement authorising mining operations on native title land

- (1) An agreement authorising mining operations on native title land (a *native title mining agreement*) may—
  - (a) authorise mining operations by a particular mining operator; or
  - (b) authorise mining operations of a specified class within a defined area by mining operators of a specified class who comply with the terms of the agreement.



**Explanatory note—**

If the authorisation relates to a particular mining operator it is referred to as an *individual authorisation*. Such an authorisation is not necessarily limited to mining operations under a particular exploration authority or production tenement but may extend also to future exploration authorities or production tenements. If the authorisation does extend to future exploration authorities or production tenements it is referred to as a *conjunctive authorisation*. An authorisation that extends to a specified class of mining operators is referred to as an *umbrella authorisation*.

- (2) If a native title mining agreement is negotiated between a mining operator who does not hold, and is not an applicant for, a production tenement for the relevant land, and native title parties who are claimants to (rather than registered holders of) native title land, the agreement cannot extend to mining operations conducted on the land under a future production tenement.
- (3) An umbrella authorisation can only relate to prospecting or mining for precious stones over an area of 200 square kilometres or less.
- (4) If the native title parties with whom a native title mining agreement conferring an umbrella authorisation is negotiated are claimants to (rather than registered holders of) native title land, the term of the agreement cannot exceed 10 years.
- (5) The existence of an umbrella authorisation does not preclude a native title mining agreement between a mining operator and the relevant native title parties relating to the same land, and if an individual agreement is negotiated, the agreement regulates mining operations by a mining operator who is bound by the agreement to the exclusion of the umbrella authorisation.

**63L—Negotiation of agreements**

- (1) A person (the *proponent*) who seeks a native title mining agreement may negotiate the agreement with the native title parties.

**Explanatory note—**

The *native title parties* are the persons who are, at the end of the period of two months from when notice is given under section 63M, registered under the law of the State or the Commonwealth as holders of, or claimants to, native title in the land. A person who negotiates with the registered representative of those persons will be taken to have negotiated with the native title parties. Negotiations with other persons are not precluded but any agreement reached must be signed by the registered representative on behalf of the native title parties.

- (2) The proponent must be—
  - (a) if an agreement conferring an individual authorisation<sup>1</sup> is sought—the mining operator who seeks the authorisation;
  - (b) if an agreement conferring an umbrella authorisation<sup>1</sup> is sought—the Minister or an association representing the interests of mining operators approved by regulation for the purposes of this section.

**Note—**

<sup>1</sup> See the explanatory note to section 63K(1).

**63M—Notification of parties affected**

- (1) The proponent initiates negotiations by giving notice under this section.

- (2) The notice must—
  - (a) identify the land on which the proposed mining operations are to be carried out; and
  - (b) describe the general nature of the proposed mining operations that are to be carried out on the land.
- (3) The notice must be given to—
  - (a) the relevant native title parties; and
  - (b) the ERD Court; and
  - (c) the Minister.
- (4) Notice is given to the relevant native title parties as follows:
  - (a) if a native title declaration establishes who are the holders of native title in the land—the notice must be given to the registered representative of the native title holders and the relevant representative Aboriginal body for the land;
  - (b) if there is no native title declaration establishing who are the holders of native title in the land—the notice must be given to all who hold or may hold native title in the land in accordance with the method prescribed by Part 5 of the *Native Title (South Australia) Act 1994*.

### **63N—What happens when there are no registered native title parties with whom to negotiate**

- (1) If, two months after the notice is given to all who hold or may hold native title in the land, there are no native title parties in relation to the land to which the notice relates, the proponent may apply without notice to any person to the ERD Court for a summary determination.
- (2) On an application under subsection (1), the ERD Court must make a determination authorising entry to the land for the purpose of carrying out mining operations on the land, and the conduct of mining operations on the land.
- (3) The determination may be made on conditions the Court considers appropriate and specifies in the determination.
- (4) The determination cannot confer a conjunctive or umbrella authorisation.<sup>1</sup>

**Note—**

- 1 See the explanatory note to section 63K(1).

### **63O—Expedited procedure where impact of operations is minimal**

- (1) This section applies to mining operations that—
  - (a) will not directly interfere with the community life of the holders of native title in the land on which the operations are to be carried out; and
  - (b) will not interfere with areas or sites of particular significance, in accordance with their traditions, to the holders of native title in the land on which the operations are to be carried out; and
  - (c) will not involve major disturbance to the land on which the operations are to be carried out.

- (2) If the proponent states in the notice given under this Division that the mining operations to which the notice relates are operations to which this section applies and that the proponent proposes to rely on this section, the proponent may apply without notice to any person to the ERD Court for a summary determination authorising mining operations in accordance with the proposals made in the notice.
- (3) On an application under subsection (2), the ERD Court may make a summary determination authorising mining operations in accordance with the proposals contained in the notice.
- (4) However, if within two months after notice is given, a written objection to the proponent's reliance on this section is given by the Minister, or a person who holds, or claims to hold, native title in the land, the ERD Court must not make a summary determination under this section unless the Court is satisfied after giving the objectors an opportunity to be heard that the operations are in fact operations to which this section applies.
- (5) An objection under subsection (4) must be given to the proponent and a copy given to the ERD Court.

### **63P—Negotiating procedure**

- (1) The proponent and native title parties must negotiate in good faith and accordingly explore the possibility of reaching an agreement.
- (2) However, the obligation to negotiate does not arise if the case is one where a summary determination may be made.
- (3) If any of the negotiating parties requests the ERD Court to do so, the Court must mediate among the parties to assist in obtaining their agreement.
- (4) The Minister may (personally or by representative) intervene in negotiations under this Division.

### **63Q—Agreement**

- (1) An agreement negotiated under this Division may provide for payment to the native title parties based on profits or income derived from mining operations on the land or the quantity of minerals produced.
- (2) The basis of the payment may be fixed in the agreement or left to be decided by the ERD Court or some other nominated arbitrator.
- (3) An agreement must deal with—
  - (a) notices to be given or other conditions to be met before the land is entered for the purposes of carrying out mining operations; and
  - (b) principles governing the rehabilitation of the land on completion of the mining operations.
- (4) If agreement is reached between the proponent and the native title parties authorising mining operations on the native title land, the proponent must lodge a copy of the agreement with a mining registrar and the mining registrar will, subject to this section, register the agreement.

- (5) If the Minister is of the opinion that there is reason to believe that the agreement may not have been negotiated in good faith, the Minister may, within two months after the copy of the agreement is lodged for registration with the mining registrar, make an order prohibiting registration of the agreement.
- (6) A party to an agreement may appeal against an order under subsection (5) to the ERD Court and the Court may, on appeal—
  - (a) confirm or revoke the Minister's order; and
  - (b) if the Court considers it appropriate, make a determination authorising entry on the land to carry out mining operations, and the conduct of mining operations on the land, on conditions determined by the Court.

### **63R—Effect of registered agreement**

- (1) A registered agreement negotiated under this Division is (subject to its terms) binding on, and enforceable by or against the original parties to the agreement and—
  - (a) the holders from time to time of native title in the land to which the agreement relates; and
  - (b) the holders from time to time of any exploration authority or production tenement under which mining operations to which the agreement relates are carried out.
- (2) If a native title declaration establishes that the native title parties with whom an agreement was negotiated are not the holders of native title in the land or are not the only holders of native title in the land, the agreement continues in operation (subject to its terms) until a fresh agreement is negotiated under this Part with the holders of native title in the land, or for 2 years after the date of the declaration (whichever is the lesser).
- (3) Either the holders of native title in the land or the mining operator may initiate negotiations for a fresh agreement by giving notice to the other.
- (4) A registered agreement that authorises mining operations to be conducted under a future mining tenement is contingent on the tenement being granted or registered.

### **63S—Application for determination**

- (1) If agreement between the proponent and the native title parties is not reached within the relevant period, any party to the negotiations or the Minister may apply to the ERD Court for a determination.

In this subsection the *relevant period* is—

- (a) if the mining operations to which the negotiations relate are merely of an exploratory nature—four months from when the negotiations were initiated; or
  - (b) in any other case—six months from when the negotiations were initiated.
- (2) On an application under this section, the ERD Court may determine—
    - (a) that mining operations may not be conducted on the native title land; or
    - (b) that mining operations may be conducted on the native title land subject to conditions determined by the Court.

- 
- (3) If the ERD Court determines that mining operations may be conducted on native title land, the determination—
- (a) must deal with the notices to be given or other conditions to be met before the land is entered for the purposes of mining operations; but
  - (b) cannot provide for payment to the native title parties based on profits or income derived from mining operations on the land or the quantity of minerals produced.
- (4) The ERD Court must make its determination on an application under this section within the relevant period unless there are special reasons why it cannot do so.
- In this subsection, the *relevant period* is—
- (a) if a determination is sought only for exploring—four months from when the application is made; or
  - (b) in any other case—six months from when the application is made.
- (5) The representative Aboriginal body for the area in which the land is situated is entitled to be heard in proceedings under this section.

### **63T—Criteria for making determination**

- (1) In making its determination, the ERD Court must take into account the following:
- (a) the effect of the proposed mining operations on—
    - (i) native title in the land; and
    - (ii) the way of life, culture and traditions of any of the native title parties; and
    - (iii) the development of the social, cultural and economic structures of any of those parties; and
    - (iv) the freedom of access by any of those parties to the land concerned and their freedom to carry out rites, ceremonies or other activities of cultural significance on the land in accordance with their traditions; and
    - (v) any area or site, on the land concerned, of particular significance to the native title parties in accordance with their traditions; and
    - (vi) the natural environment of the land concerned;
  - (b) any assessment of the effect of the proposed mining operations on the natural environment of the land concerned—
    - (i) made by a court or tribunal; or
    - (ii) made, or commissioned, by the Crown in any capacity or by a statutory authority;
  - (c) the interests, proposals, opinions or wishes of the native title parties in relation to the management, use or control of the land concerned;
  - (d) the economic or other significance of the proposed mining operations to Australia and to the State;
  - (e) any public interest in the mining operations proceeding;

- (f) any other matter the ERD Court considers relevant.
- (2) This section does not affect the operation of another law of the State or the Commonwealth for the preservation or protection of areas or sites of particular significance to Aboriginal people.

### **63U—Limitation on powers of Court**

- (1) The ERD Court cannot make a determination conferring a conjunctive or umbrella authorisation<sup>1</sup> unless the native title parties<sup>2</sup> are represented in the proceedings and agree to the authorisation.
- (2) A conjunctive authorisation<sup>1</sup> conferred by determination cannot authorise mining operations under both an exploration authority and a production tenement unless the native title parties<sup>1</sup> are the registered holders of (rather than claimants to) native title land.<sup>3</sup>
- (3) An umbrella authorisation<sup>1</sup> conferred by determination—
  - (a) can only relate to prospecting or mining for precious stones over an area of 200 square kilometres or less; and
  - (b) cannot authorise mining operations for a period exceeding 10 years unless the native title parties<sup>2</sup> are registered holders of (rather than claimants to) native title land.<sup>4</sup>

#### **Notes—**

- 1 See explanatory note to section 63K(1).
- 2 See explanatory note to section 63L(1).
- 3 Section 63K(2) is of similar effect in relation to native title mining agreements.
- 4 Section 63K(3) and (4) are of similar effect in relation to native title mining agreements.

### **63V—Effect of determination**

- (1) A determination under this Division—
  - (a) must be lodged with a mining registrar; and
  - (b) must be registered two months after it was lodged for registration unless it has in the meantime been overruled by the Minister;<sup>1</sup> and
  - (c) takes effect on registration.
- (2) A determination registered under this Division has effect as if it were a contract between the proponent and the native title parties.
- (3) A registered determination is (subject to its terms) binding on, and enforceable by or against the original parties to the proceedings in which the determination was made and—
  - (a) the holders from time to time of native title in the land to which the determination relates; and
  - (b) the holders from time to time of any exploration authority or production tenement under which mining operations to which the determination relates are carried out.

- (4) If a native title declaration establishes that the native title parties to whom the determination relates are not the holders of native title in the land or are not the only holders of native title in the land, the determination continues in operation (subject to its terms) until a fresh determination is made, or for 2 years after the date of the declaration (whichever is the lesser).
- (5) A determination under this Part that authorises mining operations to be conducted under a future mining tenement is contingent on the tenement being granted or registered.

**Note—**

- 1 See section 63W.

**63W—Ministerial power to overrule determinations**

- (1) If the Minister considers it to be in the interests of the State to overrule a determination of the ERD Court under this Part, the Minister may, by notice in writing given to the ERD Court and the parties to the proceedings before the Court, overrule the determination and substitute another determination that might have been made by the Court.
- (2) However—
  - (a) the Minister cannot overrule a determination—
    - (i) if more than two months have elapsed since the date of the determination; or
    - (ii) if the Minister was the proponent of the negotiations leading to the determination; and
  - (b) the substituted determination cannot create a conjunctive or umbrella authorisation<sup>1</sup> if there was no such authorisation in the original determination nor can the substituted determination extend the scope of a conjunctive or umbrella authorisation.

**Explanatory note—**

The scope of an authorisation is extended if the period of its operation is lengthened, the area to which it applies is increased, or the class of mining operations to which it applies is expanded in any way.

**Note—**

- 1 See the explanatory note to section 63K(1).

**63X—No re-opening of issues**

If an issue is decided by determination under this Part, the parties to the proceedings in which the determination was made cannot make an agreement that is inconsistent with the terms of the determination unless the ERD Court authorises the agreement.

**Division 5—Miscellaneous****63Y—Non-application of this Part to Pitjantjatjara and Maralinga lands**

Nothing in this Part affects the operation of—

- (a) the *Pitjantjatjara Land Rights Act 1981*; or

- (b) the *Maralinga Tjarutja Land Rights Act 1984*.

### **63Z—Compensation to be held on trust in certain cases**

- (1) If a determination under this Part authorises mining operations on conditions requiring payment of compensation—
- (a) the ERD Court must decide the amount of the compensation; and
  - (b) the compensation must be paid into the ERD Court to be held on trust and applied as required by this section.
- (2) Compensation paid into the ERD Court under this section—
- (a) must, on application by the registered representative of the native title holders, be paid out to the registered representative; or
  - (b) if the Court, on application by an interested person, is satisfied that it is just and equitable to pay the compensation in some other way—must be paid out as directed by the Court.
- (3) However, if compensation is held on trust by the ERD Court under this section and—
- (a) a native title declaration is made to the effect that no part of the land is subject to native title; or
  - (b) the proponent abandons the proposal to carry out mining operations on the land before exercising the right to do so and, by notice to the Minister, relinquishes the right to do so,

the compensation must be repaid to the person who paid it.

### **63ZA—Non-monetary compensation**

- (1) Compensation under this Part is to be given in the form of monetary compensation.
- (2) However—
- (a) if, during negotiations under this Part, a person who may be entitled to compensation requests that the whole or part of the compensation be in a form other than money,<sup>1</sup> the other person who may be liable to pay compensation—
    - (i) must consider the request; and
    - (ii) must negotiate in good faith on the subject; and
  - (b) the ERD Court may, at the request of a person entitled to compensation, order non-monetary compensation.<sup>1</sup>

**Example—**

- 1 The non-monetary compensation might take the form of a transfer of property or the provision of goods or services.

### **63ZB—Review of compensation**

- (1) If—
- (a) mining operations are authorised by determination under this Part on conditions requiring the payment of compensation; and



- (b) a native title declaration is later made establishing who are the holders of native title in the land,

the ERD Court may, on application by the registered representative of the holders of native title in the land, or on the application of a person who is liable to pay compensation under the determination, review the provisions of the determination providing for the payment of compensation.

- (2) The application must be made within three months after the date of the native title declaration.
- (3) The Court may, on an application under this section—
- (a) increase or reduce the amount of the compensation payable under the determination (as from the date of application or a later date fixed by the Court); and
  - (b) change the provisions of the determination for payment of compensation in some other way.
- (4) In deciding whether to vary a determination and, if so, how, the Court must have regard to—
- (a) the assumptions about the existence or nature of native title on which the determination was made and the extent to which the native title declaration has confirmed or invalidated those assumptions; and
  - (b) the need to ensure that the determination provides just compensation for, and only for, persons whose native title in land is affected by the mining operations; and
  - (c) the interests of mining operators and investors who have relied in good faith on the assumptions on which the determination was made.

### **63ZBA—Mining Native Title Register**

- (1) The Mining Registrar must establish a distinct part of the Mining Register (which may be referred to as the *Mining Native Title Register*) for the registration of agreements and determinations under this Part.
- (2) The Mining Registrar must, in respect of each agreement or determination registered under this Part, include in the *Mining Native Title Register* details concerning—
- (a) the land to which the agreement or determination relates; and
  - (b) if relevant—the exploration authority or production tenement to which the agreement or determination relates; and
  - (c) the parties who are bound by the agreement or determination; and
  - (d) other information prescribed by the regulations.
- (3) The Mining Registrar may also note in any other part of the Mining Register any agreement or determination registered under this Part (as the Mining Registrar thinks fit).

- (4) An agreement or determination registered under this Part is not available for inspection under this Act if—
- (a) in the case of an agreement, the parties to the agreement specify in the agreement, or in some other manner determined by the Mining Registrar, that the contents of the agreement should be kept confidential under this section;
  - (b) in the case of a determination, the ERD Court specifies in the determination that the contents of the determination should be kept confidential under this section.
- (5) However, subsection (4) does not prevent the inspection of an agreement or determination registered under this Part by—
- (a) a person engaged in the administration of this Act acting in the course of official duties; or
  - (b) the Minister, or a person appointed to the Public Service acting in the course of official duties on behalf of, or with the authority of, the Minister; or
  - (c) a person who is bound by the agreement or determination; or
  - (d) a person who is acting under the joint authority of all persons who are bound by the agreement or determination (and such an authority must be given in a manner and form approved by the Mining Registrar); or
  - (e) a person who is acting under the authority of an order or determination of the ERD Court or the Supreme Court (for the purposes of this or another Act or law).
- (6) An authority under subsection (5) may be given on conditions.
- (7) A person who contravenes or fails to comply with a condition is guilty of an offence.  
Maximum penalty: \$10 000.

### **63ZC—Saving of pre-1994 mining tenements**

This Part does not apply in relation to—

- (a) a claim registered before 1 January 1994; or
- (b) a lease or licence granted under this Act before 1 January 1994; or
- (c) a renewal of a lease or licence granted under this Act before 1 January 1994 in pursuance of a legally enforceable right created before that date.

## **Part 10—Warden's Court and forfeiture of mining tenements**

### **64—Establishment of Warden's Court**

- (1) There shall be a court entitled the "Warden's Court".
- (2) The jurisdiction of the Warden's Court shall be exercisable by any warden.
- (3) The Warden's Court may sit at such times and places as may be determined by a warden exercising the jurisdiction of the court and the jurisdiction of the Warden's Court may be exercised by a warden notwithstanding that another warden is simultaneously exercising the jurisdiction of the court in some other matter.

### **65—Powers etc of Warden's Court**

- (1) For the purposes of any proceedings before the Warden's Court, the Warden's Court may—
  - (a) by summons signed by a warden, require the attendance before the Court of any person whom the warden thinks fit to call before the Court; or
  - (b) by summons signed by a warden, require the production of any books, papers or documents; or
  - (c) inspect any books, papers or documents produced before the Court and retain them for such reasonable period as the Court thinks fit and make copies of any of them or of any of their contents; or
  - (d) require any person to make an oath or affirmation that he will truly answer all questions put to him before the Court (which oath or affirmation may be administered by a warden or any other person); or
  - (e) require any person appearing before the Court (whether he has been summoned to appear or not) to answer any question put to him by the Court or any person appearing before the Court.
- (1a) Subject to subsection (1b), if any person—
  - (a) who has been served with a summons to attend before the Court neglects or fails to appear in obedience to the summons; or
  - (b) who has been served with a summons to produce any books, papers or documents neglects or fails to comply with the summons; or
  - (c) misbehaves himself before the Court, wilfully insults the Court or a warden or interrupts the proceedings of the Court; or
  - (d) refuses to be sworn or to affirm, or to answer any relevant question, when required to do so by the Court,  
he shall be guilty of a contempt of the Warden's Court.
- (1b) A person shall not be obliged to answer a question if the answer to that question would tend to incriminate him, or to produce any books, papers or documents if their contents would tend to incriminate him.

- (1c) In addition to the powers and authorities conferred on the Warden's Court by this Act, the Court shall have such of the powers and authorities of a justice, or a court of summary jurisdiction, under the *Justices Act 1921* as may be conferred on the Court by regulation.
- (2) The Warden's Court shall have power to issue injunctions.
- (3) An appeal shall lie against a judgment or order of the Warden's Court to the ERD Court.
- (3a) The Director or the Mining Registrar may appeal against a judgment or order of the Warden's Court, whether or not he was a party to the proceedings in which the judgment or order was given or made.
- (3b) An appeal against a judgment or order of the Warden's Court must be instituted within 1 month after publication of the judgment or order, but the ERD Court may, for proper cause, extend the period for instituting an appeal.
- (4) Subject to any rules of the ERD Court, the practice and procedure relating to an appeal from a judgment or order of the Warden's Court shall conform as nearly as practicable to the practice and procedure applicable to an appeal under the *Justices Act 1921*.

## **66—Rules of Warden's Court**

- (1) The Governor may make rules respecting the practice and procedure of the Warden's Court.
- (1a) The rules may prescribe, and provide for, the payment of fees in respect of the lodging of documents in the Court or the issuing of documents by the Court.
- (2) The rules may provide for the enforcement of judgments and orders, and the punishment of contempt of the Warden's Court and, in particular, may provide that appropriate provisions of the *Justices Act 1921* and of the *Local and District Criminal Courts Act 1926* shall apply, with such modifications as may be necessary or desirable and specified in the rules, in respect of judgments and orders of the Warden's Court.

## **66A—Removal of cases to ERD Court**

- (1) A case of unusual difficulty or importance in the Warden's Court may be removed by order of the Warden's Court or the ERD Court into the ERD Court.
- (2) The ERD Court may exercise (in addition to its ordinary jurisdiction and powers) any of the powers of the Warden's Court in relation to a case removed into the ERD Court under this section.

## **67—Jurisdiction relating to tenements and monetary claims**

- (1) The Warden's Court shall have jurisdiction to determine, in such manner as may be just, all actions concerning any right claimed in, under, or in relation to, any mining tenement, or purported mining tenement, or any miner's right.
- (1a) The Warden's Court will have jurisdiction to determine a monetary claim for not more than \$40 000 arising in relation to any contract, partnership or joint venture arrangement related to, or otherwise associated with—
  - (a) the acquisition or holding of any mining tenement, or purported mining tenement, or any miner's right; or
  - (b) the performance of any mining operations under this Act; or

- (c) the recovery of any minerals under this Act.
- (2) The Warden's Court shall have jurisdiction in any matter in which it is invested with jurisdiction by regulation.
- (3) The Director of Mines is entitled to appear in any proceedings before the Warden's Court.

### **68—Cancellation of miner's right**

- (1) The Warden's Court may, upon the application of the Director of Mines, make either or both of the following orders:
  - (a) an order cancelling a miner's right;
  - (b) an order prohibiting a person from holding or obtaining a miner's right for a period specified in the order or until further order of the Warden's Court.
- (2) An order shall not be made under subsection (1) unless the Warden's Court is satisfied that the person against whom the order is made has contravened, or failed to comply with, the provisions of this Act or of any other Act or regulations regulating mining operations, and the matter is of sufficient gravity to justify the making of the order.

### **69—Forfeiture of claim**

- (1) The Warden's Court may, upon application by any interested person, make an order for the forfeiture of any mineral claim.
- (2) An order shall not be made under subsection (1) unless the Court is satisfied that the requirements of this Act in relation to the claim have not been complied with in a material respect and that the matter is of sufficient gravity to justify the forfeiture of the claim.
- (3) Where an order for the forfeiture of a claim is made (otherwise than upon the application of the Director) under this section, the person upon whose application the order was made shall have, for a period of 14 days after the date of the order, a preferential right to peg out a claim of the same class as the forfeited claim upon the land comprised in the forfeited claim.
- (3a) After an application has been made under this section, the mineral claim to which the application relates cannot be surrendered, nor will it lapse, until the application has been determined.
- (4) For the purposes of this section—

*interested person* means—

  - (a) the Director of Mines; or
  - (b) the holder of a miner's right.

### **70—Forfeiture and transfer of leases**

- (1) The Warden's Court may, upon application by any interested person, adjudge that a lease under this Act is liable to forfeiture, and recommend to the Minister that the lease be forfeited.

- (2) A recommendation shall not be made under subsection (1) unless the Court is satisfied that the requirements of this Act in relation to the lease have not been complied with in a material particular and that the matter is of sufficient gravity to justify the forfeiture of the lease.
- (3) Where the Warden's Court has recommended the forfeiture of a lease—
  - (a) the Minister may, by notice in the Gazette, forfeit the lease to the Crown; and
  - (b) the person on whose application the Court recommended forfeiture is then entitled to a transfer of the lease from the Crown for the balance of its term.
- (4) A transfer of a lease under subsection (3)(b) takes effect on publication of a notice of transfer in the Gazette.
- (4a) After an application has been made under this section, the lease to which the application relates shall not be transferred or surrendered until the application has been determined.
- (5) For the purposes of this section—  
*interested person* means the holder of a miner's right.

## **Part 11—Assistance to mining**

### **71—Minister may assist in conduct of mining operations**

- (1) The Minister may assist in the conduct of mining operations by the loan of mining equipment or of money to be expended in advancing mining operations.
- (2) Assistance may be provided upon such terms and conditions as may be determined by the Minister, but any money advanced under subsection (1) shall become a debt due to the Crown, to be repaid in such manner as the Minister may direct.

### **72—Research and investigation**

The Minister may—

- (a) conduct research and investigation into—
  - (i) the existence of native title on mineral land; and
  - (ii) problems affecting the conduct of mining operations or the treatment of ores; and
- (b) stipulate and recover charges for any such research or investigation conducted at the request of any person; and
- (c) pay the cost of any such research or investigation out of money provided by Parliament for the purpose.

### **73—Acquisition of mining equipment**

The Minister may, out of money provided by Parliament, acquire mining equipment for the purposes of this Part.





## Part 11A—Caveats

### 73A—Lodging of caveats

- (1) A person claiming an interest in a mining tenement may lodge with a mining registrar a caveat forbidding the registration of any transfer or other instrument affecting the mining tenement or interest.
- (2) A caveat lodged under this section—
  - (a) shall be in the prescribed form and shall be accompanied by the prescribed fee; and
  - (b) shall state the full name and address of the caveator; and
  - (c) shall be signed by the caveator or his agent; and
  - (d) shall give an address within the State for the service of notices and proceedings in relation to the caveat.
- (3) Upon the lodging of the caveat—
  - (a) a memorial or copy of the caveat shall be entered in the register; and
  - (b) notice of the lodging of the caveat shall be sent, by registered post or certified mail, to the holder of the mining tenement affected by the caveat.
- (4) Successive caveats shall not be lodged in respect of the same subject matter except with the permission of the Warden's Court.

### 73B—Duration and effect of caveat

- (1) Except as provided in this section, a caveat shall lapse upon—
  - (a) the order of the Warden's Court for the removal of the caveat;
  - (b) the withdrawal of the caveat by the caveator;
  - (c) the expiration of 14 days after notification that application has been made for the registration of a transfer or other instrument affecting the subject matter of the caveat has been sent by, or on behalf of, a mining registrar, by registered post or certified mail, to the caveator at the address for service given in the caveat, unless, within that period, the Warden's Court otherwise orders.
- (2) When a caveat lapses, a memorial of that fact shall be entered in the register.
- (3) Where the holder of a mining tenement has entered into an agreement with any person relating to the sale of an interest in the tenement, then, if the agreement so provides, either party to the agreement may lodge a caveat in accordance with this Part, together with a copy of the agreement, and the caveat shall remain in force for such period as may be specified in the agreement, unless sooner withdrawn by consent of the parties to the agreement or removed by order of the Warden's Court or some other court that is competent to adjudicate upon the rights protected by the caveat.
- (4) A transfer or other instrument that would operate in derogation of rights protected by a caveat shall not be registered by a mining registrar, and its operation shall be suspended, while the caveat remains in force, unless the Warden's Court, or some other court that is competent to adjudicate upon the rights protected by the caveat, otherwise orders.

- (5) Any person interested in the subject matter of a caveat may apply to the Warden's Court for an order under this section.

## Part 11B—Private mines

### 73C—Interpretation

- (1) In this Part—
  - compliance order*—see section 73I;
  - environment* means land, air, water, organisms and ecosystems, and includes human-made or modified structures or areas;
  - general duty* means the duty under section 73H;
  - mine operations plan* means a mine operations plan under section 73G;
  - private mine* means an area declared to be a private mine under section 19 as in force immediately before the commencement of this Part;
  - rectification authorisation*—see section 73K;
  - rectification order*—see section 73J.
- (2) Without derogating from the general meaning of mining operations under this Act, *mining operations* includes, for the purposes of this Part, when carried out within the boundaries of a private mine—
  - (a) the treatment, processing or handling of any material recovered in the course of mining operations; and
  - (b) any activity ancillary to the conduct of mining operations.

### 73D—Exemption from Act

- (1) Subject to this Part, and any other provisions of this Act that explicitly apply to a private mine or the operator of a private mine, a private mine is exempt from the other Parts of this Act.
- (2) Land comprised within a private mine cannot be subject to a mining tenement under this Act.

### 73E—Royalty

- (1) Royalty is, subject to and in accordance with the provisions of this Act, payable on extractive minerals recovered from a private mine, but is not payable on any other minerals so recovered.
- (2) Subject to subsection (3), the proprietor of a private mine is liable for royalty payable under this section.
- (3) If—
  - (a) a person other than the proprietor is carrying out mining operations at a private mine; and
  - (b) the proprietor gives notice to the Minister in the prescribed form under this section,

the person carrying out the mining operations (rather than the proprietor) is liable for royalty under this section.

- (4) If—
- (a) the proprietor of a private mine has given a notice to the Minister under subsection (3); and
  - (b) the person carrying out mining operations at the private mine fails to pay royalty; and
  - (c) the proprietor pays the royalty,
- the proprietor may, subject to any agreement to the contrary—
- (d) recover the amount paid as a debt from the person who failed to pay the royalty; or
  - (e) set off the amount paid against a liability (if any) to the person who failed to pay the royalty.
- (5) If royalty payable on extractive minerals recovered from a private mine is not paid on or by the day on which it fell due—
- (a) the Minister may, by written notice served on—
    - (i) the proprietor of the mine; and
    - (ii) if the Minister has been given a notice under subsection (3)—the person carrying out mining operations at the private mine,make an order suspending mining operations at the mine; and
  - (b) the person liable for the royalty is liable to pay a penalty amount, in addition to the amount of royalty unpaid, equal to \$1 000 plus \$200 for each month (or part of a month) for which the royalty remains unpaid.
- (6) The Minister must revoke an order under subsection (5)(a) if the royalty and any penalty amount payable under subsection (5)(b) is subsequently paid.
- (7) A person who carries out mining operations in contravention of an order under subsection (5)(a) is guilty of an offence.  
Maximum penalty: \$5 000.
- (8) If a person is convicted of an offence under subsection (7) and the offence continues after the date of conviction, the person is guilty of a further offence against that subsection and liable, in addition to the maximum penalty of \$5 000, to a penalty not exceeding \$1 000 for each month (or part of a month) the offence continues after the date of the conviction.
- (9) A person who is entitled to receive a notice under subsection (5)(a) may appeal to the Warden's Court against an order under that subsection.
- (10) An appeal must be made in a manner and form determined by the Warden's Court.
- (11) The Warden's Court may, on hearing an appeal, revoke the order appealed against if satisfied that the making, or the continuation, of the order is unreasonable in the circumstances of the particular case.
- (12) The Minister may, at the Minister's discretion, remit a penalty amount payable under subsection (5)(b) by any amount.

### **73F—Passing of property in minerals**

- (1) While a mine continues as a private mine under this Act, the property in any minerals recovered from the mine will—
  - (a) in the case of all minerals except extractive minerals, pass to the person by whom the minerals are lawfully mined on recovery of the minerals; or
  - (b) in the case of extractive minerals, pass to the person by whom the minerals are lawfully mined on, and in consideration of, payment of royalty.
- (2) Subsection (1) operates subject to any contract, agreement, assignment, mortgage, charge or other instrument relating to proprietary rights in the minerals.
- (3) An interested party may, by application to the Warden's Court, seek the determination of any question or dispute as to the effect or enforcement of a contract, agreement, assignment, mortgage, charge or other instrument under subsection (1).
- (4) The Court may, on the hearing of an application under subsection (3), make such orders as it considers necessary or expedient to give effect, consistently with the provisions of this Act, to the intention of the contract, agreement, assignment, mortgage, charge or other instrument or to achieve a just settlement of any matters of dispute.

### **73G—Mine operations plans**

- (1) Unless otherwise approved by the Director, a person must not, after the commencement of this Part, carry out mining operations at a private mine unless a mine operations plan that relates to the operations and complies with requirements of this section is in place.
- (2) A mine operations plan must, in order to comply with the requirements of this section—
  - (a) include, in accordance with the requirements of the regulations—
    - (i) a set of objectives approved by the Director; and
    - (ii) a set of criteria for measuring those objectives approved by the Director,that relate to the mining operations carried out at the private mine; and
  - (b) be consistent with any relevant environment improvement programme or environment protection policy under the *Environment Protection Act 1993*; and
  - (c) comply with any other requirement prescribed by the regulations.
- (3) Objectives under subsection (2)(a) must include specific objectives to achieve compliance with the general duty (see section 73H).
- (4) A person wishing to obtain the approval of the Director to a set of objectives and a set of criteria, or to an alteration to a set of objectives or a set of criteria, must submit a draft of the objectives and criteria, or a draft of the objectives or criteria as altered, (as the case may be) to the Director in accordance with the regulations.
- (5) The Director may, on receipt of a draft under subsection (4)—
  - (a) accept the draft, without alteration; or

- (b) require alterations to the draft after consultation with the person who has submitted the draft (and in this case the person must (subject to any appeal under subsection (6)) alter the draft in accordance with the requirements of the Director).
- (6) The person who has submitted the draft may appeal to the Warden's Court against a requirement of the Director under subsection (5)(b) and the Warden's Court may, on hearing an appeal—
  - (a) confirm the requirement of the Director;
  - (b) vary or revoke the requirement of the Director, or impose any requirement in substitution for a requirement of the Director;
  - (c) make any consequential or ancillary order that it considers necessary or expedient.
- (7) Subject to the outcome of any appeal under subsection (6), the Director will then, unless subsection (8) applies, be taken to have approved the objectives and criteria contained in the draft.
- (8) If a draft relates to new operations to be carried out at a private mine, the draft must then be released for public consultation on the proposed objectives and criteria.
- (9) The public consultation must be conducted in accordance with the regulations.
- (10) The person who submitted the draft must, after complying with the public consultation requirements, prepare a report on the matters raised as a result of public consultation (insofar as they are relevant to the matters that were referred for public consultation) and, if relevant, on any recommended alterations to the objectives and criteria contained in the draft, and submit the report to the Director.
- (11) The Director may then—
  - (a) approve the objectives and criteria (with any alterations recommended under subsection (10)); or
  - (b) refer the matter back to the person who submitted the draft for further consideration or report (and in this case the Director must provide written reasons for his or her action and may subsequently approve the objectives and criteria, or altered objectives and criteria, if or when the Director is satisfied that the matter has been satisfactorily resolved).
- (12) The person who submitted the draft may appeal to the Warden's Court against a decision of the Director under subsection (11)(b) (including a decision not to approve objectives and criteria) and the Warden's Court may, on hearing an appeal—
  - (a) confirm the decision of the Director;
  - (b) vary or revoke the decision of the Director, or make any decision in substitution for a decision of the Director;
  - (c) make any consequential or ancillary order that it considers necessary or expedient.
- (13) A mine operations plan may be reviewed by a person carrying out, or intending to carry out, mining operations at the private mine at any time.
- (14) A mine operations plan must be reviewed at the direction of the Director (which may be given at any time for any reasonable cause).

- (15) A mine operations plan must also be reviewed—
  - (a) within seven years after the commencement of the plan (unless it has been reviewed sooner under subsection (13) or (14)); or
  - (b) in any event, within seven years after it was last reviewed.
- (16) A review must be conducted in accordance with the regulations.
- (17) A report must be furnished to the Director in accordance with the regulations on the completion of a review.
- (18) An appeal under this section must be made in a manner and form determined by the Warden's Court, setting out the grounds of the appeal.

### **73H—General duty to avoid undue environmental damage**

- (1) A person must, in carrying out mining operations at a private mine, take all reasonable and practicable measures to avoid undue damage to the environment.
- (2) In determining what measures are required to be taken under subsection (1), regard is to be had, amongst other things, to—
  - (a) the nature of the mining operations and the sensitivity of the receiving environment; and
  - (b) the financial implications of the various measures that might be taken as those implications relate to the class of persons undertaking activities of the same or a similar kind; and
  - (c) the current state of technical knowledge and likelihood of successful application of the various measures that might be taken.
- (3) A person will be taken to have complied with subsection (1) if the mining operations are the subject of a mine operations plan and meet objectives approved by the Director (when measured against criteria approved by the Director) contained in that plan.
- (4) Subsection (1) operates in addition to, and does not limit or derogate from, the provisions of the *Environment Protection Act 1993* or any other Act.

### **73I—Compliance orders**

- (1) The Director may issue an order under this section (a *compliance order*) for the purpose of securing compliance with—
  - (a) the requirement to have a mine operations plan in accordance with this Part; or
  - (b) the objectives contained in a mine operations plan; or
  - (c) the general duty.
- (2) A compliance order—
  - (a) must be in the form of a written notice served on the person to whom the notice is issued; and
  - (b) must—
    - (i) specify the person to whom it is issued (whether by name or a description sufficient to identify the person);

- (ii) if the order is issued for the purpose of securing compliance with the objectives contained in a mine operations plan—state the purpose and specify the objective that is not being met;
    - (iii) if the order is issued for the purpose of securing compliance with the general duty—state the purpose and specify the matters that it is directed towards; and
  - (c) may impose any requirement reasonably required for the purpose for which the order is issued including one or more of the following:
    - (i) a requirement that the person discontinue, or not commence, specified mining operations indefinitely or for a specified period or until further notice from the Director;
    - (ii) a requirement that the person not carry on specified mining operations except at specified times or subject to specified conditions;
    - (iii) a requirement that the person take specified action within a specified period; and
  - (d) must state that the person may, within 28 days, appeal to the Warden's Court against the order.
- (3) The Director may, by written notice served on a person to whom a compliance order has been issued, vary or revoke the order.
- (4) A person to whom a compliance order is issued must comply with the order.  
Maximum penalty: \$120 000.
- (5) If the requirements of a compliance order are not complied with, the Director may take any action required by the order.
- (6) Any action to be taken by the Director under subsection (5) may be taken on the Director's behalf by inspectors or by other persons authorised by the Director for the purpose.
- (7) If a person other than an inspector is authorised to take action under subsection (6), the following provisions apply:
  - (a) the Director must issue the person with an instrument of authority;
  - (b) the person may exercise such powers of an inspector under this Part as are reasonably required for the purpose of taking action under that subsection;
  - (c) the provisions of this Part apply in relation to the exercise of such powers by the person in the same way as in relation to an inspector;
  - (d) the person must produce the instrument of authority for the inspection of any person in relation to whom the person intends to exercise powers of an inspector.
- (8) The reasonable costs and expenses incurred by the Director in taking action under subsection (5) may be recovered by the Director as a debt from the person who failed to comply with the requirements of the compliance order.



### 73J—Rectification orders

- (1) If the Director is satisfied that a person has caused damaged to the environment by a contravention of the general duty, the Director may issue an order (a **rectification order**) to the person requiring the person to take specified action within a specified period to make good the damage.
- (2) A rectification order—
  - (a) must be in the form of a written notice served on the person to whom it is issued; and
  - (b) must specify the person to whom it is issued (whether by name or a description sufficient to identify the person); and
  - (c) must specify the contravention alleged to have caused the damage to the environment; and
  - (d) may include requirements for action to be taken to prevent or mitigate further damage to the environment; and
  - (e) may include requirements for monitoring and reporting to the Director the effectiveness of action taken in pursuance of the order; and
  - (f) must state that the person may, within 28 days, appeal to the Warden's Court against the order.
- (3) The Director may, by written notice served on a person to whom a rectification order has been issued, vary or revoke the order.
- (4) A person to whom a rectification order is issued must comply with the order.  
Maximum penalty: \$120 000.

### 73K—Rectification authorisations

- (1) If the Director is satisfied that a person has caused damage to the environment by a contravention of the general duty, the Director may (whether or not a rectification order has been issued to the person) issue an authorisation (a **rectification authorisation**) under which inspectors or other persons authorised by the Director for the purpose may take specified action to make good the damage.
- (2) A rectification authorisation—
  - (a) must be in the form of a written notice; and
  - (b) must specify the person alleged to have caused the damage to the environment (whether by name or a description sufficient to identify the person); and
  - (c) must specify the contravention alleged to have caused the damage to the environment; and
  - (d) may include authorisation for action to be taken to prevent or mitigate further damage to the environment.
- (3) The Director must, as soon as practicable after issuing a rectification authorisation, serve a copy of the authorisation on the person alleged to have caused the damage to the environment.

- (4) The Director may, by notice in writing, vary or revoke a rectification authorisation and must, as soon as practicable after doing so, serve a copy of the notice on the person alleged to have caused the damage to the environment.
- (5) If a person other than an inspector is authorised to take action under subsection (1), the following provisions apply:
  - (a) the Director must issue the person with an instrument of authority;
  - (b) the person may exercise such powers of an inspector as are reasonably required for the purpose of taking action under that subsection;
  - (c) the provisions of this Part apply in relation to the exercise of such powers by the person in the same way as in relation to an inspector;
  - (d) the person must produce the instrument of authority for the inspection of any person in relation to whom the person intends to exercise powers of an inspector.
- (6) The reasonable costs and expenses incurred by the Director by virtue of work done under a rectification authorisation may be recovered by the Director as a debt from the person whose contravention gave rise to the issuing of the authorisation.

### **73L—Appeals to Warden's Court**

- (1) A person to whom a compliance order or a rectification order has been issued may appeal to the Warden's Court against the order or any variation of the order.
- (2) An appeal must be made in a manner and form determined by the Warden's Court, setting out the grounds of the appeal.
- (3) Subject to subsection (4), an appeal must be made within 28 days after the order is issued or the variation is made.
- (4) The Warden's Court may, if it is satisfied that it is just and reasonable in the circumstances to do so, dispense with the requirements that an appeal be made within the period fixed by subsection (3).
- (5) Subject to subsection (6), the making of an appeal against an order does not affect the operation of the order or prevent the taking of action to implement the order.
- (6) The Warden's Court may, on application by a party to an appeal, make an order staying or otherwise affecting the operation or implementation of the whole or a part of the order appealed against if the Warden's Court is satisfied that it is appropriate to do so having regard to—
  - (a) the possible environmental consequences and the interests of any persons who may be affected by the appeal; and
  - (b) the need to secure the effectiveness of the hearing and determination of the appeal.
- (7) An order under subsection (6)—
  - (a) may be varied or revoked by the Warden's Court by further order; and
  - (b) is subject to such conditions as are specified in the order; and
  - (c) has effect until—
    - (i) the end of the period of operation (if any) specified in the order; or

- (ii) the decision of the Warden's Court on the appeal comes into operation,
- whichever is the earlier.
- (8) The Warden's Court may, on hearing an appeal under this section—
  - (a) confirm, vary or revoke the order appealed against;
  - (b) order or direct a person or body to take such action as the Warden's Court thinks fit, or to refrain (either temporarily or permanently) from such action or activity as the Warden's Court thinks fit;
  - (c) make any consequential or ancillary order or direction, or impose any condition, that it considers necessary or expedient.

**73M—Declaration of Warden's Court concerning variation or revocation of declaration of an area as a private mine**

- (1) The Warden's Court may, on the application of the Director or the proprietor of the private mine, declare that proper grounds exist for the variation or revocation of an area as a private mine under this Act.
- (2) Proper grounds exist for the purposes of subsection (1) if—
  - (a) in the case of an application by the Director or the proprietor—the Warden's Court is satisfied that the whole or any part of the private mine is not being effectively operated (for a reason other than the operation of an order under section 73E) and that in the circumstances it is appropriate that a declaration be made; or
  - (b) in the case of an application by the proprietor—the Warden's Court is satisfied that in the circumstances of the particular case it is appropriate that a declaration be made.
- (3) In the case of an application by the proprietor, the proprietor must disclose to the Warden's Court the name of any other person who appears to have an interest in the private mine and the Warden's Court may, as part of the proceedings, invite and hear submissions from any such person.
- (4) If the Director satisfies the Warden's Court—
  - (a) that the Director, by written notice, required the proprietor of a private mine to furnish the Director with a report in accordance with the regulations demonstrating why the declaration of the area as a private mine should not be varied or revoked and that the proprietor failed to furnish such a report, or an adequate report, within a period (being not less than two months) specified by the Director; and
  - (b) that the Director, before making application under this section—
    - (i) took reasonable steps to give notice of the proposed application to—
      - (A) the proprietor of the private mine; and
      - (B) any other person who, from an inspection of the current title to the relevant land and any instrument registered under this Act, appears to have an interest in the private mine or any minerals recovered from the private mine; and

- (ii) placed a notice in the prescribed form in a newspaper circulating generally throughout the State,

the Warden's Court may assume that it may make a declaration under subsection (2)(a).

- (5) The Director may object to an application by the proprietor of a private mine for a declaration under this section on the grounds that a variation or revocation would effectively lead to the loss of the opportunity to recover minerals from the area of the private mine in the future.

### **73N—Variation or revocation of declaration of private mine**

The Governor may, on the basis of a declaration of the Warden's Court under section 73M, by proclamation vary or revoke the declaration of an area as a private mine under this Act.

### **73O—Powers of inspectors and authorised persons**

- (1) An inspector, or any person authorised in writing by the Director, may do all or any of the following as may be reasonably required in connection with the administration or operation of this Part:
  - (a) enter and inspect any private mine;
  - (b) carry out, or cause to be carried out, any investigation, examination, test or survey;
  - (c) take, and remove, specimens and samples;
  - (d) require a person to produce documents (which may include a written record reproducing in an understandable form information stored by computer, microfilm or other process);
  - (e) examine, copy or take extracts from a document or information so produced or require a person to provide a copy of the document or information;
  - (f) require a person to answer questions;
  - (g) give directions.
- (2) In the exercise of powers under this section an inspector or an authorised person may be assisted by such persons as may be necessary or desirable in the circumstances.
- (3) A person exercising a power under this section must not unnecessarily impede or obstruct the lawful use or enjoyment of a private mine.
- (4) Subject to the requirements of subsection (3), the proprietor or occupier of a private mine must give an inspector or an authorised person, or a person assisting an inspector or an authorised person, such assistance as is reasonably required for the effective exercise of a power conferred by this section.

Maximum penalty: \$2 500.

- (5) A person who—
  - (a) without reasonable excuse, hinders or obstructs a person in the exercise of powers under this section; or
  - (b) uses abusive, threatening or insulting language to a person exercising a power under this section; or

- (c) without reasonable excuse, fails to obey a requirement or direction imposed or given under this section; or
- (d) without reasonable excuse, fails to answer, to the best of the person's knowledge, information and belief, a question put under this section,

is guilty of an offence.

Maximum penalty: \$2 500.

- (6) It is not an excuse for a person to refuse or fail to answer a question or to produce, or provide a copy of, a document or information as required under this section on the ground that to do so might tend to incriminate the person or make the person liable to a penalty.
- (7) However, if compliance by a person with a requirement to answer a question or to produce, or provide a copy of, a document or information might tend to incriminate the person or make the person liable to a penalty, then—
  - (a) in the case of a person who is required to produce, or provide a copy of, a document or information—the fact of production, or provision of a copy, of the document or the information (as distinct from the contents of the document or the information); or
  - (b) in any other case—the answer given in compliance with the requirement,is not admissible in evidence against the person in proceedings for an offence or for the imposition of a penalty (other than proceedings in respect of the making of a false or misleading statement).
- (8) An inspector or an authorised person, or a person assisting an inspector or an authorised person, who, in the course of exercising powers under this Act—
  - (a) addresses offensive language to another person; or
  - (b) without lawful authority, hinders or obstructs or uses or threatens to use force in relation to another person,is guilty of an offence.  
Maximum penalty: \$2 500.
- (9) This section does not limit the action that an inspector may take in order to carry out the requirements of a compliance order or to give effect to a rectification authorisation.

### **73P—Service of documents on proprietor**

- (1) A document required or authorised to be served on or given to the proprietor of a private mine under this Act may be served on or given to the proprietor—
  - (a) personally; or
  - (b) by leaving it at the last address of the proprietor known to the Registrar; or
  - (c) by post addressed to the proprietor at the last address of the proprietor known to the Registrar (including, in the case of a corporation, the registered address or a business address of the corporation); or

- (d) if the name or whereabouts of the proprietor is unknown—by fixing the document in a prominent position at the private mine or by publishing a copy of the document in a newspaper circulating generally throughout the State.
- (2) If the name of the proprietor of a private mine is unknown to the Registrar, then it is not necessary to name the proprietor in a document served or given under subsection (1) (and the document may be addressed in a general way).
- (3) If a private mine has two or more proprietors, service of a document on one proprietor may be taken to constitute service on each proprietor.
- (4) For the purposes of this Act, service of a document on the person last known to the Registrar to be the proprietor of a private mine will be taken to constitute service on the proprietor of the private mine.

### **73Q—Registration of mine operations plans**

- (1) A mine operations plan must be registered on the Mining Register.
- (2) However, a mine operations plan is not available for public inspection but the following must be provided to a person on application under this section:
  - (a) the name of the proprietor of the mine; and
  - (b) the location of the mine; and
  - (c) an extract showing the objectives and criteria applying as part of the plan.

### **73R—Power to correct errors in declarations**

- (1) If, in the opinion of the Governor, there is an error in the declaration of an area as a private mine, the Governor may, by proclamation, correct the error.
- (2) A proclamation under subsection (1) will, if it so provides, be taken to have had effect as from the making of the declaration to which it relates.
- (3) A proclamation should not be made under subsection (1) except at the request of, or after consultation by the Minister with, the proprietor of the private mine.

## Part 12—Miscellaneous

### 74—Penalty for illegal mining

- (1) A person who—
  - (a) mines; or
  - (b) sells, or disposes of, minerals recovered by him in the course of mining operations, or utilises any such minerals for a commercial or industrial purpose,

without being duly authorised by or under this Act shall be guilty of an offence.

Maximum penalty: \$5 000 or imprisonment for 2 years.

- (1a) A person who encourages, or procures the commission of an offence under subsection (1) shall be guilty of an offence.

Maximum penalty: \$5 000 or imprisonment for 2 years.

### 74A—Compliance orders

- (1) If a person carries out mining operations without the authority required by this Act, the ERD Court may, on application by the Director or the owner of land on which the operations are carried out, make an order (a *compliance order*) requiring the person (the *respondent*)—
  - (a) to stop the operations; and
  - (b) if the operations have resulted in damage to land—to take specified action to rehabilitate the land.

- (2) Before the Court makes a compliance order it must allow the respondent a reasonable opportunity to be heard on the application.

- (3) A person against whom a compliance order is made must comply with the order.

Maximum penalty: \$100 000.

### 75—Provision relating to certain minerals

- (1) No claim or lease may be pegged out or granted in respect of extractive minerals on land granted in fee simple or land in respect of which native title conferring a right to exclusive possession of land exists except with the written consent of the owner of the land.
- (2) The owner of land does not require a mining tenement under this Act for the recovery of extractive minerals from that land for his own personal use.

### 75A—Avoidance of double compensation

In determining compensation to be paid to a body or person under this Act, compensation that has been paid to the body or person, or to which the body or person is entitled under other laws, must be taken into account.

## **76—Returns**

- (1) The holder of a mining tenement must, not later than 31 January and 31 July in each year, furnish the Director of Mines with a return in a manner and form determined by the Director of Mines (but the Director of Mines may, on application by the holder of a mining tenement or of his or her own motion, extend the date by which a return must be furnished).
- (2) A return must contain the information required by the Director of Mines relating to the conduct of mining operations, the minerals recovered in the course of those operations and the sale or disposal of those minerals during the period of 6 months commencing—
  - (a) in the case of the return due on 31 January in each year—on the preceding 1 July; and
  - (b) in the case of the return due on 31 July in each year—on the preceding 1 January,and must comply with any other requirement specified by the Director of Mines.
- (3) A holder of a mining tenement who fails to comply with this section, or who furnishes a return that is false in any material particular, is guilty of an offence.  
Maximum penalty: \$5 000.
- (4) In the case of a continuing failure by a holder of a mining tenement to comply with this section, the holder of the mining tenement is guilty of a further offence for each month for which the failure continues.  
Maximum penalty: \$5 000.
- (5) A holder of a mining tenement who furnishes a return that is misleading in any material particular is guilty of an offence.  
Maximum penalty: \$1 250.  
Expiation fee: \$160.
- (6) This section applies to the operator of a private mine as if the operator were the holder of a mining tenement.
- (7) The regulations may exempt a person, or a class of persons, from the requirement under subsection (1).
- (8) An exemption—
  - (a) may be granted absolutely or on conditions; and
  - (b) remains in force for the period specified in the regulations.

## **77—Records and samples**

- (1) The holder of a mining tenement shall keep such records and geological samples as may be prescribed or as the Director of Mines may, by notice served upon him, require.  
Maximum penalty: \$750.



- (2) A person required to keep records and geological samples under subsection (1) shall, at the request of the Director of Mines or any person acting under his written authority, produce, at the place specified by the Director of Mines or the person acting under his written authority, those records or geological samples for inspection.  
Maximum penalty: \$750.
- (2a) Without limiting any other power that might otherwise be exercised, the Director of Mines or a person acting under his written authority may make copies or take extracts of a record produced under this section.
- (3) The holder of a mining tenement shall, at the request of the Director of Mines or any person acting under his written authority, permit a person nominated in the request to make tests, and take samples of minerals, from the land comprised in the mining tenement.  
Maximum penalty: \$750.
- (4) The Director of Mines may, with the consent of the Minister, publish the results of—
  - (a) any tests made in pursuance of this section; or
  - (b) the analysis of any samples taken in pursuance of this section.

#### **77A—Period of retention of records**

- (1) A person required to keep a record under section 77 must keep the record for not less than 7 years after—
  - (a) the date it was made by the person or, if it was not made by the person, the date it was obtained by the person; or
  - (b) if it relates to a transaction, the date of completion of the transaction,whichever is the later.  
Maximum penalty: \$750.
- (2) A person may, with the written approval of the Director of Mines, destroy a record within the 7 year period.
- (3) A decision to refuse approval under subsection (2) is a non-reviewable decision.
- (4) This section is subject to the provisions of any other law concerning the retention or destruction of records.

#### **78—Persons under 16 years of age**

- (1) No person under the age of 16 years is competent to hold a miner's right or mining tenement.
- (2) The obligations imposed by or under this Act are binding on a minor of or above the age of 16 years who holds a miner's right or mining tenement.

#### **79—Minister may grant exemption from certain obligations**

- (1) Where the Minister is satisfied that circumstances exist that justify him in so doing, he may—
  - (a) exempt the holder of a lease or licence under this Act from the obligation to comply with a condition of the lease or licence; or

- (b) exempt the holder of a mining tenement from the obligation to comply with a provision of this Act (except Part 9B).
- (2) An exemption under this section—
  - (a) may be granted absolutely or on conditions; and
  - (b) shall remain in force for a period determined by the Minister.
- (3) An exemption may not be granted under this section so as to discriminate against the holders of native title in land.

### **79A—Avoidance of duplication of procedures etc**

- (1) The purpose of this section is to provide for the avoidance of unnecessary duplication of procedures and compliance requirements under the Commonwealth Act and this Act where an activity requires authorisation under this Act and approval under the Commonwealth Act.
- (2) Despite any other provision of this Act, the Minister or the Director of Mines may—
  - (a) accept a Commonwealth Act document as an application, notice or other document for the purposes of this Act if (subject to subsection (5)) the document complies with the requirements of this Act; and
  - (b) direct that a procedure taken under the Commonwealth Act in relation to a Commonwealth Act document that has been accepted by the Minister or Director under paragraph (a) will be taken to have fulfilled the requirement for a procedure in relation to the relevant document under this Act if the requirements of this Act in relation to the procedure have been complied with; and
  - (c) instead of himself or herself, or some other person, preparing a plan, report, statement, assessment or other document under this Act, adopt or accept the whole or part of a document (whether a plan, report, statement, assessment or other document of the same kind or not) used, or to be used, for the purposes of the Commonwealth Act as the document required under this Act if (subject to subsection (5)) the document has been prepared in compliance with this Act and complies with the requirements of this Act.
- (3) To avoid doubt, where a controlled action under the Commonwealth Act is an activity or part of an activity, or includes an activity, for which authorisation is required under this Act, the Minister or Director may, when considering an application for a mining tenement or other authorisation for the activity, use information and other material provided to the Commonwealth Minister under the Commonwealth Act for the purpose of deciding whether to give his or her approval to the controlled action under that Act.
- (4) Where a controlled action under the Commonwealth Act is an activity or part of an activity, or includes an activity, for which authorisation is required under this Act, the Minister or Director—
  - (a) must, if the Commonwealth Minister has given his or her approval to the controlled action, consider whether the conditions (if any) to be attached by the Minister or Director to the mining tenement or other authorisation should be consistent with the conditions (if any) attached to the Commonwealth Minister's approval under the Commonwealth Act;

- (b) may attach a condition to the mining tenement or other authorisation that requires compliance with all or some of the conditions attached to the Commonwealth Minister's approval under the Commonwealth Act.
- (5) A document accepted or adopted under subsection (2)—
  - (a) may be in a form that does not comply with the requirements of this Act; and
  - (b) may include information or other material that is irrelevant for the purposes of this Act.
- (6) Once a document is accepted or adopted under subsection (2) or a direction has been given in relation to a procedure under subsection (2)(b), the document or procedure will not be invalid or ineffective for the purposes of this Act because a court, tribunal or other authority has decided that it is invalid or ineffective for the purposes of the Commonwealth Act.
- (7) In this section—

*assessment report* means—

  - (a) an assessment report as defined in the Commonwealth Act by reference to section 84(3), 95, 100 or 105 of that Act; or
  - (b) a report under section 121 of the Commonwealth Act;

*Commonwealth Act* means the *Environment Protection and Biodiversity Conservation Act 1999* of the Commonwealth;

*Commonwealth Act document* means—

- (a) a referral under section 68, 69 or 71 of the Commonwealth Act; or
- (b) information given by a person to the Minister under the Commonwealth Act under section 86 of that Act; or
- (c) information and invitation published by a proponent under section 93 of the Commonwealth Act; or
- (d) guidelines prepared under section 97 or 102 of the Commonwealth Act; or
- (e) a draft report prepared under section 98 of the Commonwealth Act; or
- (f) a finalised report prepared under section 99 of the Commonwealth Act; or
- (g) a draft statement prepared under section 103 of the Commonwealth Act; or
- (h) a finalised statement prepared under section 104 of the Commonwealth Act; or
- (i) an assessment report.

## **80—Conditions under which land may be simultaneously subject to more than one tenement**

- (1) Subject to this section, land shall not be simultaneously subject to more than one mining tenement under this Act.
- (1a) Land may be simultaneously subject to an access claim and a mining tenement of some other kind but, in such a case, the rights conferred by the claim are, while the claim remains in force, exclusive of the rights conferred by the other mining tenement in respect of lands comprised in the claim.

- (1b) The Minister may grant an exploration licence that relates solely to exploration operations for precious stones in respect of land that is subject to a prior tenement under this Act that does not relate solely to precious stones.
- (1c) However, the Minister must not grant an exploration licence under subsection (1b) without the written consent of the holder of the prior tenement.
- (1d) If the Minister grants an exploration licence under subsection (1b), the holders of the respective tenements must, subject to maintaining reasonable efficiencies in the conduct of their own operations, and any agreement between them or order of the Warden's Court, take all steps that are reasonably practicable to minimise interference with each others' operations.  
Maximum penalty: \$5 000.
- (2) Where land is subject to a mining tenement, a further claim, lease or miscellaneous purposes licence may, with the consent of the holder of that mining tenement or the approval of the Warden's Court, be pegged out, or granted, in respect of any portion of the land comprised in the prior tenement, and the rights conferred by the respective tenements shall then be modified according to the agreement of the parties or the order of the Warden's Court, as the case may require.
- (3) The Warden's Court shall not approve the pegging of a claim or the granting of a lease or miscellaneous purposes licence under subsection (2) unless it is satisfied that the rights of the holder of the prior tenement would not be materially diminished by the granting of such an approval.
- (4) The Warden's Court may, on the application of the holder of a mining tenement, make an order to regulate, restrict or prohibit mining operations where two or more tenements include the same land.
- (5) The holder of a mining tenement must not contravene or fail to comply with an order under subsection (4).  
Maximum penalty: \$5 000.

### **81—This Act not to affect Pastoral Act or Local Government Act**

This Act does not derogate from any provision of the *Pastoral Act 1936* or the *Local Government Act 1934* relating to the conduct of mining operations.

### **82—Surrender of lease or licence**

The Minister may, upon receipt of an application in the prescribed form by the holder of a lease or licence under this Act, consent to the surrender of the lease or licence.

### **83—Dealing with licences**

- (1) Subject to subsection (2), a lease or licence, or an interest in a lease or licence, under this Act shall not be assigned, transferred, sublet, or made the subject of any trust or other dealing, whether directly or indirectly, without the consent in writing of the Minister, and any such transaction entered into without that consent shall be void.
- (2) A lease or licence, or an interest in a lease or licence, may be charged without the consent of the Minister, but any assignment or transfer of the licence or interest for the purpose of enforcing the charge shall not be made except with the consent of the Minister and, if made without that consent, shall be void.

- (3) The Minister may, before consenting to a transaction subject to the provisions of this section, require the parties to furnish him with such information in relation to the transaction as he may require.
- (4) An application for the consent of the Minister under this section shall be accompanied by the prescribed fee.

#### **84—Duplicate copy of lease or licence**

Where the Minister is satisfied, upon application by the holder of a lease or licence under this Act, that the copy of the lease or licence to the possession of which that person is entitled has been lost or destroyed, he may issue, at the expense of the applicant, a duplicate copy of the lease or licence.

#### **84A—Safety net**

- (1) The Minister may enter into an agreement with the holder of a mining tenement—
  - (a) that, if the tenement should at some future time be found to be wholly or partially invalid due to circumstances beyond the control of the holder of the tenement, the holder of the tenement will have a preferential right to the grant of a new tenement; and
  - (b) dealing with the terms and conditions on which the new tenement will be provided.
- (2) The Minister must consider any proposal by the holder of a mining tenement for an agreement under this section.

#### **85—Non-payment of money due to Crown**

A lease or licence shall be liable to forfeiture if any sum payable to the Minister by the holder of the lease or licence is not paid within 3 months after the day on which it fell due.

#### **86—Removal of machinery etc**

- (1) The owner of any machinery or other goods upon the area of a mining tenement that has been transferred, surrendered or forfeited, or has lapsed, may, at any time within the period of 3 months after the date of the transfer, surrender, forfeiture or lapse, enter and remove the machinery or other goods from that area.
- (2) The Chief Inspector may cause any machinery or other goods that have been abandoned in the area of a mining tenement that has been forfeited, surrendered or abandoned, or has lapsed, to be sold.
- (3) The proceeds from a sale under subsection (2) shall be paid to the Treasurer who shall, upon the receipt of due application by the person by whom the machinery or other goods were abandoned, pay those proceeds to that person.
- (4) If money derived from the sale of machinery or other goods under this section is not claimed within 2 years of the date of the sale, it shall be forfeited to the Crown.

#### **87A—Powers of inspection**

An inspector or an authorised person may, at any time, enter and remain upon land comprised in a mining tenement for the purpose of ascertaining whether the provisions of this Act have been, or are being, complied with.

### **88—Obstruction etc of officers exercising powers under this Act**

A person shall not wilfully obstruct or impede any officer appointed under this Act in the execution of his duty.

Maximum penalty: \$2 500.

### **89—Obstruction etc of person authorised to mine under this Act**

A person shall not, without lawful excuse, obstruct or hinder the holder of a miner's right or a mining tenement in the reasonable exercise of rights conferred on him under this Act.

Maximum penalty: \$1 250.

### **89A—Immunity from liability**

No liability attaches to an officer or employee of the Crown or other person to whom powers or functions have been delegated under this Act for an act done, or omission made, in good faith in the course of carrying out functions related to the administration or enforcement, or purported administration or enforcement, of this Act.

### **90—Evidentiary provision**

- (1) In any proceedings for an offence against this Act, an allegation in the complaint that any land referred to in the complaint is mineral land, or land exempt from operations in pursuance of this Act, shall be deemed to be proved in the absence of evidence to the contrary.
- (2) In any proceedings, a document purporting to be a miner's right, lease or licence under this Act shall be accepted as such in the absence of evidence to the contrary.

### **92—Regulations**

The Governor may make such regulations as are contemplated by this Act, or as he thinks necessary or expedient for the purposes of this Act and, without limiting the generality of the foregoing, those regulations may—

- (a) regulate and control the issue of miner's rights, certificates of registration in respect of claims, leases and licences under this Act; and
- (b) provide for the maintenance and inspection of registers; and
- (c) regulate, restrict or prohibit operations of any kind upon mining tenements or mining tenements relating to land within an area specified in the regulations; and
- (d) declare equipment of any kind to be declared equipment for the purposes of this Act; and
- (e) prescribe any matters in relation to the nature or size of any kind of mining tenement, and the incidents attaching to, and the obligations entailed in, ownership of a mining tenement; and
- (f) require that a mining tenement be worked with proper diligence, in conformity with the requirements of the regulations, as to the number of men, and the nature of the machinery, to be employed in working the mining tenement and such other matters as may be required in the regulations; and

- (g) provide for the amalgamation, in accordance with the regulations, of 2 or more mining tenements, or the conditions affecting 2 or more mining tenements so that the mining tenements may be worked as if they together constituted a single mining tenement; and
- (i) provide for the protection of land upon which mining operations are conducted and require the restoration, to the satisfaction of an inspector, of land disturbed by mining operations; and
- (k) restrict or prohibit mining operations that may cause nuisance or inconvenience to persons in the vicinity of the mining operations; and
- (l) restrict or prohibit mining operations that may result in the pollution of any watercourse or water supply or any natural amenities; and
- (m) regulate the expenditure of money from the Extractive Areas Rehabilitation Fund; and
- (n) prescribe, and regulate the performance of, the duties of inspectors, mining registrars and other officers appointed under this Act; and
- (o) prescribe fees that are to be paid in respect of anything done under this Act or in connection with the administration or operation of this Act, or in respect of any matter occurring under this Act, and provide for the recovery of fees; and
- (p) prescribe any form for the purposes of this Act; and
- (q) prescribe a penalty, recoverable summarily, not exceeding \$1 250 for breach of, or non-compliance with, any regulation.





## **Schedule—Transitional provisions**

- 1 Any land declared to be mineral land under the repealed Act shall, subject to this Act, be and continue to be mineral land under this Act and any land reserved from the operation of the repealed Act shall, subject to this Act, be and continue to be land reserved from the operation of this Act.
- 2 A gold lease, mineral lease, coal lease, or miscellaneous lease granted under the repealed Act and in force immediately before the commencement of this Act shall be deemed to be a mining lease granted under this Act and shall, subject to this Act, remain in force for the remainder of the period for which it was granted or last renewed.
- 3 Where a person lawfully entered upon land before the commencement of this Act for the purposes of conducting mining operations, he may, subject to this Act, continue those operations upon the land in all respects as if he had lawfully entered upon the land in pursuance of this Act.
- 4 A business licence or an occupation licence granted under the repealed Act and in force immediately before the commencement of this Act shall be deemed to be a miscellaneous purposes licence under this Act, and shall, subject to this Act, remain in force for the remainder of the period for which it was granted or last renewed.



## Legislative history

### Notes

- This version is comprised of the following:

Part 1	6.11.2008
Part 2	30.10.2003 (Reprint No 20)
Part 3	1.1.2006
Part 4	12.6.2003 (Reprint No 19)
Part 5	6.11.2008
Part 6	6.11.2008
Part 6A	6.11.2008
Part 8	6.11.2008
Part 8A	12.6.2003 (Reprint No 19)
Part 9	6.11.2008
Part 9A	12.6.2003 (Reprint No 19)
Part 9B	4.9.2006
Part 10	4.9.2006
Part 11	12.6.2003 (Reprint No 19)
Part 11A	4.9.2006
Part 11B	1.1.2006
Part 12	1.1.2006
Schedule	24.11.2003 (Reprint No 21)
- Amendments of this version that are uncommenced are not incorporated into the text.
- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of this Act (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or [www.legislation.sa.gov.au](http://www.legislation.sa.gov.au).

### Legislation repealed by principal Act

The *Mining Act 1971* repealed the following:

*Mining Act 1930*

*Mining Act Amendment Act 1941*

*Mining Act Amendment Act 1945*

*Mining Act Amendment Act 1946*

*Mining Act Amendment Act 1950*

*Mining Act Amendment Act 1951*

*Mining Act Amendment Act 1953*

*Mining Act Amendment Act 1955*

*Mining Act Amendment Act 1958*

*Mining Act Amendment Act 1962*

## Legislation amended by principal Act

The *Mining Act 1971* amended the following:

*Crown Lands Act 1929*

*Petroleum Act 1940*

## Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
1971	109	<i>Mining Act 1971</i>	9.12.1971	3.7.1972 ( <i>Gazette</i> 29.6.1972 p2689)
1972	142	<i>Mining Act Amendment Act 1972</i>	7.12.1972	25.1.1973 ( <i>Gazette</i> 25.1.1973 p274)
1973	72	<i>Mining Act Amendment Act 1973</i>	6.12.1973	6.12.1973
1975	1	<i>Mining Act Amendment Act 1975</i>	6.3.1975	6.3.1975
1976	105	<i>Mining Act Amendment Act 1976</i>	16.12.1976	23.12.1976 ( <i>Gazette</i> 23.12.1976 p2317)
1978	51	<i>Mining Act Amendment Act (No. 2) 1978</i>	20.7.1978	20.7.1978
1981	71	<i>Mining Act Amendment Act 1981</i>	5.11.1981	5.11.1981 ( <i>Gazette</i> 5.11.1981 p1431)
1982	97	<i>Mining Act Amendment Act 1982</i>	23.12.1982	5.11.1981: s 2
1983	50	<i>Mining Act Amendment Act 1983</i>	16.6.1983	16.6.1983
1986	14	<i>Statute Law Revision Act 1986</i>	20.3.1986	Sch 5—31.7.1986 ( <i>Gazette</i> 17.7.1986 p269)
1988	12	<i>Aboriginal Heritage Act 1988</i>	17.3.1988	1.3.1989 ( <i>Gazette</i> 9.2.1989 p354)
1988	86	<i>Mining Act Amendment Act 1988</i>	1.12.1988	1.7.1989 ( <i>Gazette</i> 29.6.1989 p1755)
1993	3	<i>Mining (Precious Stones Field Ballots) Amendment Act 1993</i>	4.3.1993	4.3.1993
1993	54	<i>Statutes Repeal and Amendment (Development) Act 1993</i>	27.5.1993	15.1.1994 ( <i>Gazette</i> 27.10.1993 p1889)
1994	60	<i>Mining (Royalties) Amendment Act 1994</i>	27.10.1994	3.11.1994 ( <i>Gazette</i> 3.11.1994 p1442)
1995	41	<i>Mining (Special Enterprises) Amendment Act 1995</i>	4.5.1995	1.6.1995 ( <i>Gazette</i> 1.6.1995 p2529)
1995	43	<i>Mining (Native Title) Amendment Act 1995</i>	11.5.1995	17.6.1996 ( <i>Gazette</i> 9.5.1996 p2440)
1995	102	<i>Opal Mining Act 1995</i>	14.12.1995	21.4.1997 ( <i>Gazette</i> 3.4.1997 p1386)
1998	23	<i>Statutes Amendment (Native Title) Act 1998</i>	2.4.1998	Pt 2 (ss 4—8)—21.5.1998 ( <i>Gazette</i> 21.5.1998 p2199)
1999	1	<i>Statutes Amendment (Mining Administration) Act 1999</i>	25.2.1999	Pt 2 (ss 4—9)—1.4.1999 ( <i>Gazette</i> 25.3.1999 p1462)

1999	36	<i>Electricity Corporations (Restructuring and Disposal) Act 1999</i>	1.7.1999	Sch 4 (cll 20 & 21)—29.7.1999 ( <i>Gazette 29.7.1999 p528</i> )
1999	73	<i>Mining (Private Mines) Amendment Act 1999</i>	25.11.1999	1.9.2000 except new s 73G (as inserted by s 6)—1.3.2001 ( <i>Gazette 31.8.2000 p970</i> )
2000	11	<i>Offshore Minerals Act 2000</i>	4.5.2000	4.5.2002 (s 7(5) <i>Acts Interpretation Act 1915</i> )
2000	13	<i>Mining (Royalty) Amendment Act 2000</i>	11.5.2000	1.7.2000 ( <i>Gazette 29.6.2000 p3414</i> )
2000	22	<i>Statutes Amendment (Extension of Native Title Sunset Clauses) Act 2000</i>	8.6.2000	8.6.2000
2001	16	<i>Statutes Amendment (Avoidance of Duplication of Environmental Procedures) Act 2001</i>	17.5.2001	Pt 4 (s 6)—14.6.2001 ( <i>Gazette 14.6.2001 p2221</i> )
2001	23	<i>Statutes Amendment (Corporations) Act 2001</i>	14.6.2001	Pt 22 (s 86)—15.7.2001 being the day on which the <i>Corporations Act 2001</i> of the Commonwealth came into operation: <i>Commonwealth of Australia Gazette No. S 285, 13.7.2001 (Gazette 21.6.2001 p2270)</i>
2001	69	<i>Statutes Amendment (Courts and Judicial Administration) Act 2001</i>	6.12.2001	Pt 9 (ss 20—22)—3.2.2002 ( <i>Gazette 24.1.2002 p346</i> )
2003	12	<i>Mining (Miscellaneous) Amendment Act 2003</i>	12.6.2003	Pt 2 (ss 4—18) and Sch—12.6.2003 ( <i>Gazette 12.6.2003 p2497</i> )
2003	35	<i>River Murray Act 2003</i>	31.7.2003	Sch (cl 12)—24.11.2003 ( <i>Gazette 20.11.2003 p4203</i> )
2003	39	<i>Statutes Amendment (Mining) Act 2003</i>	9.10.2003	Pt 3 (s 5)—30.10.2003 ( <i>Gazette 23.10.2003 p3879</i> )
2003	44	<i>Statute Law Revision Act 2003</i>	23.10.2003	Sch 1—24.11.2003 ( <i>Gazette 13.11.2003 p4048</i> )
2004	34	<i>Natural Resources Management Act 2004</i>	5.8.2004	Sch 4 (cl 22)—2.9.2004 ( <i>Gazette 2.9.2004 p3545</i> )
2005	5	<i>Adelaide Dolphin Sanctuary Act 2005</i>	14.4.2005	Sch 2 (cll 31—41)—1.7.2005 ( <i>Gazette 2.6.2005 p1684</i> )
2005	17	<i>Mining (Royalty) Amendment Act 2005</i>	2.6.2005	1.1.2006 ( <i>Gazette 18.8.2005 p3058</i> )
2005	61	<i>Mining (Royalty No 2) Amendment Act 2005</i>	1.12.2005	1.1.2006: s 2
2006	17	<i>Statutes Amendment (New Rules of Civil Procedure) Act 2006</i>	6.7.2006	Pt 52 (ss 167—170)—4.9.2006 ( <i>Gazette 17.8.2006 p2831</i> )
<b>2007</b>	<b>60</b>	<b><i>Marine Parks Act 2007</i></b>	<b>29.11.2007</b>	<b>Sch 1 (cll 30—40)—6.11.2008 (<i>Gazette 6.11.2008 p5055</i>)</b>
2009	35	<i>Petroleum (Miscellaneous) Amendment Act 2009</i>	23.7.2009	Sch 1 (cl 2)—uncommenced

## Provisions amended since 3 February 1976

- Legislative history prior to 3 February 1976 appears in marginal notes and footnotes included in the consolidation of this Act contained in Volume 7 of The Public General Acts of South Australia 1837-1975 at page 326.
- Certain textual alterations were made to this Act by the Commissioner of Statute Revision when preparing the reprint of the Act that incorporated all amendments in force as at 31 July 1986. A Schedule of these alterations was laid before Parliament on 5 August 1986.

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
Long title	amended by 44/2003 s 3(1) (Sch 1)	24.11.2003
Pt 1		
s 2	<i>deleted by 44/2003 s 3(1) (Sch 1)</i>	<i>24.11.2003</i>
s 3	<i>deleted by 14/1986 s 3(1) (Sch 5)</i>	<i>31.7.1986</i>
s 4	amended by 51/1978 s 3	20.7.1978
	<i>amended by 71/1981 s 3</i>	<i>5.11.1981</i>
	<i>deleted by 14/1986 s 3(1) (Sch 5)</i>	<i>31.7.1986</i>
s 5		
s 5(1), (2), (6) and (8)—see Sch		
s 5(3)—(5), (7), (9)—(11)	<i>deleted by 14/1986 s 3(1) (Sch 5)</i>	<i>31.7.1986</i>
s 6		
s 6(1)	s 6 redesignated as s 6(1) by 71/1981 s 4(i)	5.11.1981
Adelaide Dolphin Sanctuary	inserted by 5/2005 Sch 2 (cl 31(1))	1.7.2005
<i>the appropriate court</i>	<i>inserted by 86/1988 s 3(a)</i>	<i>1.7.1989</i>
	<i>deleted by 43/1995 s 3(a)</i>	<i>17.6.1996</i>
appropriate court	inserted by 43/1995 s 3(a)	17.6.1996
	amended by 69/2001 s 20(a)	3.2.2002
authorised person	inserted by 105/1976 s 3(a)	23.12.1976
baseline	inserted by 11/2000 Sch 2	4.5.2002
declared equipment	substituted by 43/1995 s 3(b)	17.6.1996
the Director of Mines or the Director	substituted by 51/1978 s 4(e)	20.7.1978
ERD Court	inserted by 43/1995 s 3(c)	17.6.1996
exempt land	inserted by 71/1981 s 4(a)	5.11.1981
exploration authority	inserted by 43/1995 s 3(d)	17.6.1996
	(b) deleted by 102/1995 Sch 2 cl 2(a)	21.4.1997

exploring	inserted by 71/1981 s 4(a)	5.11.1981
extractive minerals	substituted by 51/1978 s 4(a)	20.7.1978
fossicking	inserted by 51/1978 s 4(a)	20.7.1978
	substituted by 71/1981 s 4(b)	5.11.1981
machinery	inserted by 71/1981 s 4(c)	5.11.1981
<b>marine park</b>	<b>inserted by 60/2007 Sch 1 cl 30(1)</b>	<b>6.11.2008</b>
minerals	amended by 105/1976 s 3(b), (c)	23.12.1976
	amended by 71/1981 s 4(d)	5.11.1981
mining or mining operations	amended by 51/1978 s 4(b)	20.7.1978
	amended by 71/1981 s 4(e)	5.11.1981
	amended by 12/2003 s 4	12.6.2003
Mining Register	inserted by 1/1999 s 4	1.4.1999
a mining registrar	inserted by 14/1986 s 3(1) (Sch 5)	31.7.1986
	substituted by 102/1995 Sch 2 cl 2(b)	21.4.1997
the Mining Registrar	inserted by 14/1986 s 3(1) (Sch 5)	31.7.1986
	substituted by 102/1995 Sch 2 cl 2(b)	21.4.1997
mining tenement	amended by 105/1976 s 3(d)	23.12.1976
<i>Minister for the Adelaide Dolphin Sanctuary</i>	<i>inserted by 5/2005 Sch 2 (cl 31(2))</i>	<i>1.7.2005</i>
	<b><i>deleted by 60/2007 Sch 1 cl 30(2)</i></b>	<b>6.11.2008</b>
<i>Minister for the River Murray</i>	<i>inserted by 35/2003 Sch cl 12(a)</i>	<i>24.11.2003</i>
	<b><i>deleted by 60/2007 Sch 1 cl 30(2)</i></b>	<b>6.11.2008</b>
Murray-Darling Basin	inserted by 35/2003 Sch cl 12(a)	24.11.2003
native title	inserted by 43/1995 s 3(e)	17.6.1996
native title holder	inserted by 43/1995 s 3(e)	17.6.1996
native title land	inserted by 43/1995 s 3(e)	17.6.1996
native title mining determination	inserted by 43/1995 s 3(e)	17.6.1996
opal development area	inserted by 102/1995 Sch 2 cl 2(c)	21.4.1997
owner	substituted by 86/1988 s 3(b)	1.7.1989
	substituted by 43/1995 s 3(f)	17.6.1996
precious stones	substituted by 102/1995 Sch 2 cl 2(d)	21.4.1997
precious stones field	amended by 105/1976 s 3(e)	23.12.1976
	amended by 51/1978 s 4(c)	20.7.1978
	substituted by 71/1981 s 4(f)	5.11.1981
	substituted by 102/1995 Sch 2 cl 2(d)	21.4.1997
prescribed notice of entry	inserted by 43/1995 s 3(g)	17.6.1996

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production tenement	inserted by 43/1995 s 3(g)	17.6.1996
	(a) deleted by 102/1995 Sch 2 cl 2(e)	21.4.1997
proprietor	substituted by 73/1999 s 3	1.9.2000
<i>prospecting or to prospect</i>	<i>deleted by 71/1981 s 4(g)</i>	<i>5.11.1981</i>
prospecting	inserted by 71/1981 s 4(g)	5.11.1981
radioactive material	inserted by 51/1978 s 4(d)	20.7.1978
registered representative	inserted by 43/1995 s 3(h)	17.6.1996
<i>registrar or mining registrar</i>	<i>deleted by 14/1986 s 3(1) (Sch 5)</i>	<i>31.7.1986</i>
<b>relevant Act</b>	<b>inserted by 60/2007 Sch 1 cl 30(3)</b>	<b>6.11.2008</b>
<b>relevant Minister</b>	<b>inserted by 60/2007 Sch 1 cl 30(3)</b>	<b>6.11.2008</b>
River Murray Protection Area	inserted by 35/2003 Sch cl 12(b)	24.11.2003
<b>specialty protected area</b>	<b>inserted by 60/2007 Sch 1 cl 30(4)</b>	<b>6.11.2008</b>
subsurface stratum	inserted by 71/1981 s 4(h)	5.11.1981
surface stratum	inserted by 71/1981 s 4(h)	5.11.1981
warden	amended by 105/1976 s 3(f)	23.12.1976
	substituted by 50/1983 s 2	16.6.1983
	substituted by 69/2001 s 20(b)	3.2.2002
s 6(2)	inserted by 71/1981 s 4(i)	5.11.1981
s 6(3)	inserted by 43/1995 s 3(i)	17.6.1996
s 7		
s 7(1)	s 7 redesignated as s 7(1) by 71/1981 s 5	5.11.1981
s 7(2)	inserted by 71/1981 s 5	5.11.1981
	substituted by 86/1988 s 4	1.7.1989
s 7(3)	inserted by 102/1995 Sch 2 cl 3	21.4.1997
s 8		
s 8(1)	amended by 51/1978 s 5	20.7.1978
	amended by 71/1981 s 6(a)	5.11.1981
	amended by 11/2000 Sch 2	4.5.2002
	(b) deleted by 102/1995 Sch 2 cl 4	21.4.1997
s 8(3)	inserted by 71/1981 s 6(b)	5.11.1981
s 8(4)—(6)	inserted by 11/2000 Sch 2	4.5.2002
s 8A	inserted by 102/1995 Sch 2 cl 5	21.4.1997
s 9		
s 9(1)	amended by 105/1976 s 4	23.12.1976
	amended by 51/1978 s 6	20.7.1978
	amended by 86/1988 s 5(a)	1.7.1989
	amended by 43/1995 s 4(a)	17.6.1996
	amended by 102/1995 Sch 2 cl 6	21.4.1997



s 9(3)	substituted by 71/1981 s 7	5.11.1981
	amended by 97/1982 s 3(a)	5.11.1981
	amended by 86/1988 s 5(b)	1.7.1989
s 9(3a)	inserted by 71/1981 s 7	5.11.1981
	amended by 86/1988 s 5(c)	1.7.1989
s 9(3b)	inserted by 97/1982 s 3(b)	5.11.1981
	amended by 43/1995 s 4(b)	17.6.1996
s 9(3c)	inserted by 97/1982 s 3(b)	5.11.1981
s 9(5)	inserted by 86/1988 s 5(d)	1.7.1989
s 10A	inserted by 51/1978 s 7	20.7.1978
s 10A(1)	amended by 71/1981 s 8	5.11.1981
s 10B	inserted by 34/2004 Sch 4 cl 22	2.9.2004
	substituted by 5/2005 Sch 2 (cl 32)	1.7.2005
	<b>substituted by 60/2007 Sch 1 cl 31</b>	<b>6.11.2008</b>
Pt 2		
s 11	substituted by 14/1986 s 3(1) (Sch 5)	31.7.1986
s 12	substituted by 3/1993 s 2	4.3.1993
s 13	substituted by 50/1983 s 3	16.6.1983
	substituted by 14/1986 s 3(1) (Sch 5)	31.7.1986
s 13(3)—(7)	inserted by 102/1995 Sch 2 cl 7	21.4.1997
s 14	<i>amended by 73/1999 s 7 (Sch 1 cl 1)</i>	<i>1.9.2000</i>
	<i>deleted by 39/2003 s 5</i>	<i>30.10.2003</i>
s 15		
s 15(2)	substituted by 43/1995 s 5	17.6.1996
	substituted by 12/2003 s 5(1)	12.6.2003
s 15(3)	amended by 73/1999 s 7 (Sch 1 cl 2)	1.9.2000
s 15(5)—(7)	inserted by 12/2003 s 5(2)	12.6.2003
s 15A	inserted by 105/1976 s 5	23.12.1976
s 15A(1)	amended by 102/1995 Sch 2 cl 8(a)	21.4.1997
s 15A(2)	amended by 1/1999 s 5	1.4.1999
s 15A(3)	inserted by 102/1995 Sch 2 cl 8(b)	21.4.1997
Pt 3		
s 16		
s 16(2)	amended by 11/2000 Sch 2	4.5.2002
<i>s 17 before substitution by 61/2005</i>		
s 17(2)	<i>amended by 60/1994 s 3</i>	<i>3.11.1994</i>
	<i>substituted by 13/2000 s 3(a)</i>	<i>1.7.2000</i>
	<i>substituted by 17/2005 s 4(1)</i>	<i>1.1.2006</i>
s 17(3)	<i>substituted by 13/2000 s 3(a)</i>	<i>1.7.2000</i>
s 17(4)	<i>amended by 71/1981 s 9(a)</i>	<i>5.11.1981</i>
	<i>substituted by 13/2000 s 3(a)</i>	<i>1.7.2000</i>

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<i>s 17(4a)—(4d)</i>	<i>inserted by 13/2000 s 3(a)</i>	<i>1.7.2000</i>
<i>s 17(5)</i>	<i>amended by 73/1999 s 4(a)</i>	<i>1.9.2000</i>
<i>s 17(6)</i>	<i>amended by 43/1995 s 6</i>	<i>17.6.1996</i>
	<i>amended by 13/2000 s 3(b)</i>	<i>1.7.2000</i>
	<i>amended by 73/1999 s 4(b)</i>	<i>1.9.2000</i>
<i>s 17(7)</i>	<i>amended by 43/1995 s 6</i>	<i>17.6.1996</i>
<i>s 17(8)</i>	<i>amended by 36/1999 Sch 4 (cl 21)</i>	<i>29.7.1999</i>
	<i>amended by 17/2005 s 4(2)</i>	<i>1.1.2006</i>
<i>s 17(10)</i>	<i>substituted by 102/1995 Sch 2 cl 9</i>	<i>21.4.1997</i>
<i>s 17(11)</i>	<i>inserted by 71/1981 s 9(b)</i>	<i>5.11.1981</i>
<i>s 17(12)—(16)</i>	<i>inserted by 13/2000 s 3(c)</i>	<i>1.7.2000</i>
<i>s 17</i>	<i>substituted by 61/2005 s 4</i>	<i>1.1.2006</i>
<i>ss 17A—17G</i>	<i>inserted by 61/2005 s 4</i>	<i>1.1.2006</i>
<i>s 19</i>	<i>amended by 14/1986 s 3(1) (Sch 5)</i>	<i>31.7.1986</i>
	<i>amended by 86/1988 s 6</i>	<i>1.7.1989</i>
	<i>amended by 43/1995 s 7</i>	<i>17.6.1996</i>
	<i>amended by 23/1998 s 4</i>	<i>21.5.1998</i>
	<i>deleted by 73/1999 s 5</i>	<i>1.9.2000</i>
<b>Pt 4</b>		
<i>s 20</i>		
<i>s 20(4)</i>	<i>inserted by 105/1976 s 6</i>	<i>23.12.1976</i>
<i>s 20(5)</i>	<i>inserted by 105/1976 s 6</i>	<i>23.12.1976</i>
	<i>amended by 73/1999 s 7 (Sch 1 cl 3)</i>	<i>1.9.2000</i>
<i>s 20(6)</i>	<i>inserted by 71/1981 s 10</i>	<i>5.11.1981</i>
<i>s 21</i>		
<i>s 21(1)</i>	<i>s 21 amended and redesignated as s 21(1) by 105/1976 s 7</i>	<i>23.12.1976</i>
	<i>amended by 51/1978 s 8(a)</i>	<i>20.7.1978</i>
<i>s 21(2)</i>	<i>inserted by 105/1976 s 7(b)</i>	<i>23.12.1976</i>
	<i>amended by 51/1978 s 8(b)</i>	<i>20.7.1978</i>
<i>s 22</i>		
<i>s 22(1)</i>	<i>amended by 102/1995 Sch 2 cl 10</i>	<i>21.4.1997</i>
<i>s 22(1a) and (1b)</i>	<i>inserted by 71/1981 s 11(a)</i>	<i>5.11.1981</i>
<i>s 22(3)</i>	<i>substituted by 71/1981 s 11(b)</i>	<i>5.11.1981</i>
<i>s 24</i>		
<i>s 24(1)</i>	<i>amended by 14/1986 s 3(1) (Sch 5)</i>	<i>31.7.1986</i>
<i>s 24(2)</i>	<i>deleted by 105/1976 s 8</i>	<i>23.12.1976</i>
<i>s 24(4)</i>	<i>amended by 71/1981 s 12(a)</i>	<i>5.11.1981</i>
	<i>substituted by 43/1995 s 8</i>	<i>17.6.1996</i>
<i>s 24(4a)</i>	<i>inserted by 71/1981 s 12(b)</i>	<i>5.11.1981</i>
	<i>substituted by 43/1995 s 8</i>	<i>17.6.1996</i>
<i>s 25</i>		
<i>s 25(1)</i>	<i>substituted by 71/1981 s 13</i>	<i>5.11.1981</i>

s 25(2)	substituted by 105/1976 s 9	23.12.1976
	amended by 73/1999 s 7 (Sch 1 cl 4)	1.9.2000
s 25(4)	<i>deleted by 102/1995 Sch 2 cl 11</i>	21.4.1997
s 26(2)	amended by 71/1981 s 14(a)	5.11.1981
s 26(3)	inserted by 51/1978 s 9	20.7.1978
	amended by 71/1981 s 14(b)	5.11.1981
s 26(4)	inserted by 71/1981 s 14(c)	5.11.1981
s 27	amended by 105/1976 s 10	23.12.1976
	substituted by 51/1978 s 10	20.7.1978
	amended by 71/1981 s 15	5.11.1981
Pt 5		
s 28		
s 28(1) and (2)	substituted by 71/1981 s 16	5.11.1981
s 28(2a)	inserted by 102/1995 Sch 2 cl 12(a)	21.4.1997
s 28(3)	substituted by 71/1981 s 16	5.11.1981
	amended by 102/1995 Sch 2 cl 12(b)	21.4.1997
s 28(4)	<i>substituted by 71/1981 s 16</i>	5.11.1981
	<i>deleted by 12/2003 s 6(1)</i>	12.6.2003
s 28(4a)	<i>inserted by 102/1995 Sch 2 cl 12(c)</i>	21.4.1997
	<i>deleted by 12/2003 s 6(1)</i>	12.6.2003
s 28(5)	deleted by 105/1976 s 11	23.12.1976
	inserted by 71/1981 s 16	5.11.1981
	substituted by 43/1995 s 9	17.6.1996
s 28(6)	<i>deleted by 12/2003 s 6(2)</i>	12.6.2003
s 28(7)	inserted by 102/1995 Sch 2 cl 12(d)	21.4.1997
s 28(8)	inserted by 35/2003 Sch cl 12(c)	24.11.2003
s 28(9) and (10)	inserted by 35/2003 Sch cl 12(c)	24.11.2003
	<b>substituted by 60/2007 Sch 1 cl 32</b>	<b>6.11.2008</b>
s 28(11) and (12)	<i>inserted by 5/2005 Sch 2 (cl 33)</i>	1.7.2005
	<b><i>deleted by 60/2007 Sch 1 cl 32</i></b>	<b>6.11.2008</b>
s 29		
s 29(1)	amended by 12/2003 s 7	12.6.2003
s 29(2)	amended by 71/1981 s 17	5.11.1981
s 30		
s 30(1)	amended by 71/1981 s 18(a), (b)	5.11.1981
	(c) deleted by 71/1981 s 18(b)	5.11.1981
s 30(2)	amended by 105/1976 s 12	23.12.1976
	amended by 71/1981 s 18(c)	5.11.1981
	amended by 12/1988 Sch 2	1.3.1989
s 30(3)	amended by 71/1981 s 18(d)	5.11.1981
s 30AA	inserted by 12/2003 s 8	12.6.2003
s 30A	inserted by 71/1981 s 19	5.11.1981
	substituted by 43/1995 s 10	17.6.1996

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s 30A(4)	amended by 12/2003 s 9(1)	12.6.2003
s 30A(4a)	inserted by 12/2003 s 9(2)	12.6.2003
s 30A(7) and (8)	inserted by 35/2003 Sch cl 12(d)	24.11.2003
	<b>substituted by 60/2007 Sch 1 cl 33</b>	<b>6.11.2008</b>
s 30A(9)	<i>inserted by 5/2005 Sch 2 (cl 34)</i>	1.7.2005
	<b>deleted by 60/2007 Sch 1 cl 33</b>	<b>6.11.2008</b>
s 30AB	inserted by 12/2003 s 10	12.6.2003
s 31		
s 31(1a)	inserted by 1/1999 s 6	1.4.1999
s 32		
s 32(1)	amended by 73/1999 s 7 (Sch 1 cl 5(a))	1.9.2000
s 32(2)	amended by 73/1999 s 7 (Sch 1 cl 5(b))	1.9.2000
s 33		
s 33(2)	amended by 43/1995 s 11	17.6.1996
s 33(3)	<i>deleted by 71/1981 s 20(a)</i>	5.11.1981
s 33(4)	amended by 14/1986 s 3(1) (Sch 5)	31.7.1986
s 33(5)	amended by 43/1995 s 11	17.6.1996
s 33(7)	amended by 14/1986 s 3(1) (Sch 5)	31.7.1986
s 33(8)	<i>deleted by 71/1981 s 20(b)</i>	5.11.1981
s 33A	inserted by 12/2003 s 11	12.6.2003
Pt 6		
s 34		
s 34(1)	amended by 71/1981 s 21(a)	5.11.1981
	amended by 43/1995 s 12	17.6.1996
	substituted by 1/1999 s 7	1.4.1999
s 34(1a) and (1b)	inserted by 71/1981 s 21(b)	5.11.1981
s 34(2)	<i>substituted by 71/1981 s 21(c)</i>	5.11.1981
	<i>deleted by 54/1993 s 10(a)</i>	15.1.1994
s 34(5)	substituted by 71/1981 s 21(d)	5.11.1981
s 34(6)	amended by 105/1976 s 13	23.12.1976
	amended by 71/1981 s 21(e)	5.11.1981
	amended by 12/1988 Sch 2	1.3.1989
s 35		
s 35(1)	substituted by 71/1981 s 22(a)	5.11.1981
s 35(2a)	inserted by 35/2003 Sch cl 12(e)	24.11.2003
s 35(2b) and (2c)	inserted by 35/2003 Sch cl 12(e)	24.11.2003
	<b>substituted by 60/2007 Sch 1 cl 34</b>	<b>6.11.2008</b>
s 35(2d) and (2e)	<i>inserted by 5/2005 Sch 2 (cl 35)</i>	1.7.2005
	<b>deleted by 60/2007 Sch 1 cl 34</b>	<b>6.11.2008</b>
s 35(3)	inserted by 71/1981 s 22(b)	5.11.1981
s 35A	inserted by 71/1981 s 23	5.11.1981
s 35A(1)	substituted by 54/1993 s 10(b)	15.1.1994
s 35A(1a)	inserted by 54/1993 s 10(b)	15.1.1994

	substituted by 43/1995 s 13	17.6.1996
s 37		
s 37(2)	amended by 43/1995 s 14	17.6.1996
s 37(3) and (4)	<i>deleted by 105/1976 s 14</i>	23.12.1976
s 38		
s 38(2)	amended by 105/1976 s 15(a)	23.12.1976
	amended by 71/1981 s 24	5.11.1981
s 38(3)	amended by 105/1976 s 15(b)	23.12.1976
s 38(4)	inserted by 43/1995 s 15	17.6.1996
s 38(5) and (6)	inserted by 35/2003 Sch cl 12(f)	24.11.2003
	<b>substituted by 60/2007 Sch 1 cl 35</b>	<b>6.11.2008</b>
s 38(7)	<i>inserted by 5/2005 Sch 2 (cl 36)</i>	1.7.2005
	<b>deleted by 60/2007 Sch 1 cl 35</b>	<b>6.11.2008</b>
s 39	amended by 71/1981 s 25	5.11.1981
s 40		
s 40(2)	substituted by 43/1995 s 16	17.6.1996
s 40(3) and (4)	inserted by 43/1995 s 16	17.6.1996
s 41	deleted by 71/1981 s 26	5.11.1981
	inserted by 41/1995 s 3	1.6.1995
Pt 6A	inserted by 51/1978 s 11	20.7.1978
s 41A		
s 41A(1)	amended by 71/1981 s 27(a)	5.11.1981
	amended by 43/1995 s 17	17.6.1996
s 41A(1a)	inserted by 71/1981 s 27(b)	5.11.1981
s 41A(3a)	inserted by 35/2003 Sch cl 12(g)	24.11.2003
s 41A(3b) and (3c)	inserted by 35/2003 Sch cl 12(g)	24.11.2003
	<b>substituted by 60/2007 Sch 1 cl 36</b>	<b>6.11.2008</b>
s 41A(3d) and (3e)	<i>inserted by 5/2005 Sch 2 (cl 37)</i>	1.7.2005
	<b>deleted by 60/2007 Sch 1 cl 36</b>	<b>6.11.2008</b>
s 41A(5)	amended by 71/1981 s 27(c)	5.11.1981
	amended by 12/1988 Sch 2	1.3.1989
s 41C		
s 41C(2)	amended by 43/1995 s 18	17.6.1996
s 41D	substituted by 71/1981 s 28	5.11.1981
s 41D(4)	inserted by 43/1995 s 19	17.6.1996
s 41D(5) and (6)	inserted by 35/2003 Sch cl 12(h)	24.11.2003
	<b>substituted by 60/2007 Sch 1 cl 37</b>	<b>6.11.2008</b>
s 41D(7)	<i>inserted by 5/2005 Sch 2 (cl 38)</i>	1.7.2005
	<b>deleted by 60/2007 Sch 1 cl 37</b>	<b>6.11.2008</b>
s 41E		
s 41E(2)	substituted by 43/1995 s 20	17.6.1996
s 41E(3) and (4)	inserted by 43/1995 s 20	17.6.1996
s 41F	substituted by 71/1981 s 29	5.11.1981

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Pt 7	<i>amended by 105/1976 ss 16—21</i>	23.12.1976
	<i>amended by 51/1978 ss 12, 13</i>	20.7.1978
	<i>amended by 71/1981 ss 30—36</i>	5.11.1981
	<i>amended by 14/1986 s 3(1) (Sch 5)</i>	31.7.1986
	<i>amended by 86/1988 ss 7—9</i>	1.7.1989
	<i>amended by 3/1993 s 3</i>	4.3.1993
	<i>amended by 43/1995 ss 21, 22</i>	17.6.1996
	<i>deleted by 102/1995 Sch 2 cl 13</i>	21.4.1997
Pt 8		
s 52		
s 52(2)	<i>substituted by 51/1978 s 14</i>	20.7.1978
	<i>deleted by 86/1988 s 10(a)</i>	1.7.1989
s 52(3)	substituted by 51/1978 s 14	20.7.1978
s 52(3a)	inserted by 35/2003 Sch cl 12(i)	24.11.2003
s 52(3b) and (3c)	inserted by 35/2003 Sch cl 12(i)	24.11.2003
	<b>substituted by 60/2007 Sch 1 cl 38</b>	<b>6.11.2008</b>
s 52(3d) and (3e)	<i>inserted by 5/2005 Sch 2 (cl 39)</i>	1.7.2005
	<b>deleted by 60/2007 Sch 1 cl 38</b>	<b>6.11.2008</b>
s 52(4)	amended by 105/1976 s 22	23.12.1976
	amended by 71/1981 s 37	5.11.1981
	amended by 12/1988 Sch 2	1.3.1989
s 52(5) and (6)	inserted by 86/1988 s 10(b)	1.7.1989
s 52(7)	inserted by 86/1988 s 10(b)	1.7.1989
	substituted by 43/1995 s 23	17.6.1996
s 52(8) and (9)	inserted by 43/1995 s 23	17.6.1996
s 53	substituted by 86/1988 s 11	1.7.1989
s 53(2)	substituted by 54/1993 s 10(c)	15.1.1994
s 53(4)	amended by 54/1993 s 10(d)	15.1.1994
	(ab) deleted by 43/1995 s 24	17.6.1996
s 53(5)	amended by 54/1993 s 10(e)	15.1.1994
s 54	amended by 43/1995 s 25	17.6.1996
s 55		
s 55(2)	amended by 105/1976 s 23(a)	23.12.1976
s 55(3)	amended by 105/1976 s 23(b)	23.12.1976
s 55(4)	inserted by 43/1995 s 26	17.6.1996
s 55(5) and (6)	inserted by 35/2003 Sch cl 12(j)	24.11.2003
	<b>substituted by 60/2007 Sch 1 cl 39</b>	<b>6.11.2008</b>
s 55(7)	<i>inserted by 5/2005 Sch 2 (cl 40)</i>	1.7.2005
	<b>deleted by 60/2007 Sch 1 cl 39</b>	<b>6.11.2008</b>
s 56		
s 56(1)	s 56 redesignated as s 56(1) by 41/1995 s 4	1.6.1995
s 56(2) and (3)	inserted by 41/1995 s 4	1.6.1995
Pt 8A	inserted by 41/1995 s 5	1.6.1995

s 56C		
s 56C(7)	amended by 73/1999 s 7 (Sch 1 cl 6)	1.9.2000
Pt 9		
s 57	amended by 71/1981 s 38	5.11.1981
	substituted by 86/1988 s 12	1.7.1989
s 58	amended by 105/1976 s 24	23.12.1976
	amended by 71/1981 s 39	5.11.1981
	substituted by 43/1995 s 27	17.6.1996
	substituted by 12/2003 s 12	12.6.2003
s 58A	inserted by 71/1981 s 40	5.11.1981
	substituted by 43/1995 s 27	17.6.1996
s 58A(6)	amended by 73/1999 s 7 (Sch 1 cl 7)	1.9.2000
s 58A(7)	amended by 12/2003 s 13	12.6.2003
s 59		
s 59(1)	substituted by 51/1978 s 15(a)	20.7.1978
	amended by 71/1981 s 41(a), (b)	5.11.1981
	amended by 102/1995 Sch 2 cl 14(a)	21.4.1997
	amended by 73/1999 s 7 (Sch 1 cl 8(a))	1.9.2000
	(b) deleted by 102/1995 Sch 2 cl 14(b)	21.4.1997
s 59(1a)	inserted by 51/1978 s 15(a)	20.7.1978
s 59(1aa)	inserted by 35/2003 Sch cl 12(k)	24.11.2003
s 59(1ab) and (1ac)	inserted by 35/2003 Sch cl 12(k)	24.11.2003
	<b>substituted by 60/2007 Sch 1 cl 40</b>	<b>6.11.2008</b>
s 59(1ad) and (1ae)	<i>inserted by 5/2005 Sch 2 (cl 41)</i>	<i>1.7.2005</i>
	<b>deleted by 60/2007 Sch 1 cl 40</b>	<b>6.11.2008</b>
s 59(1b)	inserted by 71/1981 s 41(c)	5.11.1981
	amended by 102/1995 Sch 2 cl 14(c)	21.4.1997
	amended by 73/1999 s 7 (Sch 1 cl 8(b))	1.9.2000
s 59(2)	amended by 71/1981 s 41(d)	5.11.1981
s 59(6)	amended by 43/1995 s 28(a)	17.6.1996
s 59(7)	amended by 73/1999 s 7 (Sch 1 cl 8(c), (d))	1.9.2000
s 59(8)	amended by 51/1978 s 15(b)	20.7.1978
	amended by 71/1981 s 41(e)	5.11.1981
	substituted by 43/1995 s 28(b)	17.6.1996
s 60		
s 60(1)	amended by 105/1976 s 25	23.12.1976
	amended by 71/1981 s 42(a)	5.11.1981
	substituted by 43/1995 s 29	17.6.1996
s 60(2)	amended by 73/1999 s 7 (Sch 1 cl 9)	1.9.2000
s 60(5)	<i>deleted by 71/1981 s 42(b)</i>	<i>5.11.1981</i>
s 61		

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s 61(1)	amended by 43/1995 s 30	17.6.1996
s 61(2)	amended by 12/2003 s 14(1)	12.6.2003
s 61(3)—(5)	amended by 86/1988 s 13	1.7.1989
s 61(6)	inserted by 12/2003 s 14(2)	12.6.2003
s 62		
s 62(1)	amended by 71/1981 s 43(a)	5.11.1981
	amended by 86/1988 s 14(a)	1.7.1989
s 62(2)	amended by 86/1988 s 14(b)	1.7.1989
s 62(3)	substituted by 71/1981 s 43(b)	5.11.1981
	substituted by 86/1988 s 14(c)	1.7.1989
s 62(4)	amended by 73/1999 s 7 (Sch 1 cl 10)	1.9.2000
s 63		
s 63(2)	amended by 60/1994 s 4	3.11.1994
	substituted by 17/2005 s 5(1)	1.1.2006
s 63(3)	amended by 17/2005 s 5(2)—(4)	1.1.2006
s 63(4) and (5)	inserted by 17/2005 s 5(5)	1.1.2006
Pt 9A	inserted by 71/1981 s 44	5.11.1981
s 63C		
s 63C(1) and (2)	amended by 14/1986 s 3(1) (Sch 5)	31.7.1986
s 63E		
s 63E(1)	substituted by 43/1995 s 31	17.6.1996
s 63E(1a)	inserted by 43/1995 s 31	17.6.1996
Pt 9B	inserted by 43/1995 s 32	17.6.1996
s 63F		
s 63F(1)	amended by 12/2003 s 15	12.6.2003
s 63H	amended by 12/2003 s 16	12.6.2003
s 63K		
s 63K(2)	amended by 23/1998 s 5	21.5.1998
s 63N		
s 63N(1)	amended by 17/2006 s 167	4.9.2006
s 63O		
s 63O(2)	amended by 17/2006 s 168	4.9.2006
s 63O(4)	amended by 23/1998 s 6(a)	21.5.1998
s 63O(5)	inserted by 23/1998 s 6(b)	21.5.1998
s 63S		
s 63S(1) and (4)	amended by 44/2003 s 3(1) (Sch 1)	24.11.2003
s 63ZBA	inserted by 1/1999 s 8	1.4.1999
s 63ZBA(7)	amended by 73/1999 s 7 (Sch 1 cl 11)	1.9.2000
s 63ZD	<i>amended by 23/1998 s 7</i>	<i>21.5.1998</i>
	<i>amended by 22/2000 s 3</i>	<i>8.6.2000</i>
	<i>deleted by 12/2003 s 17</i>	<i>12.6.2003</i>
Pt 10		
s 65		



s 65(1a)	amended by 105/1976 s 26	23.12.1976
s 65(3)	amended by 43/1995 s 33	17.6.1996
s 65(3a)	inserted by 71/1981 s 45	5.11.1981
s 65(3b)	inserted by 71/1981 s 45	5.11.1981
	amended by 43/1995 s 33	17.6.1996
s 65(4)	amended by 23/1998 s 8	21.5.1998
s 66		
s 66(1a)	inserted by 71/1981 s 46	5.11.1981
s 66(2)	amended by 105/1976 s 27	23.12.1976
s 66A	inserted by 86/1988 s 15	1.7.1989
	amended by 43/1995 s 34	17.6.1996
s 67		
s 67(1)	amended by 105/1976 s 28(a)	23.12.1976
	amended by 102/1995 Sch 2 cl 15	21.4.1997
	amended by 17/2006 s 169	4.9.2006
s 67(1a)	inserted by 69/2001 s 21	3.2.2002
s 67(3)	inserted by 105/1976 s 28(b)	23.12.1976
s 68		
s 68(1)	substituted by 51/1978 s 16(a)	20.7.1978
	amended by 71/1981 s 47	5.11.1981
	amended by 102/1995 Sch 2 cl 16	21.4.1997
s 68(2)	amended by 105/1976 s 29	23.12.1976
	amended by 51/1978 s 16(b)	20.7.1978
s 69		
s 69(1)	amended by 102/1995 Sch 2 cl 17(a)	21.4.1997
s 69(3)	amended by 105/1976 s 30(a)	23.12.1976
s 69(3a)	inserted by 71/1981 s 48	5.11.1981
	substituted by 86/1988 s 16	1.7.1989
	amended by 102/1995 Sch 2 cl 17(b)	21.4.1997
s 69(4)	substituted by 105/1976 s 30(b)	23.12.1976
	amended by 102/1995 Sch 2 cl 17(c)	21.4.1997
s 70		
s 70(3) and (4)	substituted by 86/1988 s 17	1.7.1989
s 70(4a)	inserted by 71/1981 s 49	5.11.1981
Pt 11		
Heading preceding s 71	substituted by 71/1981 s 50	5.11.1981
s 72	amended by 43/1995 s 35	17.6.1996
Pt 11A	inserted by 71/1981 s 51	5.11.1981
s 73A		
s 73A(4)	amended by 17/2006 s 170	4.9.2006
s 73B		
s 73B(1)	amended by 14/1986 s 3(1) (Sch 5)	31.7.1986

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Pt 11B	inserted by 73/1999 s 6	1.9.2000 except s 73G— 1.3.2001
s 73E		
s 73E(5)	amended by 61/2005 s 5(1), (2)	1.1.2006
Pt 12		
s 74		
s 74(1)	amended by 105/1976 s 31(a), (b)	23.12.1976
	amended by 51/1978 s 17	20.7.1978
	amended by 73/1999 s 7 (Sch 1 cl 12(a), (b))	1.9.2000
s 74(1a)	inserted by 71/1981 s 52(a)	5.11.1981
	amended by 73/1999 s 7 (Sch 1 cl 12(c), (d))	1.9.2000
s 74(2) and (3)	<i>deleted by 102/1995 Sch 2 cl 18</i>	21.4.1997
s 74(4)	<i>substituted by 105/1976 s 31(c)</i>	23.12.1976
	<i>amended by 71/1981 s 52(b)</i>	5.11.1981
	<i>deleted by 102/1995 Sch 2 cl 18</i>	21.4.1997
s 74(5)	<i>amended by 71/1981 s 52(c), (d)</i>	5.11.1981
	<i>amended by 14/1986 s 3(1) (Sch 5)</i>	31.7.1986
	<i>deleted by 102/1995 Sch 2 cl 18</i>	21.4.1997
s 74(6) and (7)	<i>deleted by 102/1995 Sch 2 cl 18</i>	21.4.1997
s 74A	inserted by 43/1995 s 36	17.6.1996
s 74A(3)	amended by 73/1999 s 7 (Sch 1 cl 13)	1.9.2000
s 75		
s 75(1)	amended by 14/1986 s 3(1) (Sch 5)	31.7.1986
	substituted by 43/1995 s 37	17.6.1996
s 75(2)	substituted by 105/1976 s 32	23.12.1976
s 75A	inserted by 43/1995 s 38	17.6.1996
s 76 before substitution by 61/2005		
s 76(1)	<i>amended by 51/1978 s 18(a)</i>	20.7.1978
s 76(2)	<i>amended by 13/2000 s 4(a)</i>	1.7.2000
	<i>amended by 73/1999 s 7 (Sch 1 cl 14)</i>	1.9.2000
s 76(2a)	<i>inserted by 13/2000 s 4(b)</i>	1.7.2000
s 76(3a)	<i>inserted by 86/1988 s 18</i>	1.7.1989
s 76(4)	<i>inserted by 51/1978 s 18(b)</i>	20.7.1978
	<i>amended by 71/1981 s 53</i>	5.11.1981
	<i>(a) deleted by 102/1995 Sch 2 cl 19</i>	21.4.1997
s 76	substituted by 61/2005 s 6	1.1.2006
s 77		
s 77(1)	substituted by 51/1978 s 19	20.7.1978
	amended by 71/1981 s 54	5.11.1981
	amended by 102/1995 Sch 2 cl 20	21.4.1997
	amended by 73/1999 s 7 (Sch 1 cl 15(a))	1.9.2000
	amended by 61/2005 s 7(1)	1.1.2006

s 77(2)	substituted by 51/1978 s 19	20.7.1978
	amended by 73/1999 s 7 (Sch 1 cl 15(b))	1.9.2000
	amended by 61/2005 s 7(2)	1.1.2006
s 77(2a)	inserted by 61/2005 s 7(3)	1.1.2006
s 77(3)	inserted by 105/1976 s 33	23.12.1976
	amended by 73/1999 s 7 (Sch 1 cl 15(c))	1.9.2000
s 77(4)	inserted by 105/1976 s 33	23.12.1976
s 77A	inserted by 61/2005 s 8	1.1.2006
s 78		
s 78(1) and (2)	amended by 102/1995 Sch 2 cl 21	21.4.1997
s 79		
s 79(1)	s 79 redesignated as s 79(1) by 51/1978 s 20	20.7.1978
	substituted by 71/1981 s 55	5.11.1981
	amended by 14/1986 s 3(1) (Sch 5)	31.7.1986
	amended by 43/1995 s 39(a)	17.6.1996
s 79(2)	inserted by 51/1978 s 20	20.7.1978
s 79(3)	inserted by 43/1995 s 39(b)	17.6.1996
s 79A	inserted by 16/2001 s 6	14.6.2001
s 80		
s 80(1)	amended by 71/1981 s 56(a)	5.11.1981
s 80(1a)	inserted by 71/1981 s 56(b)	5.11.1981
s 80(1b) and (1c)	inserted by 102/1995 Sch 2 cl 22(a)	21.4.1997
s 80(1d)	inserted by 102/1995 Sch 2 cl 22(a)	21.4.1997
	amended by 73/1999 s 7 (Sch 1 cl 16(a))	1.9.2000
s 80(2)	amended by 86/1988 s 19(a)	1.7.1989
s 80(3)	amended by 86/1988 s 19(b)	1.7.1989
s 80(4)	inserted by 102/1995 Sch 2 cl 22(b)	21.4.1997
s 80(5)	inserted by 102/1995 Sch 2 cl 22(b)	21.4.1997
	amended by 73/1999 s 7 (Sch 1 cl 16(b))	1.9.2000
s 83		
s 83(1)	amended by 14/1986 s 3(1) (Sch 5)	31.7.1986
s 84A	inserted by 43/1995 s 40	17.6.1996
s 86		
s 86(1)	amended by 105/1976 s 34(a), (b)	23.12.1976
	amended by 71/1981 s 57	5.11.1981
s 86(2)	amended by 105/1976 s 34(c)	23.12.1976
s 87	<i>amended by 14/1986 s 3(1) (Sch 5)</i>	<i>31.7.1986</i>
	<i>amended by 73/1999 s 7 (Sch 1 cl 17)</i>	<i>1.9.2000</i>
	<i>amended by 23/2001 s 86</i>	<i>15.7.2001</i>
	<i>deleted by 12/2003 s 18</i>	<i>12.6.2003</i>
s 87A	inserted by 105/1976 s 35	23.12.1976
s 88	amended by 71/1981 s 58	5.11.1981
	amended by 73/1999 s 7 (Sch 1 cl 18)	1.9.2000

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s 89	amended by 14/1986 s 3(1) (Sch 5)	31.7.1986
	amended by 102/1995 Sch 2 cl 23	21.4.1997
	amended by 73/1999 s 7 (Sch 1 cl 19)	1.9.2000
s 89A	inserted by 43/1995 s 41	17.6.1996
s 90		
s 90(2)	amended by 102/1995 Sch 2 cl 24	21.4.1997
s 91	<i>deleted by 44/2003 s 3(1) (Sch 1)</i>	24.11.2003
s 92	amended by 105/1976 s 36	23.12.1976
	amended by 51/1978 s 21	20.7.1978
	amended by 102/1995 Sch 2 cl 25	21.4.1997
	amended by 1/1999 s 9	1.4.1999
	amended by 73/1999 s 7 (Sch 1 cl 20)	1.9.2000
	(h) deleted by 71/1981 s 59	5.11.1981
	(j) deleted by 71/1981 s 59	5.11.1981
Sch	deleted by 14/1986 s 3(1) (Sch 5)	31.7.1986
	s 5(1), (2), (6) and (8) redesignated as Sch under <i>Acts Republication Act 1967</i>	31.7.1986
heading	substituted by 44/2003 s 3(1) (Sch 1)	24.11.2003

## **Transitional etc provisions associated with Act or amendments**

### ***Statutes Amendment (Mining Administration) Act 1999***

#### **11—Transitional provisions**

- (1) An agreement registered under Part 9B of the *Mining Act 1971* before the commencement of this Act will be taken to be an agreement that is to be kept confidential under section 63ZBA of that Act (as enacted by this Act) unless or until all parties to the agreement notify the Mining Registrar otherwise.

### ***Mining (Private Mines) Amendment Act 1999, Sch 2***

#### **1—Existing rights and proceedings**

- (1) Subject to this clause, the repeal of section 19 of the principal Act by this Act does not affect—
- the effect of an application under section 19 of the principal Act before the commencement of this Act;
  - the declaration of an area as a private mine under the principal Act;
  - any other process commenced before the commencement of this Act.
- (2) Subject to this clause, section 19 of the principal Act, as in existence immediately before the commencement of this Act, will continue in force and effect as if this Act had not been enacted for the purpose of—
- determining any application for a declaration under that section (including by making an application to the Environment, Resources and Development Court in the event of a difference between the Minister and the applicant);
  - making any declaration of an area as a private mine;

- (c) any right to the payment of royalty pursuant to an application under subsection (17) of that section before 1 March 1980.
- (3) The general duty under section 73H of the principal Act (as enacted by this Act) applies from the commencement of this Act (including to mining operations commenced before the commencement of this Act).
- (4) The Director may take action under section 73I, 73J or 73K of the principal Act (as enacted by this Act) in relation to circumstances arising after the commencement of this Act (even if those circumstances are attributable to mining operations commenced before the commencement of this Act).
- (5) Sections 73M and 73N of the principal Act (as enacted by this Act) extend to grounds in existence before the commencement of this Act (and to any declaration of a private mine before the commencement of this Act).

## **2—Mine operation plans**

- (1) The following provisions apply with respect to mine operations plans under Part 11B of the principal Act (as enacted by this Act):
  - (a) subject to paragraph (b), section 73G of the principal Act (as enacted by this Act) does not apply to mining operations being carried out at a private mine immediately before the commencement of this Act until six months after that commencement; and
  - (b) a development programme approved by the Chief Inspector under the *Mines and Works Inspection Act 1920* before the commencement of section 73G of the principal Act (as enacted by this Act) will be taken to be a mine operations plan for the purposes of that Part to the extent that it relates to mining operations being carried out at a private mine at a particular time (and may be reviewed and amended from time to time under section 73G of the principal Act (as enacted by this Act) as if it were a mine operations plan under that section).
- (2) A mine operations plan to which subclause (1)(b) applies must be reviewed in accordance with section 73G of the principal Act (as enacted by this Act) within seven years after the commencement of that section (and will not be subject to the operation of subsection (15)(a) of that section).

## **3—Additional matters**

- (1) The Governor may, by regulation, make provision for other matters of a savings or transitional nature consequent on the enactment of this Act.
- (2) The *Acts Interpretation Act 1915* will, except to the extent of any inconsistency with the provisions of this Act, apply to any repeal or amendment effected by this Act.

## ***Statutes Amendment (Courts and Judicial Administration) Act 2001***

## **22—Transitional provisions**

- (1) The amendments made to the principal Act by section 20—
  - (a) do not apply in respect of proceedings commenced before the commencement of that section (and those proceedings may continue as if this Act had not been enacted); and

- (b) apply in respect of proceedings commenced after the commencement of that section (including proceedings in respect of a claim arising before the commencement of that section).
- (2) The amendments made to the principal Act by section 21 apply in respect of proceedings commenced after the commencement of that section (including proceedings in respect of a claim arising before the commencement of that section).

### ***Mining (Miscellaneous) Amendment Act 2003, Sch***

#### **1—Interpretation**

In this Schedule—

***commencement date*** means the date on which sections 6(1) and 8 of this Act come into operation;

***pre-amendment application*** means an application under the principal Act lodged with the Director of Mines before the commencement date;

***principal Act*** means the *Mining Act 1971*.

#### **2—Transitional provision**

The amendments made by sections 6(1) and 8 of this Act do not apply with respect to—

- (a) an exploration licence granted on the basis of a pre-amendment application; or
- (b) the renewal of an exploration licence if the licence was granted before the commencement date, or on the basis of a pre-amendment application; or
- (c) a subsequent exploration licence under section 30AB of the principal Act (as enacted by this Act) if the former licence was granted before the commencement date, or on the basis of a pre-amendment application.

### ***Mining (Royalty No 2) Amendment Act 2005, Sch 1***

#### **1—Interpretation**

In this Schedule—

***Minister*** means the Minister to whom the administration of the principal Act is committed;

***principal Act*** means the *Mining Act 1971*.

#### **2—Continuation of existing arrangements**

- (1) Subject to clause 3, in the case of a mine in existence immediately before the commencement of this Act, the ex-mine gate value of any minerals—
  - (a) subject to royalty under section 17(5) of the principal Act, as enacted by this Act; and
  - (b) listed in Column 1 of the following table,will be determined according to the values set out in Column 3 of the following table:

Mineral	Grade	Value (\$/unit)
Agricultural Limestone		4/tonne
Barite	1st	24/tonne
	2nd	14/tonne
Clay	1st	8/tonne
	2nd	4/tonne
Dolomite	1st	10/tonne
	2nd	5/tonne
Feldspar		20/tonne
Gold		12/gram
Granites & Granitic Rocks		50/metre <sup>3</sup>
		16.67/tonne
Gypsum	Categories 1-3 (super premium grade, plaster board, cement)	8/tonne
	Categories 4-8 (agricultural premium, grade 1, 2 & 3 and other)	4/tonne
Jade (Nephrite)		5000/tonne
		5/kilogram
Kaolin		8/tonne
Limesand		4/tonne
Limestone (including Marble)	1st	8/tonne
	2nd	4/tonne
Magnesite		8/tonne
Phosphate		4/tonne
Salt		8/tonne
Silica Sand/Rock Silica		4/tonne
Shell Grit		4/tonne
Talc	1st	20/tonne
	2nd	10/tonne

- (2) The Governor may, by regulation, prescribe principles that may be taken into account to determine whether or not a mine falls within the ambit of subclause (1).
- (3) This clause will expire on 31 December 2008.

### **3—Agreements**

- (1) Unless otherwise agreed by the parties, any agreement under the principal Act relating to royalty on any minerals between the Minister and a person liable to pay the royalty in force immediately before the commencement of this Act will continue to have effect after the commencement of this Act, subject to any modifications that may be necessary in the circumstances or that may be prescribed (and on the basis that the agreement will cease to have effect in any event when the agreement expires, or is brought to an end in accordance with its terms or otherwise by agreement between the parties).
- (2) Nothing in this Schedule prevents or limits the ability of the Minister to enter into an agreement under the principal Act as amended by this Act (including an agreement that has the effect of modifying or excluding the operation of clause 2 in the relevant case).

### **Historical versions**

Reprint—31.7.1986  
Reprint No 1—1.10.1991  
Reprint No 2—4.3.1993  
Reprint No 3—15.1.1994  
Reprint No 4—3.11.1994  
Reprint No 5—1.6.1995  
Reprint No 6—17.6.1996  
Reprint No 7—21.4.1997  
Reprint No 8—21.5.1998  
Reprint No 9—1.4.1999  
Reprint No 10—29.7.1999  
Reprint No 11—8.6.2000  
Reprint No 12—1.7.2000  
Reprint No 13—1.9.2000  
Reprint No 14—1.3.2001  
Reprint No 15—14.6.2001  
Reprint No 16—15.7.2001  
Reprint No 17—3.2.2002  
Reprint No 18—4.5.2002  
Reprint No 19—12.6.2003  
Reprint No 20—30.10.2003  
Reprint No 21—24.11.2003  
2.9.2004  
1.7.2005  
1.1.2006  
4.9.2006