Legislative Council—No 1
As introduced and read a first time, 11 May 2010

South Australia

Mining (Miscellaneous) Amendment Bill 2010

A BILL FOR

An Act to amend the *Mining Act 1971* and to make a related amendment to the *Petroleum and Geothermal Energy Act 2000*.

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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 (Miscellaneous) Amendment Act 2010*.

2—Commencement

This Act will come into operation on a day to be fixed by proclamation.

3—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Mining Act 1971*

4—Amendment of section 6—Interpretation

(1) Section 6(1), definition of ***appropriate court***, paragraph (c)—delete "$150 000" and substitute:

$250 000

(2) Section 6(1), definition of ***authorised person***—delete the definition and substitute:

authorised officer means a person who holds an appointment under section 14;

(3) Section 6(1), definition of ***declared equipment***—after paragraph (a) insert:

(ab) drilling equipment within a class prescribed by the regulations; or

(4) Section 6(1)—after the definition of ***the Director of Mines*** or ***the Director*** insert:

environment—see subsection (4);

(5) Section 6(1), definition of ***exploration authority***, (a)—delete paragraph (a)

(6) Section 6(1), definition of ***inspector***—delete the definition

(7) Section 6(1), definition of ***mining*** or ***mining operations***—delete the definition and substitute:

mining or ***mining operations*** means—

(a) operations carried out in the course of prospecting, exploring or mining for minerals; or

(b) without limiting paragraph (a), any operations by which minerals are recovered from any place or situation, including by recovering minerals from the sea or a natural water supply; or

(c) on-site operations undertaken to make minerals recovered from the site a commercially viable product, other operations involving such minerals, or other operations involving minerals brought on to the site of a mine for processing; or

(d) operations for the rehabilitation of land on account of the impact of any operations under a preceding paragraph; or

(e) operations that are directly related to any operations under a preceding paragraph,

but does not include—

(f) an investigation or survey under section 15; or

(g) fossicking; or

(h) the surface removal of loose rock material disturbed by agricultural operations;

(8) Section 6(1), definition of ***mining operator***—delete the definition and substitute:

mining operator means the holder of the relevant mining tenement;

(9) Section 6—after subsection (3) insert:

(4) Subject to subsections (5) and (6), ***environment*** includes—

(a) land, air, water (including both surface and underground water and sea water), organisms, ecosystems, native fauna and other features or elements of the natural environment; and

(b) buildings, structures and other forms of infrastructure, and cultural artefacts; and

(c) existing or permissible land use; and

(d) public health, safety or amenity; and

(e) the geological heritage values of an area; and

(f) the aesthetic or cultural values of an area.

(5) In relation to a particular mining tenement, paragraphs (c) and (e) of subsection (4) apply according to the circumstances existing at the time that the tenement is (or was) granted.

(6) Subsection (4) does not apply to or in relation to Parts 9B or 11B.

5—Amendment of section 8A—Opal development areas

Section 8A(2)—delete "miner's right," and substitute:

an

6—Amendment of section 9—Exempt land

Section 9(1)—delete "miner's right,"

7—Insertion of section 9A

After section 9 insert:

9A—Special declared areas

(1) The Minister may, by notice in the Gazette, declare any land to be exempt from—

(a) mining; or

(b) a specified class of mining; or

(c) a specified provision of this Act; or

(d) this Act, other than any specified provision excluded from the operation of this section by the regulations,

and the notice will (subject to this section) have effect according to its terms.

(2) The Minister may, by subsequent notice in the Gazette, vary or revoke a notice under subsection (1).

(3) A notice under subsection (1) will not have effect—

(a) in relation to a mining tenement in force at the time that the notice takes effect; or

(b) so as to prevent a person applying for (and being granted) a subsequent tenement on account of a right arising under a mining tenement in force at the time that the notice takes effect (including a subsequent exploration licence that arises from an exploration licence in force at the time that the notice takes effect),

but otherwise a person does not have a right to apply for a mining tenement in respect of land subject to the operation of the declaration unless specifically authorised to do so by the Minister (either under the terms of the notice under subsection (1) or under a specific authorisation granted by the Minister in connection with the operation of this section).

(4) While land is subject to the operation of a declaration under subsection (1), the land, to the extent of the exemption, may be dealt with by the Minister in accordance with this section and to that extent is not subject to the other provisions of this Act.

(5) Without limiting subsection (4), the Minister may, while land is exempt under this section—

(a) call for applications for the grant of such mining tenements as the Minister determines in respect of the land or any part of the land;

(b) determine any matter relating to the status or priority of any claim over the land (and, as a result of any such determination, require the removal of any pegs, cancel the operation of any claim, determine not to process any application, or take such other action as the Minister thinks fit);

(c) provide for the management of the land, or any mining right or interest (or potential right or interest) in respect of the land, in such other manner as the Minister thinks fit.

(6) If the Minister calls for applications under subsection (5)(a)—

(a) a person applying to the Minister in response to the call must do so in such manner as the Minister may require; and

(b) the Minister may, on reviewing any application received in response to the call—

(i) grant a mining tenement under this Act, subject to such terms and conditions as the Minister thinks fit; or

(ii) refuse the application.

(7) A declaration under subsection (1) has effect until it is revoked under subsection (2) or until it expires under subsection (8), whichever first occurs.

(8) A declaration under subsection (1) will expire at the end of the period of 2 years from its date of operation unless it is extended for a period or periods, not exceeding 2 years at a time, by further notice published by the Minister in the Gazette.

8—Insertion of sections 14 to 14F

After section 13 insert:

14—Appointment of authorised officers

(1) The Minister may, by instrument in writing, appoint a Public Service employee to be an authorised officer under this Act.

(2) An appointment under this section may be made subject to such conditions or limitations as the Minister thinks fit.

(4) The Minister may vary or revoke an appointment at any time.

14A—Identity cards

(1) The Minister must issue to each authorised officer an identity card—

(a) stating the name of the authorised officer; and

(b) containing a photograph of the authorised officer; and

(c) stating that the person whose name and photograph appear on the card is an authorised officer for this Act.

(2) If an authorised officer proposes to exercise powers under this Act against a person, the authorised officer must produce the identity card for inspection on request.

14B—Authorised investigations

An investigation by an authorised officer is an ***authorised investigation*** if the purpose of the investigation is—

(a) to monitor compliance with this Act; or

(b) to gather information about a suspected offence against this Act; or

(c) to gather information about personal injury or loss of property related to mining operations; or

(d) to gather information about the actual or potential environmental impact of actual or potential mining operations; or

(e) to gather other information relevant to the administration or enforcement of this Act.

14C—Powers of entry and inspection

(1) For the purpose of carrying out an authorised investigation, an authorised officer may—

(a) enter land, and inspect the land and any operations or activities conducted on the land; or

(b) examine anything on the land; or

(c) take photographs, films or videos; or

(d) carry out tests on mines, facilities and equipment; or

(e) take and remove samples; or

(f) take and remove any thing that may be evidence of non-compliance with this Act.

(2) A person must not, without reasonable excuse, obstruct an authorised officer in the exercise of powers under this section.

Maximum penalty: $10 000 or imprisonment for 6 months.

(3) A person involved in the operation of a mine must give an authorised officer such assistance as is reasonably required for the effective exercise of a power conferred by this section.

Maximum penalty: $10 000 or imprisonment for 6 months.

14D—Power to gather information

(1) An authorised officer may require a person who may be in a position to provide information relevant to any matter subject to an authorised investigation—

(a) to answer a question relevant to the investigation; or

(b) to take reasonable steps to obtain information relevant to the investigation and to pass it on to the authorised officer.

(2) A person required to answer a question under this section must answer the question to the best of the person's knowledge, information and belief.

Maximum penalty: $10 000 or imprisonment for 6 months.

(3) A person of whom a requirement is made under subsection (1)(b) must comply with the requirement.

Maximum penalty: $10 000 or imprisonment for 6 months.

(4) A person is not required to answer a question or to provide information under this section if the answer to the question or the information would tend to incriminate the person of an offence and the person objects to answering the question or providing the information on that ground.

14E—Production of records

(1) This section applies to records relating to mining operations.

(2) A person who has possession or control of a record to which this section applies must, at the request of an authorised officer—

(a) produce the record for inspection by the authorised officer; and

(b) answer any questions that the authorised officer reasonably asks about the record.

Maximum penalty: $10 000 or imprisonment for 6 months.

(3) An authorised officer may retain records produced under this section for the purpose of making copies of them.

(4) In this section—

record includes any document or other form of material.

14F—Publication of results of investigation

(1) The Minister may publish a report setting out the results of an authorised investigation.

(2) A report published under this section is protected by absolute privilege.

9—Amendment of section 15—Power to conduct geological investigations etc

Section 15(3), penalty provision—delete the penalty provision and substitute:

Maximum penalty: $10 000 or imprisonment for 6 months.

10—Amendment of section 15A—Register of mining tenements etc

Section 15A(1)(a)—delete paragraph (a)

11—Substitution of sections 20 to 22

Sections 20 to 22 (inclusive)—delete sections 20 to 22 and substitute:

20—General right to prospect for minerals

(1) A person may prospect for minerals under this section (subject to complying with any relevant requirement under this Act).

(2) Subsection (1) does not authorise the conduct of mining operations that involve disturbance of land by machinery or explosives.

21—Steps to establish a mineral claim

(1) A person may take steps to establish a mineral claim under this section.

(2) A mineral claim must be identified—

(a) by pegging in accordance with the regulations; or

(b) in some other manner approved by a mining registrar (after complying with any conditions specified by the mining registrar under the terms of the approval).

(3) In connection with the operation of subsection (2)(b)—

(a) an approval must require the service on the owner of the land (in such manner as the mining registrar thinks fit) of a notice relating to the claim (and such a notice will be taken to be a notice of entry to the owner under section 58A); and

(b) the identification of a mineral claim in accordance with an approval will have the same significance as a pegging of the claim; and

(c) in relation to the relevant identification, any period under this Act that is to be calculated from a day on which a claim is pegged out will be taken to run from (and the identification of the relevant claim will be taken to constitute a pegging that occurred on) the date of the relevant application to a mining registrar for the approval to identify the claim in a manner contemplated by subsection (2)(b).

(4) If mineral land is divided into strata, a mineral claim may relate to land within the surface stratum or a subsurface stratum.

(5) Despite a preceding subsection, a mineral claim may not be made—

(a) in respect of land within a subsurface stratum except by a person who holds an exploration licence in respect of that land; or

(b) in respect of land within a precious stones field, except that if a precious stones field consists of land that is divided into strata a person who holds an exploration licence may make a mineral claim in respect of land within a subsurface stratum.

(6) A person seeking to establish a mineral claim must make application to a mining registrar in a manner and form determined by the Minister.

(7) An application under subsection (6) must be accompanied by—

(a) a plan delineating the location and area of the mineral claim that complies with any requirements prescribed by the regulations; and

(b) information concerning the ownership of the land; and

(c) a copy of any notice of entry provided under this Act; and

(d) a copy of any agreement that is relevant to a mineral claim under this Act; and

(e) a copy of any waiver obtained under this Act; and

(f) such other information as may be prescribed by the regulations or as a mining registrar may require; and

(g) the prescribed application fee.

(8) A mining registrar may require an applicant—

(a) to provide such additional documents or information as the mining registrar may reasonably require to deal with the application;

(b) to remedy any defect or deficiency in an application or in any accompanying document or information.

(9) A plan, document or information required under subsection (7) or (8) must be provided in a manner and form determined by the Minister or approved by a mining registrar.

(10) An application under subsection (6) must be made within the prescribed period after the claim has been identified under subsection (2).

12—Amendment of section 23—Area of claim

Section 23(2)—delete subsection (2) and substitute:

(2) Despite subsection (1), the area of a mineral claim may exceed the maximum permissible area with the approval of the Minister.

13—Substitution of section 24

Section 24—delete the section and substitute:

24—Registration of claim

(1) Subject to this Act, a mining registrar will register a mineral claim if due application has been made for the claim under this Act (including by the applicant complying with any requirement under section 21).

(2) A mining registrar must not register a mineral claim if satisfied that—

(a) the registration relates to land that is the subject (in whole or in part) of an application that has been lodged for an exploration licence; and

(b) the application for the exploration licence was lodged before the claim was identified for the purposes of this Act; and

(c) the application for the exploration licence has not been refused.

(3) Subsection (2) does not apply if the mineral claim is solely for extractive minerals.

(4) A mining registrar must not register a mineral claim if to do so would be inconsistent with an order of the Warden's Court and if the registration of a mineral claim is subsequently inconsistent with the terms of an order of the Warden's Court then the registration must be cancelled.

(5) This section operates subject to the operation of section 80.

(6) If a mineral claim is registered under this section, the location and area of the claim will be determined according to the coordinates specified in the plan accepted for the purposes of registration under section 21.

(7) Without limiting any other provision or law, a mining registrar may cancel the registration of a mineral claim on a ground prescribed by the regulations.

24A—Claim may lapse

If—

(a) an application to establish and register a mineral claim is not made—

(i) in accordance with the requirements of this Act; or

(ii) within a period prescribed by the regulations; or

(b) a mining registrar lawfully refuses to accept and register a mineral claim,

the mineral claim will lapse.

14—Amendment of section 25—Rights conferred by ownership of mineral claim

Section 25(2), penalty provision—delete the penalty provision and substitute:

Administrative penalty.

15—Amendment of section 27—Land not to be subject to successive mineral claims

(1) Section 27—after "authority of" insert:

the Minister or

(2) Section 27—delete "pegged out" and substitute:

made

16—Amendment of section 28—Grant of exploration licence

Section 28(7)—delete subsection (7)

17—Amendment of section 29—Application for exploration licence

(1) Section 29—after subsection (1) insert:

(1a) If—

(a) an exploration licence has expired or been cancelled or surrendered; or

(b) a part of the area of an exploration licence has been reduced,

an application for a corresponding licence may not be made during a succeeding period specified by the Minister by notice published in a manner and form determined by the Minister.

(2) Section 29—after subsection (3) insert:

(4) If an application for an exploration licence is made in accordance with this Act (the "relevant application"), the relevant application will, for the purposes associated with its consideration and any grant of an exploration licence on the basis of the application, rank ahead of any other application for an exploration licence for an overlapping area received by the Minister after the time that the Minister received the relevant application.

(5) Subsection (4) does not apply—

(a) if the application is for a subsequent exploration licence under section 30AB (which will always rank first); or

(b) if—

(i) the application is for a corresponding licence; and

(ii) the Minister has, in the notice under subsection (1a), set a period, commencing on the day specified under that subsection, during which subsection (4) will not apply in relation to competing applications for a corresponding licence; and

(iii) the application has been made during the period set by the Minister; and

(iv) at least 1 other application for a corresponding licence is also made during that period; or

(c) so as to determine priority between 2 or more relevant applications made on the same day.

(6) In a case where subsection (5)(b) or (c) applies, the Minister will determine which application for a corresponding licence should be granted after taking into consideration such factors as the Minister considers appropriate in the particular case.

(7) A ranking established under subsection (4) will cease to apply if the Minister cancels the ranking on the ground—

(a) that the applicant has failed to comply with a requirement under this Act; or

(b) that the application is found to be invalid; or

(c) that there is some other default, defect or circumstances that the Minister considers is sufficiently significant to warrant the cancellation of the ranking.

(8) The Minister may, at any time and without consultation with the applicant or taking any other step, refuse an application at any stage of its consideration under this Act if the Minister considers that there are sufficient grounds for not assessing the application further after taking into account the public interest and such other matters as the Minister thinks fit.

(9) For the purposes of this section, a corresponding licence is an exploration licence over any land—

(a) that has been the subject of a previous exploration licence that has expired or been cancelled or surrendered; or

(b) that has been the subject of an exploration licence where part of the area of the licence has been reduced.

(10) If the Minister, in the notice under subsection (1a), declares that paragraph (b) of subsection (5) will only apply to a part of the land that has been subject to the exploration licence (the ***declared area***), then that paragraph will only apply in relation to an application for an area that overlaps the whole or any part of the declared area.

18—Amendment of section 30—Incidents of licence etc

(1) Section 30(2)—delete "give proper" and substitute:

insofar as the Minister considers to be necessary or appropriate in view of the nature and extent of the licence and any other relevant factor, give

(2) Section 30(2)(a), (b) and (c)—delete paragraphs (a), (b) and (c) and substitute:

(a) any aspect of the environment that may be affected by the conduct of operations in pursuance of the licence;

(b) any other lawful activities that may be affected by those operations;

(3) Section 30—after subsection (3) insert:

(4) The Minister may, under the terms of an exploration licence or by conditions attached to an exploration licence, limit or define the extent or scope of operations authorised under the licence.

(5) Without limiting any other section, the Minister may add, vary or revoke a term or condition of an exploration licence at any time during the term of the licence considered appropriate by the Minister.

(6) However, if the Minister acts under subsection (5) without the agreement of the holder of the licence, the holder of the licence may appeal to the ERD Court in relation to the matter.

(7) The ERD Court may, on hearing an appeal under subsection (6)—

(a) confirm the action taken by the Minister;

(b) vary or revoke any term or condition imposed by the Minister, or impose any term or condition considered appropriate by the Court;

(c) make any consequential or ancillary order that the Court considers necessary or expedient.

(8) A person must not contravene, or fail to comply with, a condition of an exploration licence.

Maximum penalty: $120 000.

19—Amendment of section 30A—Term and renewal of licence

Section 30A(6)—delete subsection (6) and substitute:

(6) The Minister may, on renewing an exploration licence, add, vary or revoke a term or condition of an exploration licence.

(6a) The Minister may, on renewing an exploration licence or, with the consent of the holder of the licence, at any other time, alter an exploration licence by reducing the licence area.

20—Amendment of section 30AB—Subsequent exploration licence

Section 30AB—after subsection (1) insert:

(1a) An application for a subsequent exploration licence must be made to the Minister in a manner and form determined by the Minister at least 3 months before the expiration of an exploration licence the term or aggregate term of which was 5 years.

(1b) If an application for a subsequent exploration licence is not decided before the date on which the immediately preceding exploration licence is due to expire or if the Minister, on application by a person entitled to apply for a subsequent exploration licence (or who would be so entitled but for the expiration of the licence) or on the Minister's own motion, in the Minister's absolute discretion, extends the date by which an application must be made, the licence continues in operation (or, in an appropriate case, is revived) until the application is decided and, if a subsequent exploration licence is granted, the granting of the subsequent exploration licence dates from the date on which the immediately preceding exploration licence would, but for this subsection, have expired.

21—Amendment of section 32—Licensee to keep and, on request, furnish Director with geological records etc

(1) Section 32(1)—delete "inspector" and substitute:

authorised officer

(2) Section 32(1), penalty provision—delete the penalty provision and substitute:

Administrative penalty.

(3) Section 32(2), penalty provision—delete the penalty provision and substitute:

Administrative penalty.

22—Amendment of section 33—Cancellation, suspension etc of licence

Section 33—after subsection (2) insert:

(3) The Minister or the ERD Court may stay the operation of the cancellation or suspension of the licence until the appeal is determined, withdrawn or struck out.

(3a) The Minister may, as a result of an appeal to the ERD Court, reinstate an exploration licence to a date that coincides with the initial date of a cancellation or suspension, or such later date as may appear to the Minister to be appropriate in the circumstances.

23—Amendment of section 34—Grant of mining lease

(1) Section 34(6)(a), (b) and (c)—delete paragraphs (a), (b) and (c) and substitute:

(a) any aspect of the environment that may be affected by the conduct of operations in pursuance of the lease;

(b) any other lawful activities that may be affected by those operations;

(2) Section 34—after subsection (7) insert:

(8) The Minister may, under the terms of a mining lease or by conditions attached to a mining lease, limit or define the extent or scope of operations authorised under the lease.

(9) Without limiting any other provision, the Minister may add, vary or revoke a term or condition of a mining lease at any time if, in the Minister's opinion, the addition, variation or revocation is necessary to prevent, reduce, minimise or eliminate undue damage to the environment associated with mining operations conducted pursuant to the lease.

(10) The Minister must take reasonable steps to consult with the holders of the lease before acting under subsection (9).

(11) If—

(a) the Minister takes action under subsection (9) during the term of the lease; and

(b) the Minister acts without the agreement of the holder of the lease,

the holder of the lease may appeal to the ERD Court in relation to the matter.

(12) The ERD Court may, on hearing an appeal under subsection (11)—

(a) confirm the action taken by the Minister;

(b) vary or revoke any term or condition imposed by the Minister, or impose any term or condition considered appropriate by the Court;

(c) make any consequential or ancillary order that the Court considers necessary or expedient.

(13) A person must not contravene, or fail to comply with, a condition of a mining lease.

Maximum penalty: $120 000.

24—Amendment of section 35—Application for lease

Section 35(1)—delete subsection (1) and substitute:

(1) An application for a mining lease must be made in a manner and form determined by the Minister and must be accompanied by—

(a) a mining proposal—

(i) specifying the mining operations that the applicant proposes to carry out in pursuance of the lease (including details of the mining methods proposed and a description of the existing environment); and

(ii) setting out—

(A) an assessment of the environmental impacts of the proposed mining operations; and

(B) an outline of the measures that the applicant proposes to take to manage, limit or remedy those environmental impacts; and

(C) a statement of the environmental outcomes that are accordingly expected to occur; and

(iii) a draft statement of the criteria to be adopted to measure the expected environmental outcomes; and

(iv) the results of any consultation undertaken in connection with the proposed mining operations; and

(b) such information as the Minister requires; and

(c) the prescribed fee.

25—Amendment of section 38—Term and renewal of mining lease

(1) Section 38(3)—delete "the prescribed form" and substitute:

a manner and form determined by the Minister

(2) Section 38(4)—delete subsection (4) and substitute:

(4) If an application for the renewal of a mining lease is not decided before the date of expiry or if the Minister, on application by a person entitled to renew a lease (or who would be so entitled but for the expiration of the lease) or on the Minister's own motion, in the Minister's absolute discretion, extends the date by which an application must be made, the lease continues in operation (or, in an appropriate case, is revived) until the application for the renewal 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.

26—Amendment of section 39—Rights conferred by lease

Section 39—after its present contents (now to be designated as subsection (1)) insert:

(2) A mining lease may, in prescribed circumstances, authorise the recovery, use and sale or disposal of extractive minerals produced as a result of operations conducted in pursuance of the lease.

(3) The Minister must consult with the owner of the land where the operations are to be carried out before granting an authorisation under subsection (2) (unless the owner of the land is (or is to be) the holder of the mining lease).

(4) If an authorisation is granted under subsection (2), the relevant extractive minerals will not be taken to constitute extractive minerals for the purposes of the operation of the other provisions of this Act subject to the operation of subsection (6).

(5) Without limiting subsection (4), if any authorisation is granted, section 75(1) will not apply in respect of the minerals.

(6) The royalty payable on extractive minerals within the ambit of an authorisation under subsection (2) will be imposed at the rate that applies under section 17(4)(a).

(7) A mining lease granted in respect of extractive minerals may, in prescribed circumstances, authorise the recovery, use and sale or disposal of other minerals produced as a result of operations conducted in pursuance of the lease.

(8) The royalty payable on minerals (not being extractive minerals) within the ambit of an authorisation under subsection (7) will be imposed at the rate that applies under section 17(4)(b).

27—Amendment of section 41—Suspension or cancellation of lease

Section 41—after subsection (3) insert:

(4) The Minister or the ERD Court may stay the operation of the suspension or cancellation of the lease until the appeal is determined, withdrawn or struck out.

(5) The Minister may, as a result of an appeal to the ERD Court, reinstate a mining lease to a date that coincides with the initial date of a cancellation or suspension, or such later date as may appear to the Minister to be appropriate in the circumstances.

28—Amendment of section 41A—Grant of retention lease

(1) Section 41A(3)—delete subsection (3)

(2) Section 41A(5)(a), (b) and (c)—delete paragraphs (a), (b) and (c) and substitute:

(a) any aspect of the environment that may be affected by the conduct of operations in pursuance of the lease;

(b) any other lawful activities that may be affected by those operations;

(3) Section 41A—after subsection (5) insert:

(6) Without limiting any other provision, the Minister may add, vary or revoke a term or condition of a retention lease at any time if, in the Minister's opinion, the addition, variation or revocation is necessary to prevent, reduce, minimise or eliminate undue damage to the environment associated with mining operations conducted pursuant to the lease.

(7) The Minister must take reasonable steps to consult with the holder of the lease before acting under subsection (6).

(8) If—

(a) the Minister takes action under subsection (6) during the term of the lease; and

(b) the Minister acts without the agreement of the holder of the lease,

the holder of the lease may appeal to the ERD Court in relation to the matter.

(9) The ERD Court may, on hearing an appeal under subsection (8)—

(a) confirm the action taken by the Minister;

(b) vary or revoke any term or condition imposed by the Minister, or impose any term or condition considered appropriate by the Court;

(c) make any consequential or ancillary order that the Court considers necessary or expedient.

(10) A person must not contravene, or fail to comply with, a condition of a retention lease.

Maximum penalty: $120 000.

29—Amendment of section 41B—Application for retention lease

Section 41B(1)—delete "in the prescribed form" and substitute:

made in a manner and form determined by the Minister

30—Insertion of section 41BA

After section 41B insert:

41BA—Representations in relation to grant of retention lease

(1) The Minister must not grant a retention 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).

(2) The Minister must, within 14 days after receiving an application for a retention 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.

(3) If an application is made for a retention lease in respect of land within the area of a council, the Minister must, 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.

(4) In determining whether to grant or refuse an application for a retention lease 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.

31—Amendment of section 41D—Term and renewal of retention lease

(1) Section 41D(2)—delete "apply, in the prescribed manner and form, to the Minister" and substitute:

apply to the Minister, in a manner and form determined by the Minister,

(2) Section 41D(4)—delete subsection (4) and substitute:

(4) If an application for the renewal of a retention lease is not decided before the date of expiry or if the Minister, on application by a person entitled to renew a lease (or who would be so entitled but for the expiration of the lease) or of the Minister's own motion, in the Minister's absolute discretion, extends the date by which an application must be made, the lease continues in operation (or, in an appropriate case, is revived) until the application for the renewal 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.

32—Amendment of section 52—Grant of miscellaneous purposes licence

(1) Section 52(3)(e)—delete paragraph (e) and substitute:

(e) any other purpose directly relating to the conduct of mining operations,

(2) Section 52(4)(a), (b) and (c)—delete paragraphs (a), (b) and (c) and substitute:

(a) any aspect of the environment that may be affected by the conduct of operations in pursuance of the licence;

(b) any other lawful activities that may be affected by those operations;

(3) Section 52—after subsection (4) insert:

(4a) The Minister may, under the terms of a miscellaneous purposes licence or by conditions attached to a miscellaneous purposes licence limit or define the extent or scope of operations authorised under the licence.

(4b) Without limiting any other provision, the Minister may add, vary or revoke a term or condition of a miscellaneous purposes licence at any time if, in the Minister's opinion, the addition, variation or revocation is necessary to prevent, reduce, minimise or eliminate undue damage to the environment associated with mining operations conducted pursuant to the licence.

(4c) The Minister must take reasonable steps to consult with the holder of the licence before acting under subsection (4b).

(4d) If—

(a) the Minister takes action under subsection (4b) during the term of the licence; and

(b) the Minister acts without the agreement in writing of the holder of the licence,

the holder of the licence may appeal to the ERD Court in relation to the matter.

(4e) The ERD Court may, on hearing an appeal under subsection (4d)—

(a) confirm the action taken by the Minister;

(b) vary or revoke any term or condition imposed by the Minister, or impose any term or condition considered appropriate by the Court;

(c) make any consequential or ancillary order that the Court considers necessary or expedient.

(4f) A person must not contravene, or fail to comply with, a condition of a miscellaneous purposes licence.

Maximum penalty: $120 000.

33—Amendment of section 53—Application for miscellaneous purposes licence

Section 53(1)—delete subsection (1) and substitute:

(1) An application for a miscellaneous purposes licence must be made in a manner and form determined by the Minister and must be accompanied by—

(a) a management plan—

(i) specifying the nature and extent of the operations or activity that the applicant proposes to carry out in pursuance of the licence; and

(ii) setting out—

(A) an assessment of the environmental impacts of the proposed operations or activity; and

(B) an outline of the measures that the applicant proposes to take to manage, limit or remedy those environmental impacts; and

(C) a statement of the environmental outcomes that accordingly are expected to occur; and

(iii) a draft statement of the criteria to be adopted to measure the expected environmental outcomes; and

(iv) the results of any consultation undertaken in connection with the proposed operations or activity; and

(b) such information as the Minister requires; and

(c) the prescribed fee.

34—Amendment of section 55—Term and renewal of miscellaneous purposes licence

Section 55(4)—delete subsection (4) and substitute:

(4) If an application for the renewal of a miscellaneous purposes licence is not decided before the date of expiry or if the Minister, on application by a person entitled to renew a licence (or who would be so entitled but for the expiration of the licence) or of the Minister's own motion, in the Minister's absolute discretion, extends the date by which an application must be made, the licence continues in operation (or, in an appropriate case, is revived) until the application for the renewal 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.

35—Amendment of section 56—Suspension and cancellation of miscellaneous purposes licence

Section 56—after subsection (3) insert:

(4) The Minister or the ERD Court may stay the operation of the suspension or cancellation of the licence until the appeal is determined, withdrawn or struck out.

(5) The Minister may, as a result of an appeal to the ERD Court, reinstate a miscellaneous purposes licence to a date that coincides with the initial date of a suspension or cancellation, or such later date as may appear to the Minister to be appropriate in the circumstances.

36—Amendment of section 57—Entry on land

Section 57(b)—after "pegging out" insert:

or otherwise identifying

37—Amendment of section 58A—Notice of entry

(1) Section 58A—after subsection (2) insert:

(2a) If the land is subject to a licence under the *Petroleum and Geothermal Energy Act 2000*, a copy of the notice must also be served (within the time required under subsection (1)) on the holder of that licence.

(2) Section 58(3)—after "pastoral lease" insert:

or a licence under the *Petroleum and Geothermal Energy Act 2000*

(3) Section 58A(6), penalty provision—delete the penalty provision and substitute:

Maximum penalty: $50 000.

(4) Section 58A—after subsection (7) insert:

(8) A notice is not required under subsection (2a) if the holder of the licence under the *Petroleum and Geothermal Energy Act 2000* has waived the requirement for notice to be given under that subsection.

(9) A notice under this section must be in a form determined or approved by the Minister.

38—Amendment of section 59—Use of declared equipment

(1) Section 59(1)—after paragraph (a) insert:

(b) in pursuance of an authorisation granted by the Minister under a program under Part 10A; or

(2) Section 59(1), penalty provision—delete the penalty provision and substitute:

Maximum penalty: $120 000.

(3) Section 59—after subsection (1) insert:

(1aaa) An authorisation under subsection (1)(b) may be given subject to conditions (if any) specified in the authorisation.

(4) Section 59(1ac)—delete "and the Minister to whom the administration of this Act is committed" and substitute:

and the Director of Mines

(5) Section 59(1b)—delete "the prescribed form" and substitute:

a manner and form determined by the Minister

(6) Section 59(1b), penalty provision—delete the penalty provision and substitute:

Maximum penalty: $50 000.

(7) Section 59(2)—delete "the prescribed form" and substitute:

a manner and form determined by the Minister

(8) Section 59—after subsection (2) insert:

(2a) If the land is subject to a licence under the *Petroleum and Geothermal Energy Act 2000*, a copy of any notice required under subsection (2) must also be served (within the time required under that subsection) on the holder of that licence.

(9) Section 59(7)—before paragraph (a) insert:

(aa) fails to comply with any condition of an authorisation under this section; or

(10) Section 59(7), penalty provision—delete the penalty provision and substitute:

Maximum penalty: $50 000.

(11) Section 59(8)—after "Subsections (2) to (7)" insert:

(other than subsection (2a))

(12) Section 59—after subsection (8) insert:

(9) A notice is not required under subsection (2a) if the holder of the licence under the *Petroleum and Geothermal Energy Act 2000* has waived the requirement for notice to be given under that subsection.

39—Repeal of section 60

Section 60—delete the section

40—Amendment of section 62—Bond and security

Section 62(4), penalty provision—delete the penalty provision and substitute:

Maximum penalty: $120 000.

41—Amendment of section 63C—Registration of access claim

(1) Section 63C(1)(a)—delete "the prescribed form" and substitute:

a manner and form determined by the Minister

(2) Section 63C(1)(c)—delete "prescribed particulars" and substitute:

information required by the Minister

42—Amendment of section 67—Jurisdiction relating to tenements and monetary claims

(1) Section 67(1)—delete ", or purported mining tenement, or any miner's right" and substitute:

or purported mining tenement

(2) Section 67(1a)(a)—delete ", or purported mining tenement, or any miner's right" and substitute:

or purported mining tenement

43—Repeal of section 68

Section 68—delete the section

44—Amendment of section 69—Forfeiture of claim

Section 69(4), definition of ***interested person***, (b)—delete paragraph (b) and substitute:

(b) a person of a class prescribed by the regulations for the purposes of this definition.

45—Amendment of section 70—Forfeiture and transfer of lease

Section 70(5), definition of ***interested person***—delete the definition and substitute:

interested person means a person of a class prescribed by the regulations for the purposes of this definition.

46—Insertion of Parts 10A and 10B

After Part 10 insert:

Part 10A—Programs for environment protection and rehabilitation

70A—Object of Part

(1) The object of this Part is to ensure that the holders of mining tenements—

(a) provide adequate information about the mining operations that will be conducted under the tenements; and

(b) ensure that mining operations that have (or potentially have) adverse environmental impacts are properly managed to reduce those impacts as far as reasonably practicable and eliminate, as far as reasonably practicable, risk of significant long term environmental harm; and

(c) ensure that land adversely affected by mining operations is properly rehabilitated.

(2) The Minister must, in acting under this Part, have regard to, and seek to further, the objects of the *Natural Resources Management Act 2004*.

70B—Preparation or application of program under this Part

(1) The holder of a mining tenement must not carry out mining operations unless a program that complies with the requirements of this Part is in force for those operations.

(2) A program under subsection (1) must—

(a) specify the mining operations that the holder of the mining tenement proposes to carry out in pursuance of the tenement; and

(b) set out—

(i) the environmental outcomes that are expected to occur as a result of the mining operations (including after taking into account any rehabilitation proposed by the holder of the tenement and other steps to manage, limit or remedy any adverse environmental impacts); and

(ii) the criteria to be adopted to measure those environmental outcomes; and

(c) incorporate information about the ability of the holder of the mining tenement to achieve the environmental outcomes set out under paragraph (b); and

(d) set out such other information as may be required by a condition of the tenement or by the regulations; and

(e) comply with any other requirements prescribed by the regulations.

(3) The Minister may, on application by the holder or holders of 2 or more mining tenements, determine that a program may relate to a group of mining tenements within a particular area and, in such a case—

(a) the holder or holders of the mining tenements within the ambit of the determination may prepare and furnish a combined program for the purposes of this section; and

(b) this section will apply to the holder or holders of the mining tenements with such modifications as may be necessary for the purpose.

(4) A program under subsection (2) or (3) must be provided in a manner and form specified or approved by the Minister.

(5) The Minister may on the receipt of a program submitted for the purposes of this section—

(a) approve the program without alteration; or

(b) require alterations to the program after consultation with the holder of the mining tenement (or holders of the mining tenements).

(6) The holder of a mining tenement required to make any alterations under subsection (5) may apply to the ERD Court for a review of the requirement within 28 days after receiving notice of the requirement or such longer period as the Minister may allow in a particular case.

(7) On a review under subsection (6), the ERD Court may—

(a) confirm the requirement (with or without modifications); or

(b) revoke the requirement and give directions with respect to the approval of the program.

(8) The regulations may set out or adopt a program that may apply in relation to mining operations of a prescribed class.

(9) If—

(a) a program is in place under subsection (8); and

(b) the mining operations to be carried out by the holder of a mining tenement fall within the ambit of that program,

the holder of the mining tenement may, subject to complying with any requirement prescribed by the regulations for the purposes of this subsection, rely on the program prescribed by the regulations rather than a program prepared under subsection (2) or (3) (and subsections (4) to (7) will not apply).

(10) Subsection (9) does not apply in relation to mining operations carried out by the holder of a particular mining tenement if the Minister has, by notice to the holder of the tenement, determined that the subsection will not apply in the circumstances of the particular case.

70C—Review of programs

(1) A program under this Part may be reviewed at any time by the holder of the relevant mining tenement.

(2) A program must be reviewed at the direction of the Minister (which may be given at any time for any reasonable cause).

(3) A review must be conducted in accordance with any requirements prescribed by the regulations, and within a period prescribed by the regulations, for the purposes of this section.

(4) A copy of any program revised under this section must be furnished to the Minister in accordance with any requirements prescribed by the regulations.

(5) The Minister may on the receipt of a revised program submitted for the purposes of this section—

(a) approve the revised program without alteration; or

(b) require alterations to the revised program after consultation with the holder of the mining tenement (or holders of the mining tenements).

(6) The holder of a mining tenement required to make any alterations under subsection (5) may apply to the ERD Court for a review of the requirement within 28 days after receiving notice of the requirement or such longer period as the Minister may allow in a particular case.

(7) On a review under subsection (6), the ERD Court may—

(a) confirm the requirement (with or without modifications); or

(b) revoke the requirement and give directions with respect to the approval of the revised program.

70D—Related matters

(1) A holder of a mining tenement must not conduct mining operations in pursuance of the mining tenement if the person is in breach of any requirement of this Part.

Maximum penalty: $120 000.

(2) A holder of a mining tenement must not fail to comply with any requirement under this Part to review a program under this Part.

Maximum penalty: $120 000.

(3) A person who, in connection with any mining operations, contravenes or fails to comply with a program under this Part that applies in relation to those operations is guilty of an offence.

Maximum penalty: $120 000.

Part 10B—General provisions—environmental protection

70E—Power to direct tenement holders to take action to prevent or minimise environmental harm

(1) If, in the Minister's opinion, mining operations are being conducted in a way that results in, or that is reasonably likely to result in—

(a) undue damage to the environment; or

(b) a breach of the environmental outcomes under a program under Part 10A,

the Minister may, by written notice given to any person involved in undertaking the mining operations (an ***environmental direction***), direct that action be taken to comply with specified requirements to prevent or minimise damage to the environment (to the extent necessary to address the relevant matter arising under paragraph (a) or (b)).

(2) If, in the opinion of an authorised officer—

(a) mining operations are being conducted in a way that results in, or that is reasonably likely to result in—

(i) undue damage to the environment; or

(ii) a breach of the environmental outcomes under a program under Part 10A; and

(b) it is urgently necessary to take action under this subsection,

the authorised officer may, by written notice given to any person involved in undertaking the mining operations (an ***environmental direction***), direct that action be taken to comply with specified requirements to prevent or minimise damage to the environment (to the extent necessary to address the relevant matter arising under paragraph (a)).

(3) A direction under this section may impose any requirement reasonably required for the purpose for which the direction is issued including 1 or more of the following:

(a) a requirement that a person specified or identified in the direction discontinue, or not commence, a specified activity indefinitely or for a specified period or until further notice from the Minister or an authorised officer;

(b) a requirement that a person specified or identified in the direction take specified action in a specified way, and within a specified period or at specified times or in specified circumstances;

(c) a requirement that a person specified or identified in the direction take action to prevent or minimise any damage to the environment, or to control any specified activity;

(d) a requirement that a person specified or identified in the direction undertake specified tests or monitoring;

(e) a requirement that a person specified or identified in the direction take specified action to rehabilitate or restore any land;

(f) a requirement that a person specified or identified in the direction furnish the Minister with specified results or reports.

(4) A direction under this section must allow a reasonable time for compliance with the direction.

(5) A person to whom a direction relates must comply with a direction under this section within the time allowed in the direction.

Maximum penalty: $250 000.

(6) If a direction is given under this section, the Minister may review the adequacy of any relevant program under Part 10A and, if it appears on the review that a revised program is appropriate, the Minister may take the necessary steps to have a revised program prepared and brought into force.

(7) The Director must establish a process for a person who is the subject of a direction under subsection (2) to apply for an internal review of the direction and the Director may, at the conclusion of any such review, confirm, vary or revoke the direction.

(8) For the purposes of this section, a reference to a person involved in undertaking mining operations extends (in all cases) to the holder of a mining tenement under which the mining operations are conducted.

70F—Power to direct rehabilitation of land

(1) The Minister may, by written notice given to any person involved in undertaking mining operations under a mining tenement (including a former mining tenement) (a ***rehabilitation direction***), direct that action be taken—

(a) to rehabilitate land in accordance with the requirements of a program under Part 10A; or

(b) to rehabilitate land to a standard required to secure compliance with a condition of the mining tenement,

(including land outside the area of the mining tenement).

(2) A direction under this section—

(a) must allow a reasonable time for compliance with the direction; and

(b) may require the removal of abandoned equipment and facilities.

(3) A person must comply with a direction under this section within the time allowed in the direction.

Maximum penalty: $250 000.

(4) Without limiting any other provision under this Act, the Warden's Court may order that no further claim may be established under this Act by a person named in a direction under this section until the requirements of the direction have been satisfied.

(5) If an order has been made under subsection (4), the person named in the order is not entitled to establish a claim under this Act until the requirements of the direction have been satisfied or the order has been revoked.

(6) For the purposes of this section, a reference to a person involved in undertaking mining operations extends (in all cases) to—

(a) the holder of the mining tenement under which the mining operations are conducted;

(b) if relevant, the holder of a mining tenement that has since expired, or has been cancelled or surrendered (but, in such a case, a notice may only be given to the person who was the holder of the mining tenement immediately before its expiration, cancellation or surrender).

70G—Application for review of direction

(1) A person required to comply with an environmental direction or a rehabilitation direction may apply to the ERD Court for a review of the direction within 28 days after receiving the direction or such longer period as the Minister may allow in a particular case.

(2) Unless the Minister or the Court decides to the contrary, an application for review of an environmental direction or a rehabilitation direction does not suspend operation of the direction.

(3) On review of an environmental direction or a rehabilitation direction, the ERD Court may—

(a) confirm the direction (with or without modification); or

(b) revoke the direction.

70H—Action if non-compliance occurs

(1) If the requirements of an environmental direction or a rehabilitation direction are not complied with, the Minister may take the action required by the direction.

(2) Any action to be taken by the Minister under subsection (1) may be taken on the Minister's behalf by an authorised officer or by another person authorised by the Minister for the purpose.

(3) If a person other than an authorised officer is authorised to take action under subsection (2), the following provisions apply:

(a) the Minister must issue the person with an instrument of authority;

(b) the person must produce the instrument of authority for the inspection of any person in relation to whom the person intends to exercise powers under this section.

(4) The reasonable costs and expenses incurred by the Minister in taking action under subsection (1) may be recovered by the Minister as a debt from the person who failed to comply with the requirements of the relevant direction.

47—Amendment of section 73A—Lodging of caveats

(1) Section 73A(1)—delete "an interest" and substitute:

a legal or proprietary interest

(2) Section 73A(2)(a)—delete paragraph (a) and substitute:

(a) must be a form determined by the Minister and lodged in a manner determined or approved by a mining registrar; and

(3) Section 73A(2)—after paragraph (b) insert:

(ba) must state the nature of the interest claimed by the person lodging the caveat and the grounds on which the claim is founded; and

(4) Section 73A(2)(d)—delete "within the State"

(5) Section 73A(2)—after paragraph (d) insert:

and

(e) must be accompanied by such other information as a mining registrar may require; and

(f) must be accompanied by the prescribed fee.

(6) Section 73A(4)—delete subsection (4) and substitute:

(4) If—

(a) a person lodges a caveat with respect to a mining tenement; and

(b) the caveat lapses,

the person may not lodge a second or subsequent caveat relating to the same interest that applied under subsection (1) in relation to the original caveat without the approval of the Warden's Court.

(5) The operation of subsection (4) does not affect the ability of a person to lodge a caveat under section 73B(3).

48—Amendment of section 73E—Royalty

Section 73E(3)(b)—delete "in the prescribed form" and substitute:

, in a manner and form determined by the Minister,

49—Amendment of section 73I—Compliance orders

(1) Section 73I(6)—delete "inspectors" and substitute:

authorised officers

(2) Section 73I(7)—delete "inspector" wherever occurring and substitute in each case:

authorised officer

50—Amendment of section 73K—Rectification authorisations

(1) Section 73K(1)—delete "inspectors" and substitute:

authorised officers

(2) Section 73K(5)—delete "inspector" wherever occurring and substitute in each case:

authorised officer

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

Section 73M(4)(b)(ii)—delete "the prescribed form" and substitute:

a manner and form determined by the Minister

52—Amendment of section 73O—Powers of authorised officers or persons

(1) Section 73O(1)—delete "inspector, or any" and substitute:

authorised officer, or any other

(2) Section 73O(2)—delete "inspector" and substitute:

authorised officer

(3) Section 73O(4)—delete "inspector" wherever occurring and substitute in each case:

authorised officer

(4) Section 73O(4), penalty provision—delete the penalty provision and substitute:

Maximum penalty: $10 000 or imprisonment for 6 months.

(5) Section 73O(5), penalty provision—delete the penalty provision and substitute:

Maximum penalty: $10 000 or imprisonment for 6 months.

(6) Section 73O(8)—delete "inspector" wherever occurring and substitute in each case:

authorised officer

(7) Section 73O(8), penalty provision—delete the penalty provision and substitute:

Maximum penalty: $5 000.

(8) Section 73O(9)—delete "inspector" and substitute:

authorised officer

53—Amendment of section 74—Penalty for illegal mining

(1) Section 74(1), penalty provision—delete the penalty provision and substitute:

Maximum penalty: $250 000 or imprisonment for 2 years.

(2) Section 74(1a), penalty provision—delete the penalty provision and substitute:

Maximum penalty: $250 000 or imprisonment for 2 years.

54—Insertion of section 74AA

After section 74 insert:

74AA—Compliance directions

(1) The Minister may issue a direction under this section (a ***compliance direction***) for the purpose of—

(a) securing compliance with a requirement under this Act, a mining tenement (including a condition of a mining tenement) or any authorisation under or in relation to a mining tenement; or

(b) preventing or bringing to an end specified operations that are contrary to this Act or a mining tenement (including a condition of a mining tenement); or

(c) without limiting any other provision, requiring the rehabilitation of land on account of any mining operations conducted without an authority required by this Act.

(2) A compliance direction—

(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); and

(ii) specify the grounds on which it is issued; and

(c) may impose any requirement reasonably required for the purpose for which the order is issued including 1 or more of the following:

(i) a requirement that the person discontinue, or not commence, specified operations indefinitely or for a specified period or until further notice from the Minister;

(ii) a requirement that the person not carry on specified 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, apply to the ERD Court for a review of the direction.

(3) The Minister may, by written notice served on a person to whom a compliance direction has been issued, vary or revoke the direction.

(4) A person required to comply with a compliance direction may apply to the ERD Court for a review of the direction within 28 days after receiving the direction.

(5) Unless the Minister or the Court decides to the contrary, an application for review of a compliance direction does not suspend the operation of the direction.

(6) On review of a compliance direction, the ERD Court may—

(a) confirm the direction (with or without modification); or

(b) revoke the direction.

(7) A person to whom a compliance direction is issued must comply with the direction.

Maximum penalty: $250 000.

(8) If the requirements of a compliance direction are not complied with, the Minister may take any action required by the direction.

(9) Any action to be taken by the Minister under subsection (8) may be taken on the Minister's behalf by an authorised officer or by another person authorised by the Minister for the purpose.

(10) If a person other than an authorised officer is authorised to take action under subsection (9), the following provisions apply:

(a) the Minister must issue the person with an instrument of authority;

(b) the person must produce the instrument of authority for the inspection of any person in relation to whom the person intends to exercise powers under this section.

(11) The reasonable costs and expenses incurred by the Minister in taking action under subsection (8) may be recovered by the Minister as a debt from the person who failed to comply with the requirements of the compliance direction.

55—Amendment of section 74A—Compliance orders

(1) Section 74A(1)—delete "the Director or"

(2) Section 74A(3), penalty provision—delete "$100 000" and substitute:

$250 000

56—Amendment of section 75—Provision relating to certain minerals

Section 75(1)—delete "claim or lease may be pegged out or" and substitute:

claim may be established or lease

57—Amendment of section 76—Returns

(1) Section 76(1)—delete "(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) Section 76(2)—after "A return" insert:

under subsection (1)

(3) Section 76(3) to (5) (inclusive)—delete subsections (3) to (5) and substitute:

(3) If a mining tenement expires or is cancelled or surrendered, the holder of the mining tenement at the time of expiration, cancellation or surrender must, not later than 3 months after the occurrence of that event, furnish the Director of Mines with a return in a manner and form determined by the Director of Mines containing the information required by the regulations.

(4) A return under this section must be accompanied by any information, samples or other material required by the Director of Mines.

(5) The Director of Mines may, on application or on his or her own motion, extend the date or time by which or within which a return must be furnished under this section.

(5a) A person who fails to comply with this section, or furnishes a return or any other information that is false or misleading in a material particular, is guilty of an offence.

Maximum penalty: $120 000.

(5b) In the case of a continuing failure to comply with this section, the person in breach is guilty of a further offence for each month for which the failure continues.

Maximum penalty: $20 000.

(4) Section 76(7)—delete "the requirement under subsection (1)" and substitute:

a requirement of this section

58—Amendment of section 77—Records and samples

(1) Section 77(1), penalty provision—delete the penalty provision and substitute:

Administrative penalty.

(2) Section 77(2), penalty provision—delete the penalty provision and substitute:

Administrative penalty.

(3) Section 77(3), penalty provision—delete the penalty provision and substitute:

Administrative penalty.

59—Amendment of section 77A—Period of retention of records

Section 77A(1), penalty provision—delete the penalty provision and substitute:

Maximum penalty: $10 000.

60—Insertion of sections 77B, 77C and 77D

After section 77A insert:

77B—Other material to be provided by holder of tenement

(1) The holder of a mining tenement must, as required by the regulations, provide the Minister with any information, sample or other material required by the regulations.

Administrative penalty.

(2) The holder of a mining tenement must provide the Minister with any other information, sample or other material reasonably requested by the Minister within the time specified in the request.

Administrative penalty.

(3) If the Minister considers the provision of the information, sample or other material requested under subsection (2) essential in the public interest, and gives an intimation to that effect in the request, non-compliance with the request is an offence punishable on conviction by a fine not exceeding $120 000.

(4) The holder of a mining tenement the area of which is reduced under this Act must, not later than 1 month after the reduction, furnish the Director of Mines with a return in a manner and form determined by the Director of Mines.

Administrative penalty.

(5) A return under subsection (4) must contain information required by the regulations relating to the conduct of mining operations and other matters relating to the land that has been excised from the mining tenement.

Administrative penalty.

77C—Expert reports

(1) The holder of a mining tenement must, if requested to do so by the Minister for any purpose connected with the operation of Part 3, provide the Minister with a report from an independent expert, within the time specified in the request, verifying information or other material provided to the Minister by the holder of the tenement under this Act.

Administrative penalty.

(2) The Minister may only act under subsection (1) on reasonable cause.

(3) A request under subsection (1) may nominate the nature of the qualifications and experience that the person who prepares the report must possess.

(4) The holder of the mining tenement is responsible for any costs associated with the preparation or provision of a report under this section.

77D—Release of matter

(1) The Director of Mines may release any report, information, sample or other material of a prescribed kind obtained from the holder or former holder of a mining tenement under this Act.

(2) The Director of Mines may act under subsection (1)—

(a) on the Director's own initiative or on application made to the Director in a manner and form determined by the Director; and

(b) whether or not the mining tenement to which the report, information, sample or other material relates is still current.

(3) However, if the mining tenement is still current, the Director of Mines must not act under subsection (1) without—

(a) the consent of the holder of the mining tenement; or

(b) the consent of the Minister.

(4) The Minister must consult with the holder of the mining tenement before deciding whether or not to grant a consent under subsection (3).

(5) Subsections (3) and (4) do not apply—

(a) to the release of information in circumstances prescribed by the regulations in connection with the operation of this section; or

(b) to the release of statistical information in connection with the general administration of this Act.

(6) The Director of Mines may release any report, information, sample or material under this section—

(a) in such manner and form as the Director thinks fit; and

(b) subject to such conditions as the Director thinks fit.

(7) Without limiting subsection (6)(b), a condition under that subsection may require that a person enter into a bond in such sum, and subject to such terms and conditions, as the Director may require in connection with the release or use of any report, information, sample or material.

(8) A person who contravenes or fails to comply with a condition under subsection (6)(b) is guilty of an offence.

Maximum penalty: $120 000.

(9) A person to whom any report, information, sample or material is released must, if required by the Director of Mines, furnish to the Director specified reports or information, or reports or information of a specified kind, in accordance with any requirement specified by the Director.

Administrative penalty.

(10) The Director of Mines must, in acting under this section, comply with any other requirement or restriction prescribed by the regulations for the purposes of this section.

61—Amendment of section 78—Persons under 16 years of age

(1) Section 78(1)—delete "miner's right or"

(2) Section 78(2)—delete "miner's right or"

62—Amendment of section 82—Surrender of lease or licence

Section 82—delete "the prescribed form" and substitute:

a manner and form determined by the Minister

63—Amendment of section 83—Dealing with licences

(1) Section 83(1)—delete "Subject to subsection (2), a" and substitute:

A

(2) Section 83(1)—after "transferred," insert:

mortgaged,

(3) Section 83(2)—delete subsection (2) and substitute:

(2) If a lease or licence is subject to a mortgage or charge, the Minister must not consent to the transfer or assignment of the lease or licence unless or until the Minister has taken reasonable steps to give notice of the proposed consent to the person in whose favour the mortgage or charge has been made (unless that person has also consented to the transfer or assignment).

64—Amendment of section 86—Removal of machinery etc

Section 86(2)—delete "Chief Inspector" and substitute:

Minister

65—Repeal of section 87A

Section 87A—delete the section

66—Amendment of section 88—Obstruction etc of officers exercising powers under Act

Section 88, penalty provision—delete the penalty provision and substitute:

Maximum penalty: $10 000.

67—Amendment of section 89—Obstruction etc of person authorised to mine

(1) Section 89—delete "a miner's right or"

(2) Section 89, penalty provision—delete the penalty provision and substitute:

Maximum penalty: $5 000.

68—Insertion of section 89A

After section 89 insert:

89A—Offences and ERD Court

Offences constituted by this Act lie within the criminal jurisdiction of the ERD Court.

69—Amendment of section 90—Evidentiary provision

(1) Section 90—before subsection (1) insert:

(1aa) In proceedings for an offence against this Act, an apparently genuine document purporting to be a certificate signed by the Minister certifying—

(a) that a person named in the certificate was or was not at a specified time the holder of a mining tenement; or

(b) that a provision set out in the certificate was at a specified time a condition of a specified mining tenement,

is, in the absence of proof to the contrary, proof of the matters certified.

(2) Section 90(2)—delete "miner's right,"

(3) Section 90—after subsection (2) insert:

(3) In any proceedings, if it appears that an alleged fact has been determined by the use of an electronic, sonic, optical, mechanical, measuring or other device or technique by an authorised officer or a person assisting an authorised officer, the alleged fact must be accepted as proved in the absence of evidence to the contrary.

70—Insertion of sections 91 and 91A

After section 90 insert:

91—Administrative penalties

(1) This section applies to any provision of this Act (or the regulations) at the foot of which the words "Administrative penalty" appear.

(2) If a person who is a holder or former holder of a mining tenement is alleged to have contravened a provision to which this section applies, the Minister may, by notice in writing to the person, impose an administrative penalty on the person.

(3) The amount of an administrative penalty is an amount (not exceeding $10 000) fixed by regulation in relation to the relevant provision.

(4) An administrative penalty may be recovered as a debt due to the Crown.

(5) If an administrative penalty has been imposed in relation to a particular act or default, the same act or default cannot be made the subject of proceedings for an offence against this Act and if proceedings for an offence against this Act have been brought in relation to a particular act or default, an administrative penalty cannot be imposed for the same act or default.

91A—Rectification of boundaries

(1) The Mining Registrar may, in prescribed circumstances—

(a) vary the boundaries or delineation of any mining tenement;

(b) authorise the moving or replacement of any pegs or other items used to identify a mining tenement;

(c) take or authorise other action to clarify or rectify the area, location or boundaries of a mining tenement.

(2) However, the Mining Registrar may only act under subsection (1) if authorised to do so—

(a) by an agreement between the holder of the relevant mining tenement and the Minister; or

(b) by a determination of the Warden's Court made on application by the Mining Registrar.

71—Amendment of section 92—Regulations

(1) Section 92(a)—delete "miner's rights,"

(2) Section 92(i)—delete "an inspector" and substitute:

the Minister

(3) Section 92(n)—delete "inspectors" and substitute:

authorised officers

(4) Section 92—after paragraph (n) insert:

(na) provide for the provision of reports or the requirement to conduct any audit or investigation; and

(5) Section 92—after its present contents (as amended by this section and now to be designated as subsection (1)) insert:

(2) Without limiting subsection (1), the regulations may prescribe, or provide for the imposition of—

(a) assessment fees associated with applications under this Act; and

(b) annual administration fees to be paid by the holders of mining tenements.

(3) A regulation prescribing any fees under this Act—

(a) may provide for fees based on 1 or more of the following factors:

(i) the size of a mining tenement (or proposed mining tenement);

(ii) capital costs associated with any mining operations (or proposed mining operations);

(iii) any other factor prescribed by the regulations; and

(b) may provide for differential fees.

(4) The regulations may adopt, wholly or partially and with or without modification—

(a) a code or standard relating to matters in respect of which regulations may be made under this Act; or

(b) an amendment to such a code or standard.

(5) Any regulations adopting a code or standard, or an amendment to a code or standard, may contain such incidental, supplementary and transitional provisions as appear to the Governor to be necessary.

(6) The regulations or a code or standard adopted by the regulations may—

(a) refer to or incorporate, wholly or partially and with or without modification, a standard or other document prepared or published by a prescribed body or person, either as in force at the time the regulations are made or as in force from time to time; and

(b) be of general or limited application; and

(c) make different provision according to the persons, things or circumstances to which they are expressed to apply; and

(d) provide that any matter or thing is to be determined, dispensed or regulated according to the discretion of the Minister, the Director or a registrar.

(7) If—

(a) a code or standard is adopted by the regulations; or

(b) the regulations, or a code or standard adopted by the regulations, refers to a standard or other document prepared or published by a prescribed body,

then—

(c) a copy of the code, standard or other document must be kept available for inspection by members of the public, without charge and during normal office hours, at an office or offices specified in the regulations; and

(d) in any legal proceedings, evidence of the contents of the code, standard or other document may be given by production of a document purporting to be certified by or on behalf of the Minister as a true copy of the code, standard or other document; and

(e) the code, standard or other document has effect as if it were a regulation made under this Act.

Schedule 1—Related amendment and transitional provision

Part 1—Amendment of *Petroleum and Geothermal Energy Act 2000*

1—Amendment of section 63—Right to compensation

Section 63—after subsection (3) insert:

(3aa) Compensation is not payable under this section to the holder of a tenement under the *Mining Act 1971* in relation to—

(a) any loss represented by a reduction in the value of any minerals that may be recovered under that tenement; or

(b) any other loss, deprivation or impairment of a prescribed kind.

Part 2—Transitional provision

2—Transitional provision

(1) In this clause—

principal Act means the *Mining Act 1971*.

(2) The Minister may, after the commencement of this clause, vary the terms and conditions of a mining lease in existence at that commencement so as to authorise the recovery, use and sale or disposal of extractive minerals in the manner contemplated by section 39(2) of the principal Act or the recovery, use and sale or disposal of other minerals in the manner contemplated by section 39(7) of the principal Act (as enacted by this Act) (and this authorisation will then be taken to be an authorisation under that section).

Schedule 2—Statute law revision amendment of *Mining Act 1971*

Provision amended	How amended
Section 6(1), definition of ***baseline***	Delete "section 7(1)(b)" and substitute: section 7(2)(b)
Section 6(1), definition of ***council***	Delete the definition and substitute: ***council*** has the same meaning as in the *Local Government Act 1999* and includes a body corporate that is, by virtue of any Act, deemed to be, or vested with the powers of, a council;

Provision amended	How amended
Section 6(1), definition of ***Murray-Darling Basin***	Delete the definition and substitute: ***Murray-Darling Basin*** has the same meaning as in the *Water Act 2007* of the Commonwealth;
Section 9(4)	Delete "*Pastoral Act 1936*" and substitute: *Pastoral Land Management and Conservation Act 1989*
Section 63Y	Delete "*Pitjantjatjara Land Rights Act 1981*" and substitute: *Anangu Pitjantjatjara Yankunytjatjara Land Rights Act 1981*
Section 65(1c)	Delete "justice, or a court of summary jurisdiction, under the *Justices Act 1921*" and substitute: Magistrate, or the Magistrates Court of South Australia,
Section 65(4)	Delete "*Justices Act 1921*" and substitute: *Magistrates Court Act 1991*
Section 66(2)	Delete "the *Justices Act 1921* and of the *Local and District Criminal Courts Act 1926* shall" and substitute: the *Magistrates Court Act 1991* and of the *District Court Act 1991* may
Section 81	Delete "*Pastoral Act 1936* or the *Local Government Act 1934*" and substitute: *Pastoral Land Management and Conservation Act 1989* or the *Local Government Act 1999*