

House of Assembly—No 41

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South Australia

Statutes Amendment (Mineral Resources) Bill 2018

A BILL FOR

An Act to amend the *Mining Act 1971*, the *Mines and Works Inspection Act 1920* and the *Opal Mining Act 1995*.

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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 *Statutes Amendment (Mineral Resources) Act 2018*.

2—Commencement

- 5 (1) This Act will come into operation on a day to be fixed by proclamation.
- (2) Section 7(5) of the *Acts Interpretation Act 1915* does not apply to this Act or a provision of this Act.

3—Amendment provisions

10 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)—after the definition of *Adelaide Dolphin Sanctuary* insert:

advanced exploration operations—see subsection (1a);

15 *ancillary operations* means—

- (a) ancillary operations for the carrying on of any business that may be conducive to the effective conduct of mining operations or operations associated with providing amenities for persons engaged in the conduct of mining operations; or
- 20 (b) operations which are brought within the ambit of this definition by a determination of the Minister or by the regulations,

but does not include operations excluded from the ambit of this definition by a determination of the Minister or by the regulations;

- (2) Section 6(1)—after the definition of *authorised officer* insert:

25 *authorised operations* means—

- (a) exploration operations; or
- (b) mining operations; or
- (c) ancillary operations;

- (3) Section 6(1)—after the definition of *baseline* insert:

30 *business day* means any day except—

- (a) a Saturday, Sunday or public holiday; or
- (b) a day which falls between 25 December and 1 January in the following year;

- (4) Section 6(1), definition of *Crown lands*—delete the definition

- (5) Section 6(1)—after the definition of *declared equipment* insert:

director of a company includes a person occupying or acting in the position of a director or member of the governing body of the company, by whatever name called and whether or not validly appointed to occupy or duly authorised to act in the position, and includes any person in accordance with whose directions or instructions the directors or members of the governing body are accustomed to act;

- (6) Section 6(1), definition of *exempt land*—delete "mining" and substitute:

authorised

- (7) Section 6(1), definition of *exploration authority*, (e)—delete "exploratory operations" and substitute:

exploring

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

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

- (a) prospecting for minerals; or
- (b) exploring for minerals; or
- (c) establishing the extent of a mineral deposit; or
- (d) undertaking any other activity brought within the ambit of this definition by a determination of the Minister or by the regulations; or
- (e) providing for the rehabilitation of land on account of the impact of any operations under a preceding paragraph,

including such operations carried out at a private mine, and being operations that are classified as *low impact exploration operations* or *advanced exploration operations* under subsection (1a), and *to explore* and *exploratory* have corresponding meanings;

- (9) Section 6(1), definition of *extractive minerals*—after paragraph (b) insert:

or

- (c) proppant sand;

- (10) Section 6(1), after the definition of *the Land and Valuation Court* insert:

low impact exploration operations—see subsection (1a);

- (11) Section 6(1)—after the definition of *mineral land* insert:

mineral tenement means—

- (a) a claim, lease or licence under this Act; or
- (b) an entitlement under this Act with respect to a private mine,

(and includes, if the context so requires, the place that constitutes such a claim, lease, licence or private mine);

- (12) Section 6(1), definition of *minerals*, (a)—after "sand" insert:

, proppant sand

- (13) Section 6(1), definition of *minerals*, (d)—after "soil" insert:
or moss rocks
- (14) Section 6(1), definition of *mining*, (d)—delete paragraph (d) and substitute:
- 5 (d) operations carried out at a private mine; or
- (da) operations which are brought within the ambit of this definition by a determination of the Minister or by the regulations; or
- (db) operations for the rehabilitation of land on account of the impact of any operations under a preceding paragraph, or on account of a mine closure; or
- 10 (15) Section 6(1), definition of *mining operator*—delete the definition
- (16) Section 6(1), definition of *mining tenement*—delete the definition and substitute:
- Mining Rehabilitation Fund* or *fund* means the Mining Rehabilitation Fund established under section 62AA;
- 15 (17) Section 6(1), definition of *native title mining determination*—delete "mining operator" and substitute:
- tenement holder
- (18) Section 6(1), definition of *prescribed notice of entry*—delete the definition and substitute:
- 20 *private mine* means an area declared to be a private mine under section 19 as in force immediately before 1 September 2000;
- (19) Section 6(1), definition of *production tenement*, (c)—delete "exploratory operations" and substitute:
- exploring
- (20) Section 6(1), definition of *production tenement*—after paragraph (c) insert:
- 25 (d) an entitlement under this Act with respect to a private mine;
- (21) Section 6(1), definition of *radioactive mineral*—delete the definition
- (22) Section 6(1)—delete the definition of *relevant Act* and substitute:
- 30 *related body corporate*, in relation to a particular entity (being a body corporate), is a body corporate that is related to the entity under section 50 of the *Corporations Act 2001* of the Commonwealth;
- (23) Section 6(1)—after the definition of *River Murray Protection Area* insert:
- royalty assessment principles* means the principles set out in section 17 that apply for the purposes of assessing royalty;
- 35 *senior warden* means a warden nominated by the Attorney-General to be the senior warden of the Warden's Court;
- (24) Section 6(1)—after the definition of *surface stratum* insert:
- tenement holder*, or *holder* in relation to a mineral tenement, means—
- (a) the registered holder of a mineral tenement; or
- (b) in relation to a private mine—

- (i) in Part 2A Divisions 1 to 5 (inclusive)—a proprietor of a private mine; or
- (ii) in any other case—a person carrying out mining operations in relation to a private mine,

5 and includes—

- (c) a person who is prospecting for minerals under section 20; and
- (d) an executor, administrator or successor at law;

(25) Section 6—after subsection (1) insert:

(1a) For the purposes of this Act, exploration operations are classified—

- 10 (a) as ***low impact exploration operations***, being exploration operations—
 - (i) which are not reasonably expected to have any significant adverse impact on the environment; or
 - 15 (ii) which will reduce the impact of such operations on the environment; or
 - (iii) which are brought within the scope of low impact exploration operations by determination of the Minister or by the regulations,that do not fall within the scope of paragraph (b)(i) or (iii);
20 or
- (b) as ***advanced exploration operations***, being exploration operations—
 - (i) which involve the use of declared equipment; or
 - 25 (ii) which fall outside the scope of paragraph (a)(i) or (iii); or
 - (iii) which are brought within the scope of advanced exploration operations by determination of the Minister or by the regulations.

(26) Section 6(5)—delete "mining tenement" and substitute:

30 mineral tenement

(27) Section 6—after subsection (6) insert:

- 35 (7) A reference to a private mine in a definition in this section only has effect to the extent that the defined term is used in a provision of this Act that applies to or in relation to a private mine, or to a person carrying out operations in relation to a private mine, by virtue of the operation of section 73D.
- (8) Any determination of the Minister under this section—
 - (a) must be published in the Gazette; and
 - 40 (b) may be varied or revoked by the Minister by a subsequent notice published in the Gazette.

- (9) A provision of this Act that requires a tenement holder (or prospective tenement holder)—
- (a) to obtain the agreement or consent of an owner of land; or
 - (b) to give a notice to, or to serve a notice on, an owner of land,
- 5 will, in relation to a person who is within the ambit of paragraph (c) or (d) of the definition of *owner of land*, apply—
- (c) to the extent that the tenement holder (or prospective tenement holder) is aware of such a person; or
 - (d) to the extent that it is reasonable to expect the tenement
- 10 holder (or prospective tenement holder) to be aware of such a person.

5—Amendment of section 7—Application of Act

- (1) Section 7(2)—delete subsection (2) and substitute:

15 (2) The regulations may provide that a specified provision of this Act applies, or applies with prescribed modifications, to or in relation to land that is not mineral land.

(2a) The regulations may provide that a specified provision of this Act does not apply, or applies with prescribed modifications, to or in relation to mining operations for the recovery of extractive minerals that are authorised under another Act.

20 (2b) Royalty is payable under this Act in respect of the recovery of extractive minerals under another Act, except where the provisions of the other Act provide that royalty is not payable under this Act.

- (2) Section 7(3)—delete "mining operations" and substitute:

25 authorised operations

6—Amendment of section 8—Declaration of mineral land etc

- (1) Section 8(4)—delete "mining tenement" and substitute:

mineral tenement

- (2) Section 8(6)—delete "mining tenement" and substitute:

30 mineral tenement

- (3) Section 8—after subsection (6) insert:

35 (7) A proclamation made before 29 June 1972 cannot limit or affect, and will be taken not to have limited or affected, the exercise of the power to make a proclamation under this section on or after that date, and to the extent to which there is an inconsistency between a proclamation made on or after that date and a proclamation made before that date (including, in relation to the earlier proclamation, a proclamation that reserved specific land from the operation of the repealed Act), the later proclamation will prevail.

7—Amendment of section 8A—Opal development areas

Section 8(2)—delete "mining operations" and substitute:
authorised operations

8—Amendment of section 9—Exempt land

- 5 (1) Section 9(1)(a)(i)—delete subparagraph (i) and substitute:
- (i) as a yard or garden;
 - (ia) as a cultivated field, plantation, orchard or vineyard for commercial purposes;
- 10 (2) Section 9(1)(d)(i)—delete "400 metres" and substitute:
the prescribed distance
- (3) Section 9(1)(d)(ii)(A)—delete "of \$200 or more" and substitute:
equal to or exceeding the prescribed amount
- (4) Section 9(1)(d)(ii)(B)—after "or dam" insert:
that has some commercial value or use
- 15 (5) Section 9(1)(d)—delete "mining operations" and substitute:
authorised operations
- (6) Section 9(1)—delete "shall be exempt from mining operations" and substitute:
will be exempt from authorised operations
- 20 (7) Section 9(1)—delete "shall authorise prospecting, exploring or mining upon" and substitute:
will authorise authorised operations on
- (8) Section 9(1)—delete "does not prevent the pegging out of a claim upon such land" and substitute:
does not restrict prospecting under section 20 or establishing a claim on such
25 land or the issue of a mineral tenement (subject to gaining access under this Act)
- (9) Section 9(2)—delete "mining operations" and substitute:
authorised operations
- 30 (10) Section 9(2)—delete "the pegging out, or granting, of the claim, lease or licence" and substitute:
establishing a claim or an application for a lease or licence
- (11) Section 9(3b)—delete subsection (3b) and substitute:
- (3b) The following persons will, for the purposes of this Act, be regarded
35 as having the benefit of an exemption under this section (and subject to an order of a court under section 9AA, each person who has the benefit of an exemption must be a party to an agreement to waive the benefit before the land can cease to be exempt land):
 - (a) the owner of the exempt land;

- (b) in the case of land that is exempt from authorised 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.

5 (12) Section 9(4)—delete "mining operations" and substitute:

authorised operations

(13) Section 9(5), definition of *mining operations*—delete the definition and substitute:

Minister of Public Works means the Minister to whom the administration of the *Water Industry Act 2012* is committed;

10 **prescribed amount** means—

- (a) \$2 500; or
- (b) if a greater amount is prescribed by regulation for the purposes of this definition—that amount;

prescribed distance means—

- 15 (a) in relation to low impact exploration operations—200 metres; and
- (b) in relation to advanced exploration operations or any operations for the recovery of extractive minerals—400 metres; and
- (c) in relation to any other authorised operations—
 - 20 (i) a distance prescribed by the regulations (which may make different provision according to the circumstances or thing to which it is expressed to apply); or
 - (ii) if no distance is prescribed under subparagraph (i)—600 metres.

9—Amendment of section 9AA—Waiver of exemption (including cooling-off)

25 (1) Section 9AA(1)—delete subsection (1) and substitute:

- (1) A tenement holder may, by written notice given to an owner of land who has the benefit of an exemption under section 9, request the owner to enter into an agreement with the tenement holder to waive the benefit of the exemption.

30 (1a) If a mineral claim is registered or an application is made for a production tenement or miscellaneous purposes licence, an owner of land who has the benefit of an exemption under section 9 in respect of the land to which the claim or application relates may, by written notice given to the tenement holder, advise the tenement holder of the owner's position in relation to the waiver of the benefit of the exemption, and the conditions (if any) on which the owner may agree to waive the benefit of the exemption.

35

(2) Section 9AA(2)—after "subsection (1)" insert:

or (1a)

(3) Section 9AA(3)—after paragraph (a) insert:

(ab) may be made on such terms and conditions as the parties think fit;
and

(4) Section 9AA(4)—delete subsection (4) and substitute:

(4) An owner of land who has entered into an agreement with a tenement holder to waive the benefit of an exemption may, by giving the tenement holder written notice before the expiration of the cooling-off period of the owner's intention not to be bound by the agreement, rescind the agreement.

(5) Section 9AA(5)—delete subsection (5)

(6) Section 9AA(6)—delete "person" and substitute:

owner of land

(7) Section 9AA(7)—delete subsection (7) and substitute:

(7) If a tenement holder has been unable to reach an agreement to waive the benefit of an exemption with an owner of land, the tenement holder may apply to the appropriate court for an order waiving the benefit of the exemption for the owner.

(8) Section 9AA(8)—delete "ERD Court may refuse to determine an application unless the mining operator satisfies the Court" and substitute:

court may refuse to determine an application by a tenement holder under subsection (7) unless the tenement holder satisfies the court

(9) Section 9AA(8)(a)—delete paragraph (a) and substitute:

(a) a notice has been given under subsection (1) or (1a); and

(10) Section 9AA(8)(b)—delete "operator provided the respondent" and substitute:

tenement holder provided the owner of land

(11) Section 9AA(8)(c)—delete paragraph (c) and substitute:

(c) —

(i) in the case of a notice given to the owner of land under subsection (1)—the tenement holder has made a reasonable attempt to reach agreement with the owner of land (whether before or after notice requesting the owner to enter into an agreement was given to the owner); or

(ii) in the case of a notice given to the tenement holder under subsection (1a)—the tenement holder has made a reasonable attempt, having regard to the matters set out in the notice, to negotiate with the owner of land.

(12) Section 9AA—after subsection (8) insert:

(8a) If an application is made for a production tenement or a miscellaneous purposes licence and the relevant consultation period in relation to the application has ended, an owner of land who—

- 5 (a) has the benefit of an exemption under section 9 in respect of the land to which the application relates; and
- (b) has given notice to the tenement holder under subsection (1a),

may apply to the appropriate court for orders under subsection (9).

10 (13) Section 9AA(9)—delete subsection (9) and substitute:

(9) On an application under this section, the court may make 1 or both of the following orders:

- 15 (a) an order confirming that the owner of land is entitled to the benefit of an exemption under section 9;
- (b) if the tenement holder or owner of land satisfies the court that any adverse effects of the proposed authorised operations on the owner of land can be appropriately addressed by the imposition of conditions on the tenement holder (including the payment of compensation to the owner)—an order waiving the benefit of the exemption and imposing such conditions on a party to the proceedings as the court thinks fit (including a condition requiring the payment of compensation to the owner of land).
- 20

(14) Section 9AA(10)—delete "ERD Court" and substitute:

25 court

(15) Section 9AA(10)—delete "respondent" first occurring and substitute:

owner of land

(16) Section 9AA(10)—delete "Court" second occurring and substitute:

court

30 (17) Section 9AA(10)—delete "respondent" second occurring and substitute:

owner

(18) Section 9AA(10)(b)—delete "Court" and substitute:

court

(19) Section 9AA(11) and (12)—delete subsections (11) and (12) and substitute:

- 35 (11) If an agreement or order to waive the benefit of an exemption takes effect under this section in respect of exempt land, the land ceases to be exempt land, but the exemption revives on completion of the authorised operations in respect of which the agreement or order was made or at such earlier time as may be stipulated in that agreement or
- 40 order.

(12) An agreement or order to waive the benefit of an exemption under this section 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 mineral tenement under which authorised operations (being authorised operations in respect of which the agreement or order was made) are carried out.

(20) Section 9AA(13)—delete "the commencement of this section" and substitute:

the designated day

(21) Section 9AA(14)—delete subsection (14) and substitute:

(14) A tenement holder is liable to indemnify an owner of land—

- (a) to whom the tenement holder gives a notice under subsection (1); or
- (b) who gives the tenement holder a notice under subsection (1a); or
- (c) who makes application for orders to the appropriate court under subsection (8a) in connection with an application made for a production tenement or a miscellaneous purposes licence made by the tenement holder,

for the reasonable costs of obtaining legal assistance relating to the operation of this section up to \$2 500 or, if some other amount is prescribed by regulation, that amount.

(14a) An application under this section may be made to the Supreme Court only with the permission of the Court.

(14b) If an agreement is entered into under this section, the parties to the agreement must give notice of the agreement to the Mining Registrar for registration on the mining register.

(14c) Nothing in this section derogates from the jurisdiction of the Warden's Court under section 67 to determine whether or not land is exempted from authorised operations under section 9.

(22) Section 9AA(15), definition of *cooling-off period*—delete "mining operator" and substitute:

tenement holder

(23) Section 9AA(15)—delete the definition of *mining operations* and substitute:

designated day means a day declared by proclamation to be the designated day for the purposes of this definition;

relevant consultation period means the period for public consultation in relation to an application for a mineral tenement under section 56H(3).

10—Amendment of section 9A—Special declared areas

- (1) Section 9A(4)(a)—delete "mining tenement" and substitute:
mineral tenement
- (2) Section 9A(4)(b)—delete "mining tenement" and substitute:
5 mineral tenement
- (3) Section 9A(4)(b)—delete "(including a subsequent exploration licence that arises from an exploration licence in force at the time that the notice takes effect)"
- (4) Section 9A(4)(c)—delete "holder of the tenement" and substitute:
tenement holder
- 10 (5) Section 9A(4)(c)—delete "mining tenement" and substitute:
mineral tenement
- (6) Section 9A(4)—delete "apply for a mining tenement" and substitute:
apply for a mineral tenement
- (7) Section 9A(6)(a)—delete "mining tenements" and substitute:
15 mineral tenements
- (8) Section 9A(7)(b)(i)—delete "mining tenement" and substitute:
mineral tenement

11—Repeal of section 10A

Section 10A—delete the section

20 12—Amendment of section 10B—Interaction with other legislation

Section 10B—after paragraph (d) insert:

- (e) the code of management of wilderness protection areas and wilderness protection zones under the *Wilderness Protection Act 1992*.

25 13—Amendment of section 12—Delegation

- (1) Section 12(1)—delete subsection (1) and substitute:
- (1) The Minister may delegate any power or function vested in or conferred on the Minister—
- (a) under this Act; or
- 30 (b) under any other Act prescribed by the regulations for the purposes of this subsection.
- (2) Section 12(2)—delete subsection (2) and substitute:
- (2) The Director of Mines may delegate any power or function vested in or conferred on the Director of Mines—
- 35 (a) under this Act; or
- (b) under any other Act.

(2a) If the terms of an instrument of delegation allow for subdelegation, the delegate may subdelegate the power or function in accordance with the instrument (and a reference in this section to a delegation will then extend to any such subdelegation).

5 (3) Section 12(3)(b)—delete paragraph (b) and substitute:

(b) may be made—

(i) to a specified person or body; or

(ii) to a person for the time being holding or acting in a specified office or position; and

10 **14—Amendment of section 13—Mining registrars and other staff**

Section 13(4)—delete subsection (4) and substitute:

(3a) If the terms of an instrument of delegation allow for subdelegation, the delegate may subdelegate the power or function in accordance with the instrument (and a reference in this section to a delegation will then extend to any such subdelegation).

(4) A delegation under this section—

(a) may be absolute or conditional; and

(b) may be made—

(i) to a specified person; or

(ii) to a person for the time being holding or acting in a specified 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.

25 **15—Amendment of section 14B—Authorised investigations**

(1) Section 14B(c)—delete "mining operations" and substitute:

authorised operations

(2) Section 14B(d)—delete "mining operations" and substitute:

authorised operations

30 (3) Section 14B—after paragraph (e) insert:

(f) to undertake any inquiry relevant to the administration or enforcement of this Act; or

(g) without limiting a preceding paragraph, to inspect any authorised operations which are creating, or are likely to create, a nuisance, or are damaging, or are likely to damage, property.

35

16—Amendment of section 14C—Powers of entry and inspection

(1) Section 14C(1)(a) and (b)—delete paragraphs (a) and (b) and substitute:

(a) enter, search, inspect and examine any premises, land or vehicle that has been or is intended to be, used for, or in connection with, any operations or activity regulated by this Act and, where necessary for the purpose, break into or open a part of, or anything in, the premises, land or vehicle; or

(b) inspect or examine anything; or

(2) Section 14C(1)(f)—delete "take and remove" and substitute:

seize and retain

(3) Section 14C—after subsection (3) insert:

(4) An authorised officer may only exercise a power under subsection (1)(a) in respect of premises on the authority of a warrant issued by a magistrate (including as a warden) or justice.

(5) A warrant may not be issued unless the magistrate, warden or justice (as the case may be) is satisfied that the warrant is reasonably required in the circumstances.

(6) An application for the issue of a warrant—

(a) may be made either personally or by telephone; and

(b) must be made in accordance with any procedures prescribed by the regulations.

17—Amendment of section 14D—Power to gather information

(1) Section 14D(2)—delete "this section" and substitute:

subsection (1)

(2) Section 14D(4)—delete "A person" and substitute:

A natural person

(3) Section 14D—after subsection (4) insert:

(5) An authorised officer may require a person who the authorised officer reasonably suspects has committed, is committing or is about to commit, a contravention of this Act to state the person's full name and usual place of residence and to produce evidence of the person's identity.

(6) A person of whom a requirement is made under subsection (5) must comply with the requirement.

Maximum penalty: \$5 000.

18—Amendment of section 14E—Production of records

(1) Section 14E(1)—delete "mining operations" and substitute:

authorised operations

(2) Section 14E(3)—delete subsection (3) and substitute:

(3) An authorised officer may—

- (a) retain records produced under this section for the purpose of making copies of them; or
- (b) if the authorised officer suspects that the records may be evidence of noncompliance with this Act, seize and retain records produced under this section.

19—Insertion of sections 14G and 14H

After section 14F insert:

14G—Power to give expiation notices

An authorised officer is authorised to give expiation notices for alleged offences which are expiable under this Act.

14H—Provisions relating to things seized

(1) If a thing is seized under this Part, the following provisions apply:

- (a) the thing seized must be held pending proceedings for an offence against this Act relating to the thing seized, unless the Minister, on application, authorises its release to the person from whom it was seized or a person who had legal title to it at the time of seizure, subject to such conditions as the Minister thinks fit (including conditions as to the giving of security for satisfaction of an order under paragraph (b)(ii));
- (b) if proceedings for an offence against this Act related to the thing seized are commenced within the prescribed period after its seizure and the defendant is found guilty of the offence, the court must consider the question of forfeiture and—
 - (i) order that it be forfeited to the Crown; or
 - (ii) if it has been released under paragraph (a), order that it be forfeited to the Crown or order that the person to whom it was released pay to the Minister an amount equal to its market value at the time of its seizure, as the court thinks fit; or
 - (iii) make no order for forfeiture;
- (c) if proceedings for an offence against this Act related to the thing seized—
 - (i) are not commenced within the prescribed period after its seizure; or
 - (ii) are commenced within the prescribed period after its seizure and the defendant is found not guilty of the offence; or

- (iii) are commenced within the prescribed period after its seizure and the defendant is found guilty of the offence but no order for forfeiture is made under paragraph (b),

5 the person from whom the thing was seized or a person who had legal title to it at the time of its seizure is entitled to recover, by action in a court of competent jurisdiction, the thing itself or, if it has deteriorated or been destroyed, compensation of an amount equal to its market value at the
10 time of its seizure.

- (2) In this section—
prescribed period means 12 months or such longer period as the court may, on application by the Minister, allow.

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

- 15 (1) Section 15(3), penalty provision—delete the penalty provision and substitute:
Maximum penalty: \$20 000 or imprisonment for 6 months.
- (2) Section 15(7)—delete "mining tenement" and substitute
mineral tenement

21—Repeal of section 15A

20 Section 15A—delete the section

22—Insertion of Part 2A

After Part 2 insert:

Part 2A—Mining register and information

Division 1—Mining register

15AA—The register

- 25 (1) The Mining Registrar will keep a register (the *mining register*).
- (2) The register will be a register of—
- (a) any mineral tenement granted under this Act; and
- 30 (b) the terms and conditions of any mineral tenement granted under this Act; and
- (c) instruments of transfer with respect to any mineral tenement registered under this Act; and
- (d) any mortgage registered under Division 2; and
- (e) any caveat registered under Division 3; and
- 35 (f) instruments, agreements, determinations and dealings required to be registered under any other provision of this Act; and

- 5
- (g) determinations and dealings required to be lodged with the Mining Registrar under any other provision of this Act (or which have effect on registration under this Act); and
- (h) the commencement and completion of proceedings before the Warden's Court under this Act; and
- (i) decisions, determinations and orders of the Warden's Court under this Act; and
- (j) anything registered under Division 4; and
- 10 (k) any cancellation, suspension or surrender relating to a mineral tenement under this Act; and
- (l) any other interest, instrument, approval, agreement, determination, statement, notice, order, direction, bond, penalty or other document or dealing required to be registered by or under the regulations.
- 15 (3) The register will also contain such information as the Mining Registrar thinks fit.
- (4) The register will be kept in such forms as the Mining Registrar thinks fit (including in an electronic form).
- (5) The Mining Registrar may establish requirements as to—
- 20 (a) the form of any instrument or document that is to be registered on the register; and
- (b) the use of electronic files, including as to their formats; and
- (c) the provision and certification of any instrument, document or information, or as to any other matter; and
- 25 (d) the recording, management, preservation, storage, archiving and (if appropriate) disposals of any instrument, document or material.
- (6) Without limiting any other provision, the Mining Registrar may amend the register—
- 30 (a) in order to ensure that the register is kept up to date; or
- (b) in order to ensure that the register meets standards determined to be appropriate by the Mining Registrar.
- (7) The Mining Registrar may delay the registration of any instrument, document or dealing for such period as the Mining Registrar considers appropriate in a particular case.
- 35 (8) The Registrar who is responsible for the Warden's Court registry must, after consultation with the Mining Registrar, ensure that there is a scheme in place to ensure that information relating to the proceedings, decisions, determinations and orders of the Warden's Court that are relevant to the operation of the register is provided to
- 40 the Mining Registrar for the purposes of this section.

- (9) A tenement holder or other person who is required—
- (a) to serve a notice on the Mining Registrar; or
 - (b) to provide or give a notice to the Mining Registrar; or
 - (c) to provide or give an agreement to the Mining Registrar,
- 5 must not fail to comply with that requirement—
- (d) in accordance with any relevant provision of this Act; or
 - (e) in accordance with the regulations; or
 - (f) to the extent that paragraph (d) or (e) does not
- 10 apply—within a reasonable time.

Maximum penalty: \$5 000.

- (10) Subsection (9) does not apply to—
- (a) the Minister; or
 - (b) the Registrar who is responsible for the Warden's Court registry; or
 - 15 (c) a person prescribed by the regulations for the purposes of this subsection.

15AB—Dealings with mineral tenements

- (1) This section does not apply to or in relation to an interest if the interest is not a legal or proprietary interest in a mineral tenement.
- 20 (2) A mineral tenement, or an interest in a mineral tenement, must not be transferred, assigned, sublet or be held subject to a trust, whether directly or indirectly, without the consent of the Minister.
- (3) A dealing to which subsection (2) applies has no effect unless or until it is—
- 25 (a) consented to by the Minister; and
- (b) registered on the register under this Part.
- (4) An application for the consent of the Minister under this section—
- (a) must be made in a manner and form determined by the Minister after consultation with the Mining Registrar; and
- 30 (b) must be accompanied by the prescribed fee.
- (5) The Minister may, in connection with an application for consent, require the parties to furnish the Minister with any information specified by the Minister.
- 35 (6) An application for the registration of an instrument giving effect to or recording a dealing under this section must be made in a manner and form determined by the Mining Registrar.

Division 2—Mortgages

15AC—Mortgages

- (1) In this section—
mortgage includes any form of charge.
- 5 (2) A party to a mortgage over a mineral tenement may apply to the Mining Registrar to have the mortgage registered under this section.
- (3) An application for the registration of a mortgage—
- (a) must be made in a manner and form determined by the Mining Registrar; and
- 10 (b) must be accompanied by the prescribed fee.
- (4) The Mining Registrar may, in connection with an application for registration, require the applicant to furnish the Mining Registrar with any information specified by the Mining Registrar.
- (5) A mortgage may be created with respect to a particular interest of a tenement holder in the mineral tenement (being an interest that may be constituted as a share in a mineral tenement (including a share expressed as a percentage), or an interest as a tenant in common, or any other interest recognised at law).
- 15 (6) The registration of a mortgage under this Part—
- (a) does not give the mortgage (or the interest secured by the mortgage) priority over other interests; and
- (b) does not confer any additional status with respect to a power of enforcement.
- 20 (7) However, if a mortgage is registered in relation to a mineral tenement with the consent of the tenement holder (or tenement holders), the Mining Registrar must not proceed to register a transfer of the mineral tenement, or an interest in the mineral tenement, under Division 1 after the registration of the mortgage unless—
- 25 (a) the instrument giving effect to the transfer was received by the Mining Registrar before the registration of the mortgage; or
- 30 (b) the transfer is expressed to be subject to the mortgage; or
- (c) the mortgagee (or mortgagees) consent to the registration of the transfer; or
- 35 (d) the transfer is required by an order of a court or tribunal constituted by law; or
- (e) the mortgage is discharged before the registration of the transfer; or
- 40 (f) the Mining Registrar is acting in any circumstance prescribed by the regulations.

(8) Furthermore, if a mortgage is registered in relation to a mineral tenement with the consent of the tenement holder (or tenement holders), the mineral tenement may not be surrendered under this Act unless—

- (a) the mortgagee (or mortgagees) consent to the surrender; or
- (b) the mortgage is discharged before the surrender; or
- (c) the surrender is by operation of section 30AAA, 30A or 33B; or
- (d) the surrender is happening in any circumstance prescribed by the regulations.

(9) A mortgage registered under this section may be discharged in accordance with procedures determined by the Mining Registrar.

(10) A discharge under subsection (9) may only be made—

- (a) on application made by the mortgagee; or
- (b) on application made with the consent of the mortgagee.

(11) The Mining Registrar must discharge, or partially discharge, a mortgage if the discharge is required by an order of a court or tribunal constituted by law.

(12) An application for the discharge of a mortgage—

- (a) must be in a form determined by the Mining Registrar; and
- (b) must be accompanied by the prescribed fee.

15AD—Application to court to challenge aspects of mortgages

(1) A person who—

- (a) has an interest in a mineral tenement subject to a mortgage registered under this Division; or
- (b) has an interest that is directly affected by a mortgage registered under this Division,

may apply to the appropriate court under this section.

(2) An application may be made for 1 or more of the following:

- (a) a declaration that a registered mortgage is defective, invalid or unenforceable, on a ground specified in the application;
- (b) an order that a transfer of a mineral tenement, or of an interest in a mineral tenement, be registered despite the mortgage;
- (c) an order that a registered mortgage be discharged or partially discharged;
- (d) an order that the mortgagee (or purported mortgagee) pay compensation for any loss or damage suffered because of the registration of a mortgage under this Division, or an amount for or towards any such loss or damage.

- (3) Any compensation payable under an order under subsection (2)(d) may be recovered as if it were a debt due to the person in whose favour the order is made in a court of competent jurisdiction.
- (4) This section does not limit any other jurisdiction or power of a court.

5 **Division 3—Caveats**

15AE—Caveats

- (1) A person (a *caveator*) who has, or who is claiming, an interest in a mineral tenement may apply to the Mining Registrar to have a caveat registered under this Division.
- 10 (2) An application for the registration of a caveat must be in a form determined by the Mining Registrar.
- (3) A caveat under subsection (1) may—
 - 15 (a) forbid the registration of any transfer, mortgage or voluntary surrender affecting a specified interest in the mineral tenement (an *absolute caveat*); or
 - (b) forbid the registration of any transfer, mortgage or voluntary surrender affecting the mineral tenement unless the transfer, mortgage or surrender (as the case may be) expressly states that it is to be subject to the interest claimed by the caveator (a *claim caveat*).
- 20 (4) However, if a caveat is being registered without the express consent of the tenement holder for the mineral tenement to which the caveat relates—
 - 25 (a) if the caveator is a person who has entered into an agreement with, or is a party to an agreement with, the tenement holder—
 - 30 (i) the agreement must relate to—
 - (A) the sale or transfer (or both) of the tenement holder's interest in the relevant mineral tenement; or
 - (B) any other matter connected with the tenement holder's interest in the relevant mineral tenement; and
 - 35 (ii) the agreement must provide for the registration of a caveat under this Division; and
 - (iii) a copy of the agreement must accompany the application under subsection (2); or
 - (b) in any other case—the caveator must provide such information as the Mining Registrar may require regarding the nature of the interest.

- 5
- (5) A caveat may—
- (a) set out a date of expiry (if any); or
 - (b) set out that the caveat will expire—
 - (i) on a specified transfer or mortgage of an interest in the mineral tenement; or
 - (ii) at the end of a specified period.
- 10
- (6) In connection with the preceding subsections, an application for the registration of a caveat—
- (a) must be accompanied by—
 - (i) the prescribed fee; and
 - (ii) such other documents or information as the Mining Registrar may require; and
 - (b) if the caveat is being registered without the express consent of the tenement holder for the mineral tenement to which the caveat relates—must include a statutory declaration as to the truthfulness and accuracy of any matter specified by the caveator in the application.
- 15
- (7) The Mining Registrar does not have, on the receipt of an application to register a caveat, any duty to determine whether or not—
- (a) the caveat relates to a valid caveatable interest; or
 - (b) a caveatable interest has been sufficiently described; or
 - (c) there is sufficient evidence to support the caveat; or
 - (d) any matter specified in the application is true and accurate.
- 20
- (8) The registration of a caveat does not warrant the validity of any interest claimed in the caveat.
- 25
- (9) On the registration of a caveat under this section, a notice of the registration of the caveat must be sent by the Mining Registrar to any tenement holder whose interests are affected by the caveat, other than where the tenement holder is also the caveator.
- 30
- (10) A caveat registered under this Division—
- (a) does not affect or prevent the renewal of a mineral tenement; and
 - (b) does not lapse on the renewal of a mineral tenement (while the caveat is registered); and
 - (c) does not affect or prevent any dealing with the mineral tenement (or any interest in the mineral tenement) that is required by an order of a court or tribunal constituted by law.
- 35

- (11) A caveat registered under this Division will lapse on—
- (a) any order of the Warden's Court providing for the lapsing of the caveat; or
 - (b) the withdrawal of the caveat by the caveator; or
 - (c) the expiry of the caveat as contemplated by subsection (5).

(12) If—

- (a) a caveat is registered in respect of a mineral tenement; and
- (b) the caveat lapses,

the caveator or any related body corporate may not apply to register a second or subsequent caveat relating to the same interest in the mineral tenement to which the original caveat related without the approval of the Warden's Court, or unless that second or subsequent caveat is being registered with the express consent of the tenement holder for the mineral tenement to which the caveat relates.

15AF—Application to Warden's Court to lapse caveat or obtain compensation

(1) A person who—

- (a) has an interest in a mineral tenement subject to a caveat registered under this Division; or
- (b) has an interest that is directly affected by a caveat registered under this Division,

may apply to the Warden's Court under this section.

(2) An application may be made for 1 or more of the following:

- (a) a declaration that an interest claimed by the caveator is not a valid caveatable interest;
- (b) an order that a caveat lapse;
- (c) an order that a transfer, mortgage or surrender relating to a mineral tenement be registered despite the registration of a caveat under this Division;
- (d) an order that a caveator pay compensation for any loss or damage suffered because a caveat registered under this Division does not relate to a valid caveatable interest, or an amount for or towards any such loss or damage.

(3) Any compensation payable under an order under subsection (2)(d) may be recovered as if it were a debt due to the person in whose favour the order is made in a court of competent jurisdiction.

(4) This section does not limit any other jurisdiction or power of the Warden's Court in relation to caveats under this Division.

Division 4—Other dealings

15AG—Other dealings

- 5 (1) Subject to subsections (2) and (3), a tenement holder may apply to the Mining Registrar for the registration on the mining register of any agreement, memorandum, arrangement, instrument or other document or dealing that relates to—
- (a) the relevant mineral tenement, or an interest in the mineral tenement; or
- 10 (b) authorised operations carried out, or to be carried out, on the relevant mineral tenement,
- (a *registrable dealing*).
- (2) A registrable dealing does not include any agreement, memorandum, arrangement, instrument or other document or dealing—
- 15 (a) that does not satisfy any criteria determined by the Mining Registrar for the purposes of this section; or
- (b) that falls within a class excluded by the Mining Registrar from the operation of this section.
- (3) If a tenement holder enters into a registrable dealing under which another person is to carry out authorised operations in relation to the mineral tenement, the tenement holder—
- 20 (a) must, within 14 days after entering into the registrable dealing—
- (i) inform the Minister of the registrable dealing in a manner and form determined by the Minister; and
- 25 (ii) apply to the Mining Registrar to register the registrable dealing under this section; and
- (b) must, within 14 days after the person ceases to be responsible for carrying out those authorised operations—
- (i) inform the Minister of the matter in a manner and form determined by the Minister; and
- 30 (ii) apply to the Mining Registrar to register the cessation under this section.
- Maximum penalty: \$5 000.
- (4) A registrable dealing must comply with any relevant requirement of the Mining Registrar as to the form of any instrument or document that is to be registered on the register.
- 35 (5) An application to register a registrable dealing under this section—
- (a) must be made in a manner and form determined by the Mining Registrar; and
- 40 (b) must be accompanied by the prescribed fee.

Division 5—Protection from liability

15AH—Protection from liability

- 5
- (1) No act or omission undertaken or made by the Mining Registrar, or by any person acting on behalf of the Mining Registrar, in connection with the administration of the mining register, or the registration of any interest, instrument, agreement, statement, notice, order, direction, bond, penalty or other document or dealing on the mining register, subjects the Mining Registrar, or any person acting on behalf of the Mining Registrar, or the Minister, the Director of Mines or the Crown, to any liability.
- 10
- (2) Without limiting subsection (1), the registration of any interest, instrument, agreement, statement, notice, order, direction, bond, penalty or other document or dealing on the mining register—
- 15
- (a) does not give rise to any right of action against the Mining Registrar, or any person acting on behalf of the Mining Registrar, or against the Minister, the Director of Mines or the Crown (unless the proceedings are for judicial review on the ground of jurisdictional error); and
- 20
- (b) does not validate any instrument or dealing or provide any warranty as to the validity of any instrument or dealing.

Division 6—Information

15AI—Interpretation

- (1) In this Division—

designated material in relation to a mineral tenement means—

- 25
- (a) records of surveys and other operations carried out under, or for the purposes of, the mineral tenement; and
- (b) geological samples (including drill samples) and logs; and
- (c) records that evidence the quantity and value of minerals recovered from land comprised in the tenement that are liable to the payment of royalty under this Act; and
- 30
- (d) information and material prescribed by the regulations (including information that relates to a transaction); and
- (e) information and material specified by the Director from time to time in accordance with subsection (2) (either generally or in relation to a specified mineral tenement or class of mineral tenement);
- 35

designated person means—

- (a) the Minister; and
- (b) the Director of Mines; and
- 40
- (c) the Mining Registrar and other mining registrars; and

- (d) an authorised officer; and
- (e) any person acting under the authority of a person referred to in a preceding paragraph; and
- (f) any other person brought within the ambit of this definition by the regulations;

prescribed material means any document, instrument, report, information, samples or other material—

- (a) created under this Act; or
 - (b) provided to a designated person under this Act, or otherwise obtained by a designated person under this Act.
- (2) The Director may specify information or material as designated material—
- (a) by notice in the Gazette; or
 - (b) in the case of a notice that relates to a specified mineral tenement—by notice served on the tenement holder in the manner prescribed by the regulations.
- (3) The Director may vary or revoke a notice under subsection (2) by a further notice of a similar kind.

15AJ—Compilation, keeping and provision of material

- (1) A tenement holder must compile or create designated material relating to the tenement in accordance with any requirements prescribed by the regulations.
Administrative penalty.
- (2) A tenement holder must keep all designated material—
- (a) in a form prescribed by the regulations or approved by the Director; and
 - (b) in a place that complies with any requirements prescribed by the regulations or that is approved by the Director; and
 - (c) for a period prescribed by the regulations or approved by the Director.
- Administrative penalty.
- (3) A tenement holder must, as required by the regulations, provide to the Director any designated material of a prescribed kind.
Administrative penalty.
- (4) A tenement holder must, at the request of the Director or a person acting under the written authority of the Director, produce, at the place specified by the Director or the person acting under that written authority, any specified designated material or designated material of a specified kind.
Administrative penalty.

(5) Any designated material provided or produced under subsection (3) or (4) must comply with any requirements—

- (a) prescribed by the regulations; or
- (b) specified by the Director in the manner prescribed by the regulations.

Administrative penalty.

(6) In the case of any designated material provided or produced to the Director or another person under this section, the Director or other person may—

- (a) take extracts from, or copies of, the designated material; or
- (b) retain the designated material.

15AK—Tests

(1) A tenement holder must, at the request of the Director or a person acting under the written authority of the Director, permit a person nominated in the request to make tests, and take samples of minerals, in relation to or from land comprised in the mineral tenement.

Administrative penalty.

(2) The Director may retain any material produced or taken under subsection (1).

15AL—Release of material

(1) Subject to this section, the Minister or the Director may, in such manner as the Minister or the Director thinks fit, release any prescribed material.

(2) The Minister or the Director must not release prescribed material that relates to a private mine.

(3) Subsection (1) does not authorise the release of any prescribed material if—

- (a) the release would be contrary to any other Act or law; or
- (b) the release would be in breach of an order of a court or tribunal constituted by law; or
- (c) the release would involve the disclosure of a trade secret; or
- (d) the release would be contrary to any requirement or restriction prescribed by the regulations.

(4) The Minister or Director may release any prescribed material under this section—

- (a) in such manner as the Minister or Director thinks fit; and
- (b) subject to such conditions as the Minister or Director thinks fit.

- (5) A person who contravenes or fails to comply with a condition under subsection (4)(b) is guilty of an offence.

Maximum penalty: \$120 000.

- (6) Subsections (1), (2) and (3) do not—

- 5 (a) limit the ability of the Mining Registrar to publish or
release, or to allow access to, any instrument, document or
other item or material registered on the mining register; or
10 (b) limit the operation of any other section that provides for
publication or release of any instrument, document or other
item of material.

- (7) No action lies against the Minister or the Director in respect of the contents of any prescribed material released under this section (including where the release amounts to the publication of any material).

15 **23—Amendment of section 17—Royalty**

- (1) Section 17(1)—delete subsection (1) and substitute:

- (1) Subject to this Act, royalty is payable to the Crown on all minerals recovered from mineral land.

- 20 (1a) Royalty is not payable on extractive minerals recovered from mineral land—

- (a) where the terms and conditions of the mineral tenement—

- 25 (i) make specific provision for the management and
use of the extractive minerals as extractive minerals
produced during the course of carrying out
authorised operations under the tenement; and
 (ii) make specific provision for the exemption of the
extractive minerals from the payment of royalty; or

- (b) by the owner of the land under section 75(2).

- (2) Section 17(4) to (6)—delete subsections (4) to (6) (inclusive) and substitute:

- 30 (4) Subject to this or any other relevant section, royalty will be equivalent to—

- (a) in the case of extractive minerals—55 cents per tonne, or such lesser amount as may be prescribed by the regulations;
or

- 35 (b) in the case of minerals other than extractive minerals—

- 40 (i) if the minerals are declared mineral ores or
concentrates—5% of the value of the minerals, as
assessed in accordance with this section;
 (ii) if the minerals are declared refined mineral
products—3.5% of the value of the refined mineral
products, as assessed in accordance with this
section;

(iii) if the minerals are declared industrial minerals or construction materials—3.5% of the value of the minerals, as assessed in accordance with this section;

5 (iv) in any other case—5% of the value of the minerals, as assessed in accordance with this section.

(5) If minerals are sold pursuant to a contract with a genuine purchaser at arms length, the market value (excluding GST) of the minerals, for the purposes of determining royalty, will be the contract price
10 obtained for the minerals on the day that ownership of the minerals is transferred to the purchaser.

(6) If subsection (5) does not apply to the sale of minerals because there is no contract with a genuine purchaser at arms length, the following provisions apply:

15 (a) the value of the minerals for the purposes of determining royalty will be the value that represents the market value (excluding GST) of the minerals on the day on which—

(i) the minerals—

20 (A) leave the mineral tenement from which the minerals were recovered; or

(B) are used on the tenement; or

(ii) if the minerals have been transported to mineral land the subject of a miscellaneous purposes licence—the minerals leave that mineral land or are
25 used on that mineral land,

whichever occurs later;

(b) the market value of the minerals will be determined according to—

30 (i) any price quoted or obtained on a market recognised by the Treasurer, after consultation with the Minister, by notice in the Gazette as being a relevant industry market for the purposes of determining the market value of minerals of that kind; or

35 (ii) if subparagraph (i) does not apply—

(A) the price (if any) declared by the Treasurer, after consultation with the Minister, by notice in the Gazette as being an indicative price for the minerals; or

40 (B) the method (if any) declared by the Treasurer, after consultation with the Minister, by notice in the Gazette that is to be used for determining an indicative price for the minerals; or

(iii) if subparagraphs (i) and (ii) do not apply—

(A) any price obtained in relation to sales of minerals of the same kind where those sales were to genuine purchasers at arms length within the same period for which a return is required to be furnished under section 17CA; or

(B) if no relevant transactions have occurred in that period—any price obtained by other parties within the industry in relation to sales of minerals of the same kind on the open market within the same period for which a return is required to be furnished under section 17CA; or

(iv) if subparagraphs (i), (ii) and (iii) do not apply—the tenement holder's estimate of the reasonable value of the minerals (to be determined in accordance with any requirements, and accompanied by any information, prescribed by the regulations).

(3) Section 17(7)—delete "subsection (6)(a)" and substitute:
subsection (5)

(4) Section 17(8)—delete subsection (8) and substitute:

(8) Costs of a prescribed kind incurred before minerals leave—

(a) the mineral 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,

are not to be included for the purposes of determining the market value of those minerals.

(8a) Costs of a prescribed kind incurred after minerals leave—

(a) the mineral 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,

are not to be included for the purposes of determining the market value of those minerals.

(5) Section 17(9)—delete "some other basis" and substitute:

will be payable at some other price or according to some other method

(6) Section 17(10)—delete "mining operations" and substitute:

authorised operations

- (7) Section 17(12)—delete "holder of a tenement" and substitute:
tenement holder for the tenement

24—Amendment of section 17A—Reduced royalty for new mines

- (1) Section 17A—delete "mining operations" wherever occurring and substitute in each case:
authorised operations
- (2) Section 17A(6)(c)—delete "within the meaning of section 50 of the *Corporations Act 2001* of the Commonwealth"

25—Insertion of sections 17AB and 17AC

After section 17A insert:

17AB—Royalty for private mines

- (1) Subject to and in accordance with the provisions of this Act, royalty in respect of minerals recovered from private mines is payable as follows:
- (a) in the case of a private mine in relation to which a relevant event has occurred—royalty is payable on—
- (i) extractive minerals recovered from the private mine; and
- (ii) any other minerals recovered from the private mine on or after the day on which the relevant event occurred;
- (b) in any other case—royalty is payable on extractive minerals recovered from the private mine, but is not payable on any other minerals so recovered.
- (2) For the purposes of subsection (1), a *relevant event* occurs if, on or after 19 June 2014, there is (or has been) a change in—
- (a) the proprietor of the private mine; or
- (b) the whole or any part of the right to carry out authorised operations at the private mine.
- (3) A reference in subsection (2)(a) to a change in the proprietor of a private mine includes a change in a person lawfully claiming under the proprietor whether the claim is of a legal or equitable kind.
- (4) If a private mine has 2 or more proprietors, a change in any of those proprietors will be taken to be a relevant event for the purposes of subsection (2)(a).

- (5) Without limiting any other provision, the following will be taken to be relevant events for the purposes of subsection (2)(a):
- (a) the creation, transfer, assignment, sale or disposal of an interest in proprietary rights in minerals recovered from a private mine under a contract or other instrument or agreement;
 - (b) an event, transaction or acquisition that would give rise to liability to pay duty under Part 3 Division 6 or 8 or Part 4 of the *Stamp Duties Act 1923*, disregarding any exemptions from such duty applying under that Act;
 - (c) without limiting paragraph (b), the acquisition of a controlling interest in a business that—
 - (i) is the proprietor of the private mine; or
 - (ii) holds the whole or any part of the right to carry out authorised operations at the private mine.
- (6) For the purposes of subsection (5)(c)—
- (a) **business** includes bodies and associations (corporate and incorporated) and partnerships; and
 - (b) a person has a **controlling interest in a business** if the person would be treated as having a controlling interest in the business for the purposes of section 72 of the *Payroll Tax Act 2009* (disregarding section 72(1)).
- (7) Subject to subsection (8), the proprietor of a private mine is liable for royalty payable under this section.
- (8) If—
- (a) a person other than the proprietor is carrying out authorised operations at a private mine; and
 - (b) the proprietor gives notice to the Minister, in a manner and form determined by the Minister, under this section,
- the person carrying out the authorised operations (rather than the proprietor) is liable for royalty under this section.
- (9) If—
- (a) the proprietor of a private mine has given a notice to the Minister under subsection (8); and
 - (b) the person carrying out authorised 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.

17AC—Notification of relevant event

- (1) If a relevant event within the meaning of section 17AB occurs, the person who, as a result of the relevant event, becomes a proprietor of a private mine or acquires a right to carry out authorised operations at a private mine (as the case may be) must, within 30 days after the relevant event, notify the Minister of the relevant event.

Maximum penalty: \$20 000.

- (2) The notification of the relevant event—
 - (a) must be made in a manner and form determined by the Minister; and
 - (b) must be accompanied by such information as may be prescribed by the regulations.

26—Substitution of section 17B

Section 17B—delete the section and substitute:

17B—Assessments by Treasurer

- (1) If—
 - (a) the Treasurer is of the opinion that a person liable to pay royalty—
 - (i) has not made a payment of royalty when it falls due; or
 - (ii) has not paid royalty in accordance with the royalty assessment principles (and any related provision under this Act); or
 - (iii) has not paid royalty in accordance with any agreement or determination that applies under section 17 or 17A; or
 - (iv) has not paid royalty in accordance with any other relevant requirement; or
 - (b) the market value of minerals has been determined, for the purposes of assessing royalty, according to a tenement holder's estimate of the reasonable value of the minerals under section 17(6)(b)(iv) and the Treasurer does not agree with the estimate; or
 - (c) a person makes a default in furnishing a return; or
 - (d) the Treasurer is not satisfied with a return furnished by a person; or
 - (e) the Treasurer has reason to believe—
 - (i) that royalty is payable by a person who has not furnished a return; or

- (ii) that a person who has furnished a return has made an overpayment of royalty,

the Treasurer may, after consultation with the Minister, make an assessment of royalty the person is liable to pay.

- 5 (2) Without limiting subsection (1), the Treasurer may, after consultation with the Minister, on application or on the Treasurer's own initiative, review and revise an earlier assessment of royalty (and the revision will then be taken to be a new assessment for the purposes of this Act).
- 10 (3) For the purposes of making an assessment under subsection (1) or (2), the Treasurer may estimate the amount of royalty payable by a person and may base the estimate on any matter the Treasurer considers relevant.
- 15 (4) The Treasurer must cause a copy of an assessment under this section to be served on the person liable to pay the royalty or to whom a refund is payable.
- (5) If, as a result of the Treasurer's assessment, a lower amount of royalty is payable for the relevant return period or periods, the Treasurer must—
- 20 (a) refund the amount of the excess to the person; or
- (b) set off the amount against a future liability to make payments of royalty under this Act.
- (6) 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
- 25 ERD Court.
- (7) On the hearing of an appeal, the ERD Court may, if satisfied on the basis of evidence provided by the appellant that the assessment of the Treasurer is incorrect, vary the assessment of the Treasurer to such extent as it thinks fit.

30 **27—Insertion of section 17CA**

After section 17C insert:

17CA—Returns

- 35 (1) A tenement holder 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.
- (2) A return under subsection (1) must contain the information required by the Director of Mines relating to the conduct of authorised operations, the minerals recovered in the course of those operations (including, but not limited to, minerals intended for sale or utilised in
- 40 some way by the tenement holder) 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.

- 5 (3) If a mineral tenement is cancelled, suspended, transferred or forfeited, the tenement holder at the time of cancellation, suspension, transfer or forfeiture 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
10 containing the information required by the regulations.
- (4) If a mineral tenement is due to expire, the tenement holder must, on or before the date of expiry, 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.
- 15 (5) If a tenement holder has applied for an approval to surrender the mineral tenement, the tenement holder must comply with any prescribed requirements as to the furnishing of a final return to the Director of Mines.
- (6) A return under this section must be accompanied by any information, samples or other material required by the Director of Mines.
- 20 (7) The Director of Mines may, on application or on the Director's own initiative, extend the date or time by which or within which a return must be furnished under this section.
- (8) A person who fails to comply with this section is guilty of an offence.
25 Maximum penalty: \$120 000.
- (9) The regulations may exempt a person, or a class of persons, from a requirement of this section.
- (10) An exemption—
30 (a) may be granted absolutely or on conditions; and
(b) remains in force for the period specified in the regulations.

28—Amendment of section 17D—When royalty falls due (general principles)

- (1) Section 17D(1)(a)—delete "in respect of minerals with an ex-mine gate value calculated" and substitute:

35 if the day on which a determination of the value of the minerals is made for the purposes of assessing royalty falls

- (2) Section 17D(1)(b)—delete "with an ex-mine gate value calculated" and substitute:

if the day on which a determination of the value of the minerals is made for the purposes of assessing royalty falls

- 40 (3) Section 17D(1)—delete "may," second occurring

(4) Section 17D(1a)—delete "designated mining operator" and substitute:
designated tenement holder

(5) Section 17D(2)—delete "mining tenement or private mine" and substitute:
mineral tenement

5 (6) Section 17D(2)(a)—delete paragraph (a) and substitute:

(a) in the case of a mineral tenement other than a private mine—

(i) when the mineral tenement is being transferred, surrendered
or forfeited; or

(ii) when the mineral tenement is suspended or cancelled; or

10 (iii) when the mineral tenement expires; or

(7) Section 17D(4)—delete subsection (4)

29—Amendment of section 17DA—Special principles relating to designated tenement holders

15 (1) Section 17DA(1), definition of *designated mining operator*—delete the definition and
substitute:

designated tenement holder—see subsection (2);

(2) Section 17DA(2)—delete subsection (2) and substitute:

20 (2) A designated tenement holder is a tenement holder who, in relation
to a particular financial year (the *relevant financial year*), is
designated by the Treasurer, after consultation with the Minister, by
notice served on the tenement holder, as being a tenement holder to
whom this section applies.

(3) Section 17DA(3)—delete "mining operator" wherever occurring and substitute in each
case:

25 tenement holder

(4) Section 17DA(4)—delete "mining operator" and substitute:
tenement holder

(5) Section 17DA(5)—delete "mining operator" and substitute:
tenement holder

30 (6) Section 17DA(6)—delete "mining operator" wherever occurring and substitute in each
case:

tenement holder

(7) Section 17DA(9)(a)—delete "mining operator" and substitute:
tenement holder

35 (8) Section 17DA(10)(a)—delete "mining operator" wherever occurring and substitute in
each case:

tenement holder

30—Amendment of section 17E—Penalty for unpaid royalty

- (1) Section 17E(1)—delete "(other than minerals recovered from a private mine)"
- (2) Section 17E(4), formula—delete the formula and substitute:

$$PA = R\left(\frac{MR + 8\%}{12}\right)$$

- 5 (3) Section 17E(4), definition of **CLRR**—delete the definition and substitute:

MR is the market rate that applied under section 26 of the *Taxation Administration Act 1996* on the day on which the royalty fell due.

31—Substitution of section 18

Section 18—delete the section and substitute:

18—Passing of property in minerals

- 10 (1) Property in minerals recovered from mineral land passes to the tenement holder (including to the proprietor of a private mine), on the day on which a determination of the value of the minerals is made for the purposes of assessing royalty payable on the minerals under section 17 or, if royalty is not payable on the minerals, on recovery of the minerals.
- 15 (2) The liability of a tenement holder (including the proprietor of a private mine) to pay royalty to the Crown in respect of minerals recovered from mineral land arises when property in the minerals passes to the tenement holder or the proprietor.
- 20 (3) A liability under subsection (2) is a debt due to the Crown.

32—Amendment of section 20—General right to prospect for minerals

Section 20(2)—delete "mining operations" and substitute:

authorised operations

33—Amendment of section 21—Steps to establish a mineral claim

- 25 (1) Section 21(2) and (3)—delete subsections (2) and (3) and substitute:
 - 30 (2) The area of a mineral claim must be identified in accordance with the requirements of section 56E.
 - (3) A notice relating to the claim must be served on the owner of the land if required by the regulations (and the notice must be served by a prescribed person in a manner prescribed by the regulations) (and such a notice may be taken to be a notice of entry to the owner under section 58A).
- 35 (2) Section 21(6)—delete "a mining registrar in a manner and form determined by the Minister" and substitute:

the Mining Registrar in a manner and form determined by the Mining Registrar

- (3) Section 21(7)(a)—delete "prescribed by the regulations" and substitute:
determined or approved under section 56E
- (4) Section 21(7)(f)—delete "a mining registrar" and substitute:
the Mining Registrar
- 5 (5) Section 21(8)—delete "A mining registrar" and substitute:
The Mining Registrar
- (6) Section 21(8)(a)—delete "the mining registrar" and substitute:
the Mining Registrar
- 10 (7) Section 21(9)—delete "by the Minister or approved by the mining registrar" and
substitute:
or approved by the Mining Registrar

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

Section 25(3)—delete subsection (3) and substitute:

- 15 (3) The ownership of a mineral claim does not confer any right to sell or
dispose of any minerals recovered in the course of authorised
operations.

35—Amendment of section 26—Mineral claim not transferable etc

Section 26(4)—delete subsection (4)

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

- (1) Section 27—delete "surrendered or forfeited" and substitute:
surrendered, cancelled or forfeited
- (2) Section 27—after "held the previous claim" insert:
25 or a related body corporate
- (3) Section 27—delete "surrender or forfeiture" and substitute:
surrender, cancellation or forfeiture
- (4) Section 27—after its present contents as amended by this section (now to be
designated as subsection (1)) insert:
- 30 (2) If an application for the Minister to grant an authority under
subsection (1) in relation to a mineral claim that is due to lapse is
made to the Minister before the claim lapses, the Minister may (in
the Minister's absolute discretion), determine that no other mineral
claim covering any of the area of the claim may be made pending the
35 Minister's decision on the application (and if the Minister decides to
grant the authority then the applicant may make a new mineral claim
under this Part within a period specified by the Minister (and no
other claim may be made in relation to the relevant area during that
period)).

- (3) A determination of the Minister under subsection (2) will have effect in accordance with its terms.

37—Substitution of sections 28 and 29

Sections 28 and 29—delete the sections and substitute:

28—Preliminary

- (1) In this Part—

exploration release area means an area identified as an exploration release area in an exploration release area notice;

exploration release area notice means a notice published in relation to relinquished ground under subsection (5);

open ground means land—

- (a) that—

- (i) is not subject to an existing mineral tenement; and
(ii) subject to paragraph (d), is not relinquished ground;
or

- (b) that has become available due to the partial surrender of a mineral tenement, other than where the Minister has determined that the land should be considered to be relinquished ground; or

- (c) that has become available due to the reduction in the size of an exploration licence on the amalgamation of an expenditure commitment or on renewal of an exploration licence under this Part (other than under section 30A(11));
or

- (d) that has been subject to an exploration release area notice and has become available because no exploration licence was granted in relation to the relevant exploration release area on account of an application made during the application period specified in the notice; or

- (e) that has been the subject of an exploration licence and is to be considered as open ground by virtue of a determination of the Minister; or

- (f) that is to be considered as open ground after the land has been the subject of a reservation order under section 8 or subject to a notice under section 15 by virtue of a determination of the Minister;

relinquished ground means land—

- (a) over which an exploration licence has applied where the exploration licence—

- (i) has expired; or
(ii) has been cancelled or fully surrendered; or

- (iii) has been the subject of an application for renewal, but the application has been withdrawn,

other than where the Minister has determined that the land should be considered as open ground, or should be the subject of a mineral tenement granted to a particular person; or

- (b) that—

- (i) has been the subject of a reservation under section 8 and that reservation has been revoked; or

- (ii) has been the subject of a notice under section 15 and the completion date under that notice has expired,

other than where the Minister has determined that the land should be considered as open ground, or should be the subject of a mineral tenement granted to a particular person; or

- (c) that has been the subject of retention status under section 33B and that status has expired under that section without the land becoming the subject of a mining lease or retention lease, unless the land has returned to its original status under the relevant exploration licence; or

- (d) that is to be considered as relinquished ground by virtue of another provision of this Act; or

- (e) that is considered as relinquished ground rather than as open ground by virtue of a determination of the Minister after the partial surrender of a mineral tenement; or

- (f) that constitutes relinquished ground under the regulations.

(2) An exploration licence is granted by the Minister.

(3) An exploration licence may be granted—

- (a) in relation to an exploration release area; or
- (b) in relation to open ground.

(4) If land becomes relinquished ground—

- (a) a person may not make an application for an exploration licence in relation to any part of the land; and
- (b) a mineral claim may not be established in relation to any part of the land, other than a mineral claim relating to extractive minerals,

until the land is subject to an exploration release area notice.

- 5
- (5) An exploration release area notice will be a notice in a form determined by the Minister and will be issued by the Minister (in such manner as the Minister thinks fit) in relation to relinquished ground at a time determined by the Minister after the land becomes relinquished ground.
 - (6) An exploration release area notice will specify—
 - (a) the exploration release area; and
 - (b) the application period for that exploration release area.

29—Nature of exploration licence

- 10
- (1) An exploration licence authorises the holder of the licence to carry out exploration operations of a kind described in the licence in respect of land described, or referred to, in the licence.
 - (2) An exploration licence must not be granted in respect of extractive minerals.
 - 15 (3) An exploration licence does not (and cannot) authorise the holder of the licence to carry out exploration 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*.

29A—Application for exploration licence

- 20
- (1) An application for an exploration licence—
 - (a) must be made in a manner and form determined by the Minister; and
 - 25 (b) must identify the boundaries of the land in respect of which the licence is being sought in accordance with the requirements of section 56E; and
 - (c) must be accompanied by such information as may be prescribed by the regulations; and
 - (d) must be accompanied by the prescribed application fee.
 - 30 (2) If an application relates to an exploration release area (and is lodged with the Director within the application period for that exploration release area), the following provisions will apply:
 - 35 (a) if the application is the only application received during the application period—the application will be assessed in accordance with this Act;
 - (b) if the application is 1 of 2 or more applications received during the application period—
 - 40 (i) the applications will be ranked according to their merits after taking into account such factors as the Minister considers appropriate in the particular circumstances; and

- 5 (ii) the highest ranked application will be considered for the grant of an exploration licence but if 2 or more applications are assessed as being of equal merit, they will be placed in a ballot and the application selected by the ballot will be considered for the grant of an exploration licence in accordance with this Act.
- (3) An application that relates to open ground may be made at any time.
- 10 (4) The following provisions will apply in relation to applications that relate to open ground:
- 15 (a) if, on a particular day, the Director receives only 1 application—the application will be assessed in accordance with this Act (and the determination of the application will take priority ahead of an application for an overlapping area lodged with the Director on a later day);
- (b) if, on a particular day, the Director receives 2 or more applications that relate to the same land (wholly or in part)—
- 20 (i) the applications will be ranked according to their merits after taking into account such factors as the Minister considers appropriate in the particular circumstances; and
- (ii) the highest ranked application will be considered for the grant of an exploration licence but if 2 or more applications are assessed as being of equal merit, they will be placed in a ballot and the application selected by the ballot will be considered for the grant of an exploration licence in accordance with this Act.
- 25
- 30 (5) The Minister may require the applicant to furnish the Minister with any additional information specified by the Minister (and that information must be furnished within any period specified by the Minister).
- 35 (6) A ranking under this section will cease to apply if the Minister cancels the ranking on the ground—
- (a) that the application is found to be invalid; or
- (b) that there is some other default, defect or circumstance that the Minister considers is sufficiently significant to warrant the cancellation of the ranking.

5 (7) The Minister will not grant an exploration licence unless or until the fee payable under section 31 has been received and if such a fee is not paid in relation to an application that relates to an exploration release area within a period determined by the Minister, the Minister may refuse the application and proceed with the consideration of the application made in relation to the same exploration release area with the next highest ranking (if any) (and if no application is then granted the relevant land will become open ground).

10 (8) Furthermore, 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—

15 (a) the applicant fails to comply with a requirement under this Act that is relevant to the making or consideration of the application; or

(b) the Minister considers—

20 (i) that the applicant has not proceeded with reasonable diligence to obtain any other permission, authorisation, consent or other form of approval under another Act or law that is relevant in the circumstances; or

(ii) that there are other sufficient grounds for not assessing the application further after taking into account the public interest and such other matters as the Minister thinks fit.

25 **29B—Grant of exploration licence**

(1) If the Minister decides to grant an exploration licence, the licence will be taken to be granted under this Act when the licence is registered on the mining register (and the term of the licence will be taken to commence from the date of registration).

30 (2) The Minister must give notice of the granting of an exploration licence in the manner prescribed by the regulations.

38—Amendment of section 30—Incidents of licence

(1) Section 30(1)(b)—delete "conditions" wherever occurring and substitute in each case:
terms or conditions

35 (2) Section 30(2)—delete "conditions" and substitute:
terms and conditions

(3) Section 30(3)—delete subsection (3)

(4) Section 30(8)—delete subsection (8)

39—Insertion of section 30AAA

After section 30 insert:

30AAA—Expenditure

- 5 (1) Subject to this section, it will be a condition of an exploration licence that the tenement holder will achieve at least a level of expenditure specified in or in relation to the licence on operations carried out under the licence in accordance with the requirements of this section (an *expenditure commitment*).
- 10 (2) The initial expenditure commitment will be based on information furnished to the Minister as part of the application for the exploration licence (and may be varied from time to time by the Minister taking into account the operation of this section).
- 15 (3) The tenement holder must, at such times as may be prescribed by the regulations, furnish a return in a manner and form determined by the Minister that contains—
- (a) a statement—
- (i) outlining the exploration operations carried out under the exploration licence within a period prescribed by the regulations; and
- 20 (ii) declaring the amount of expenditure incurred in carrying out those operations;
- (b) a statement—
- (i) outlining the exploration operations that the tenement holder intends to carry out under the exploration licence over an ensuing period prescribed by the regulations; and
- 25 (ii) declaring the amount of expenditure that is estimated to be incurred in carrying out those operations.
- 30 (4) A statement under subsection (3)(a)—
- (a) must be accompanied by such information or evidence required by the Minister; and
- (b) will be registered by the Mining Registrar on the mining register.
- 35 (5) Any expenditure commitment under a preceding subsection must at least be at a monetary level set by or under a policy developed and published by the Minister from time to time for the purposes of this section.
- 40 (6) A statement under subsection (3)(a), and any information or evidence required under subsection (4)(a), must, if the Minister so requires, be verified by an independent person with qualifications, and in a manner, specified by the Minister.

(7) Any cost associated with a requirement under subsection (6) will be borne by the tenement holder.

(8) A report provided under subsection (6) will, if the Minister so determines, be registered on the mining register.

5 (9) If—

(a) a person fails to comply with a preceding subsection; or

(b) the Minister has reason to believe that an amount of expenditure that has actually been incurred is less than an expenditure commitment,

10 the Minister may (without consultation with the tenement holder) alter the relevant exploration licence by reducing the licence area by an amount determined by the Minister.

15 (10) The Minister may, on application under this subsection, allow a tenement holder or tenement holders to amalgamate their expenditure commitments in relation to 2 or more exploration licences in such manner or to such extent as the Minister may determine.

(11) The Minister may, in assessing an application under subsection (10), take into account such matters as the Minister thinks fit, including—

20 (a) the relationship between any tenement holders who are parties to the application; and

(b) the proximity of the relevant exploration licences to each other.

25 (12) If an amalgamation of expenditure commitments is allowed under subsection (10), the exploration licences to which the amalgamations relate will be altered by reducing their licence areas by an amount or amounts determined by the Minister after consultation with the tenement holders.

(13) The Minister may, on application by the tenement holder—

30 (a) approve the deferment of an amount of expenditure under an expenditure commitment; or

(b) approve the variation of an amount of expenditure that would otherwise be required under an expenditure commitment.

35 (14) This section applies subject to any variation to an expenditure commitment under section 33B.

40—Amendment of section 30AA—Area of licence

Section 30AA—after subsection (2) insert:

40 (3) The holder of an exploration licence may apply to the Minister for approval to surrender a part of the area of the licence under an agreement that is intended to enable another party to the agreement (a *designated party*) to obtain a new exploration licence in relation to the land to be surrendered.

- 5
- (4) An application under subsection (3)—
- (a) must be made in a manner and form determined by the Minister; and
 - (b) must be accompanied by such information as may be prescribed by the regulations; and
 - (c) must be accompanied by the prescribed fee.
- (5) An application may not be made under subsection (3)—
- (a) if the exploration licence is due to expire within 2 years of the making of the application; or
 - (b) if the other party to the agreement is, in relation to the tenement holder, a related body corporate.
- 10
- (6) If the Minister decides to consider an application under subsection (3) (and notifies the parties accordingly)—
- (a) the designated party has a period of 6 months to obtain an exploration licence over the land to which the application relates, or such longer period as may be allowed by the Minister; but
 - (b) if an exploration licence is not granted to the designated party within the period that applies under paragraph (a), the proposed surrender will be taken to be rejected.
- 15
- (7) The tenement holder (and the exploration licence) will continue to be subject to all the requirements of this Act in relation to the land to which an application under subsection (3) relates while the designated party seeks to obtain an exploration licence over the land.
- 20
- (8) The tenement holder may at any time withdraw an application under subsection (3) by notice given to the Minister in accordance with the regulations.
- (9) If an application is withdrawn, an exploration licence will not be granted to the designated party under this section.
- 25
- (10) If an exploration licence is granted to the designated party on application under subsection (3), the land to which the application relates will be taken to have been surrendered by the tenement holder on the date on which the new exploration licence is granted (but will not be considered to be open ground for the purposes of this Part).
- 30
- (11) In addition and without limiting any other provision of this Act, the Minister may at any time, on application by the tenement holder or with the consent of the tenement holder, reduce the area of the licence.
- 35

41—Amendment of section 30A—Term and renewals of licence

- 40
- (1) Section 30A(1)—delete "five years" and substitute:
6 years

(2) Section 30A(2)—delete "less than five years" and substitute:

less than 6 years

(3) Section 30A(2)—delete "exceeds five years" and substitute:

exceeds 6 years during this initial period

5 (4) Section 30A(3)—delete "five years" and substitute:

6 years

(5) Section 30A(4) and (4a)—delete subsections (4) and (4a) and substitute:

10 (4) An application for renewal of an exploration licence must be made to the Minister in a manner and form determined by the Minister before the date of expiry of the licence (including an expiry after 1 or more renewals under this section).

(4a) An application under subsection (4) must be accompanied by—

(a) such information as may be prescribed by the regulations; and

15 (b) any other information that the Minister may require.

(6) Section 30A(6a), (7) and (8)—delete subsections (6a), (7) and (8) and substitute:

(7) The following provisions will apply in relation to the renewal of an exploration licence:

20 (a) when the term or aggregate term of the licence has reached the period of 6 years from the grant date, the next renewal may be for a period of up to 6 years and if the renewal is granted for a period of less than 6 years then further renewals may be granted until the aggregate period of renewal is 6 years (so that the term of the licence reaches the 25 12th anniversary of the grant date);

(b) if application is made for renewal of the licence for a period beginning from the 12th anniversary of the grant date—

30 (i) the term of renewal may be for a period of up to 6 years and if the renewal is granted for a period of less than 6 years then further renewals may be granted until the aggregate period of renewal is 6 years (so that the term of the licence reaches the 18th anniversary of the grant date); and

35 (ii) the area of the licence must be reduced by 50% (being this percentage of the area of the licence at the grant date) at the time of renewal (from the 12th anniversary of the grant date);

40 (c) the result will be that the maximum period of an exploration licence with any renewals can be up to (but not exceeding) 18 years.

- (8) Subsection (7) is subject to the qualification that—
- (a) the Minister and the tenement holder may at any time agree to reduce an area by a percentage that exceeds the percentage referred to in that subsection; and
 - (b) lesser reductions may be made by the Minister if retention status has been granted in relation to the exploration licence under section 33B.
- (9) Despite a preceding subsection, the holder of an exploration licence may, before the date of expiry of the licence, apply to the Minister for the renewal of the licence pending a decision by the Minister on an application for the grant of a mining lease or a retention lease that has been made by the tenement holder under this Act.
- (10) If an application for the renewal of an exploration licence is made under subsection (9), the licence continues in operation until the application for the mining lease or retention lease (as the case may be) is decided.
- (11) Subsection (10) operates subject to the qualification that on the day on which the licence would otherwise expire—
- (a) the area of the licence is reduced, by operation of this subsection, to the area in relation to which the application for the mining lease or retention lease (as the case may be) applies; and
 - (b) the balance of the area will be taken to be relinquished ground.
- (12) This section does not limit the operation of any other section that provides for the relinquishment, excision or other reduction of land in respect of which an exploration licence is granted.
- (13) For the purposes of this section, the *grant date* is the date of the original grant of the relevant exploration licence.

42—Substitution of section 30AB

Section 30AB—delete the section and substitute:

30AB—Excise of land for public purposes

- (1) If, in the opinion of the Minister, any land comprised in an exploration licence is required for a public purpose, the Minister may, in a manner and form prescribed by the regulations, excise that land from the total area comprised in the licence, and the licence will then cease to apply to the land (but the land will not be considered to be open ground for the purposes of this Part).
- (2) If the Minister acts under subsection (1), the tenement holder may apply to the appropriate court for an order that the Minister pay compensation to the tenement holder for the money expended by the tenement holder in prospecting for minerals in the area excised from the total area comprised in the exploration licence.

- 5 (3) The appropriate court may, on hearing an application under subsection (2), determine an amount that would fairly compensate the tenement holder to the extent referred to in that subsection and order that the amount so determined be paid by the Minister to the tenement holder (and this amount will be recoverable from the Minister).

43—Amendment of section 31—Fee

Section 31—after subsection (2) insert:

- 10 (3) The liability to pay a fee under this section is a debt due to the Crown.

44—Repeal of sections 32 and 33

Sections 32 and 33—delete the sections

45—Insertion of section 33B

After section 33A insert:

33B—Retention status

- 15 (1) The holder of an exploration licence may apply to the Minister for approval of retention status in relation to the licence under this section.
- (2) An application—
- 20 (a) must be made in a manner and form determined by the Minister; and
- (b) must identify the boundaries of the land in respect of which retention status is being sought in accordance with the requirements of section 56E; and
- 25 (c) must be accompanied by such information as may be prescribed by the regulations.
- (3) The Minister may grant retention status in relation to the exploration licence—
- 30 (a) if satisfied that the tenement holder has been unable to obtain 1 or more approvals under another Act or Acts that are required before the tenement holder can commence or continue exploration operations in relation to the land to which the application relates; or
- 35 (b) if satisfied—
- (i) that there is an identified mineral resource located in, on or under the land to which the application relates; and
- 40 (ii) that it is unreasonable to expect an application to be made for a mining lease or a retention lease because it is not commercially viable to spend time and money on developing the resource; and

- (iii) that it is reasonably likely that mining the relevant land will become commercially viable within the next 6 years; or
- 5 (c) if satisfied (in the Minister's absolute discretion) that there are other circumstances which justify the granting of retention status under this section.
- 10 (4) The area of land in relation to which retention status applies will be an area that the Minister considers, after consultation with the tenement holder, to be reasonable in the circumstances (and may be less than the area delineated in the application).
- (5) The Minister may, in granting retention status in relation to an exploration licence, or at a subsequent time, do 1 or more of the following:
- 15 (a) provide for a reduction in any expenditure commitment applying under section 30AAA;
- (b) provide for less reduction in the area of the licence applying in relation to a renewal of the licence under section 30A;
- (c) provide for a reduction in the fees that would otherwise be payable under section 31.
- 20 (6) Retention status is to be granted for a term determined by the Minister of up to 6 years.
- (7) If retention status is granted for a term of less than 6 years, the Minister may extend the term (from time to time) so the aggregate term of retention status does not exceed 6 years.
- 25 (8) The Minister may then extend the term of retention status beyond 6 years if satisfied that the grounds on which retention status may be granted under subsection (3) still apply in relation to the matter.
- (9) The Minister may, when granting retention status in relation to an exploration licence, or at a subsequent time, make it a condition of the licence that the tenement holder carry out work, in accordance with a work program approved by the Minister, in relation to land to which the retention status applies.
- 30 (10) A work program to be carried out by the tenement holder must, if the Minister so requires, be submitted with the application for retention status and from time to time as required under a condition of the licence imposed under subsection (9).
- 35 (11) The Minister may approve a proposed work program with or without addition or modification.
- (12) The Minister may, on application by the tenement holder—
- 40 (a) approve deferment of any work to be carried out under an approved work program; or
- (b) approve the variation of an approved work program; or
- (c) cancel an approved work program.

(13) The Minister may, at any time, by written notice accompanied by such information or evidence as required by the Minister, require the holder of an exploration licence that has retention status by virtue of the operation of subsection (3) to show cause—

- 5 (a) why 1 or more approvals required under another Act or Acts have not been obtained; or
- (b) why a mining lease or a retention lease should not be applied for in relation to the whole or any part of the land comprised in the exploration licence.

10 (14) If—

- (a) the holder of the exploration licence fails to show cause (to the satisfaction of the Minister) within a period specified by the Minister in a notice under subsection (13); or
- 15 (b) the Minister considers that the holder of the exploration licence has failed to show sufficient cause,

the Minister may, by further notice to the tenement holder, require the tenement holder to apply in accordance with this Act for a mining lease or a retention lease in relation to the whole or any part of the land comprised in the exploration licence.

20 (15) If the tenement holder fails to comply with a notice under subsection (14) within a period specified by the Minister, or an application for a mining lease or retention lease is unsuccessful after a notice has been issued under subsection (14), any retention status applying in relation to the land to which the notice relates will expire and the land will be excised from the area of the exploration licence and become relinquished ground.

25 (16) If—

- (a) land in relation to which retention status applies is not subject to a notice under subsection (13); and
- 30 (b) the term of retention status comes to an end while the exploration licence is still in force,

the land will return to its original status under the exploration licence.

46—Substitution of sections 34 to 37

35 Sections 34 to 37 (inclusive)—delete the sections and substitute:

34—Preliminary

(1) Subject to this Act, the Minister may grant a mining lease to the holder, or to a related body corporate of the holder, of—

- 40 (a) a registered mineral claim, in respect of the whole or part of land comprised in the claim; or
- (b) an exploration licence, in respect of the whole or part of land comprised in the licence; or

(c) a retention lease, in respect of the whole or part of land comprised in the lease.

(2) If a registered mineral claim or exploration licence relates to a particular stratum, the mining lease must, if granted, relate to the same stratum.

(3) A mining lease must not be granted in respect of land within a subsurface stratum except on the authority of a resolution passed by both Houses of Parliament.

(4) A mining lease is not required to be registered under the *Real Property Act 1886*.

35—Nature of mining lease

(1) A mining lease—

(a) confers an exclusive right on the holder of the lease to carry out 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 carried out under the lease or to use any such minerals.

(2) A mining lease may be of a class prescribed by the regulations and subject to terms and conditions prescribed by the regulations in relation to that class, subject to any determination of the Minister as to the modification of any such term or condition.

(3) In addition, a mining lease is 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.

36—Application for mining lease

(1) An application for a mining lease—

(a) must be made in a manner and form determined by the Minister; and

(b) must identify the boundaries of the land in respect of which the lease is being sought in accordance with the requirements of section 56E; and

(c) must be accompanied by a mining proposal—

(i) specifying the authorised operations that are proposed to be carried out under the lease; and

(ii) setting out—

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

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

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

(iii) incorporating a draft statement of the criteria to be adopted to measure those environmental outcomes, in a form prescribed by the regulations; and

(iv) setting out the results of the consultation undertaken in connection with the proposed operations in accordance with the regulations; and

(d) must be accompanied by such other information as may be prescribed by the regulations; and

(e) must be accompanied by the prescribed fee.

(2) The Minister may require the applicant to furnish the Minister with any additional information specified by the Minister (and that information must be furnished within any period specified by the Minister).

37—Approval of application and registration

(1) The Minister—

(a) must not grant a mining lease unless the Minister is satisfied—

(i) that there is a reasonable prospect that the land in respect of which the lease is sought could be effectively and efficiently mined; and

(ii) that appropriate environmental outcomes will be able to be achieved; and

(b) must not grant a mining lease if the Minister considers that sufficient investigations have not been carried out in order to enable the Minister to determine the terms and conditions on which the lease could be granted.

(2) However, if the Minister cannot grant a mining lease by virtue of the operation of subsection (1), the Minister may instead, with the concurrence of the applicant for the mining lease (and on the basis of such further application by the applicant as the Minister thinks fit), grant a retention lease under Part 7.

(3) If the Minister decides to grant a mining lease, the lease will be taken to be granted under this Act when the lease is registered on the mining register (and the term of the lease will be taken to commence from the date of registration).

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

(1) Section 38(1)—delete ", not exceeding 21 years,"

(2) Section 38(2) to (6)—delete subsections (2) to (6) (inclusive) and substitute:

- 5
- (2) The holder of a mining lease may apply for the renewal of the lease before the expiration of the term of the lease.
- (3) An application for the renewal of a mining lease must be made to the Minister in a manner and form determined by the Minister before the date of expiry of the lease.
- 10
- (4) An application under subsection (3) must be accompanied by any other information that the Minister may require.
- (5) If an application for the renewal of a mining lease is not decided before the date on which the lease is due to expire, 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.
- 15
- (6) If the Minister decides to grant a renewal, the mining lease will be renewed for a term determined by the Minister and specified in the lease.

48—Repeal of sections 39 to 41

Sections 39, 40 and 41—delete the sections

49—Substitution of Parts 6A and 8

Parts 6A and 8—delete the Parts and substitute:

Part 7—Retention leases

42—Preliminary

- 25
- (1) Subject to this Act, the Minister may grant a retention lease to the holder, or to a related body corporate of the holder, of—
- (a) a registered mineral claim, in respect of the whole or part of land comprised in the claim; or
- (b) an exploration licence, in respect of the whole or part of land comprised in the licence; or
- 30
- (c) a mining lease, in respect of the whole or part of land comprised in the lease.
- (2) If a registered mineral claim or exploration licence relates to a particular stratum, the retention lease must, if granted, relate to the same stratum.
- 35
- (3) A retention lease is not required to be registered under the *Real Property Act 1886*.

43—Nature of retention lease

- (1) A retention lease is a mineral tenement that is granted in 1 of the following cases:
- (a) where the applicant seeks an authorisation to carry out authorised operations to obtain information required to support an application for a mining lease where those authorised operations are not suited to being conducted under an exploration licence;
 - (b) where the Minister is acting under section 37(2) after a mining proposal has been the subject of an application for a mining lease under Part 6;
 - (c) where for economic or other reasons the applicant for the lease is, in the opinion of the Minister, justified in not proceeding immediately to mine the land under a mining lease.
- (2) A retention lease—
- (a) confers an exclusive right on the tenement holder to prospect for minerals on the land comprised in the lease; and
 - (b) confers on the tenement holder such other rights to conduct authorised operations in respect of the land comprised in the lease as may be specified in the lease; and
 - (c) confers on the tenement holder an exclusive right to apply for a mining lease in respect of the land comprised in the lease.
- (3) A retention lease is 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.

44—Application for retention lease

- (1) An application for a retention lease—
- (a) must be made in a manner and form determined by the Minister; and
 - (b) must identify the boundaries of the land in respect of which the lease is being sought in accordance with the requirements of section 56E; and
 - (c) except as provided by the regulations, must be accompanied by a retention proposal—
 - (i) specifying the operations or steps that are proposed to be carried out in order for the applicant to be in a position to make an application for a mining lease; and
 - (ii) setting out—

- 5
- (A) an assessment of the environmental impacts of any proposed authorised operations to be carried out under the lease; and
- (B) an outline of the measures that the applicant intends to take to manage, limit or remedy those impacts; and
- (C) a statement of the environmental outcomes that are accordingly expected to occur; and
- 10 (iii) incorporating a draft statement of the criteria to be adopted to measure those environmental outcomes, in a form prescribed by the regulations; and
- (iv) setting out the results of the consultation undertaken in connection with any proposed operations in accordance with the regulations; and
- 15 (d) must be accompanied by such other information as may be prescribed by the regulations; and
- (e) must be accompanied by the prescribed fee.
- (2) The Minister may require the applicant to furnish the Minister with any additional information specified by the Minister (and that information must be furnished within any period specified by the Minister).
- (3) The Minister may exempt an applicant from complying with specified requirements of this section if the retention lease is to be granted under section 37(2).
- 25

45—Approval of application and registration

- (1) Without limiting any other provision, and except as provided by the regulations, the Minister must not grant a retention lease unless the Minister is satisfied that appropriate environmental outcomes will be able to be achieved.
- 30 (2) If the Minister decides to grant a retention lease, the lease will be taken to be granted under this Act when the lease is registered on the mining register (and the term of the lease will be taken to commence from the date of registration).

46—Term and renewal of retention lease

- (1) A retention lease may be granted for such term, not exceeding 5 years, as may be determined by the Minister and specified in the lease.
- 35 (2) The holder of a retention lease may apply for the renewal of the lease before the expiration of the term of the lease.
- 40

- 5
- (3) An application for the renewal of a retention lease—
- (a) must be made to the Minister in a manner and form determined by the Minister; and
 - (b) must be accompanied by such information as may be prescribed by the regulations.
- (4) The Minister may require the applicant to furnish the Minister with any additional information specified by the Minister (and the information must be furnished within any period specified by the Minister).
- 10
- (5) If an application for the renewal of a retention lease is not decided before the date on which the lease is due to expire, 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.
- 15
- (6) If the Minister decides to grant a renewal, the retention lease will be renewed for a term determined by the Minister and specified in the lease.

Part 8—Miscellaneous purposes licences

47—Preliminary

- 20
- (1) The Minister may grant to any person a miscellaneous purposes licence in respect of mineral land.
- (2) A miscellaneous purposes licence may not be granted over an area of land exceeding the maximum permissible area prescribed by the regulations.

48—Nature of miscellaneous purposes licence

- 25
- (1) A miscellaneous purposes licence is a mineral tenement that is granted for ancillary operations.
- (2) The Minister may, under the terms of a miscellaneous purposes licence or by conditions attached to a miscellaneous purposes licence, limit or define the scope of operations authorised under the licence.
- 30
- (3) A miscellaneous purposes licence is 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 licence.
- 35

49—Application for miscellaneous purposes licence

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

(b) must identify the boundaries of the land in respect of which the licence is being sought in accordance with the requirements of section 56E; and

(c) must be accompanied by a proposal—

(i) specifying the nature and extent of the ancillary operations that are proposed to be carried out under the licence; and

(ii) setting out—

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

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

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

(iii) incorporating a draft statement of the criteria to be adopted to measure those environmental outcomes, in a form prescribed by the regulations; and

(iv) setting out the results of the consultation undertaken in connection with the proposed operations in accordance with the regulations; and

(d) must be accompanied by such other information as may be prescribed by the regulations; and

(e) must be accompanied by the prescribed fee.

(2) The Minister may require the applicant to furnish the Minister with any additional information specified by the Minister (and that information must be furnished within any period specified by the Minister).

50—Approval of application and registration

(1) Without limiting any other provision, the Minister must not grant a miscellaneous purposes licence unless the Minister is satisfied that appropriate environmental outcomes will be able to be achieved.

(2) If the Minister decides to grant a miscellaneous purposes licence, the licence will be taken to be granted under this Act when the licence is registered on the mining register (and the term of the licence will be taken to commence from the date of registration).

51—Term and renewal of miscellaneous purposes licence

(1) A miscellaneous purposes licence may be granted for such term as may be determined by the Minister and specified in the licence.

(2) The holder of a miscellaneous purposes licence may apply for the renewal of the licence before the expiration of the term of the licence.

- 5
- (3) An application for the renewal of a miscellaneous purposes licence—
- (a) must be made to the Minister in a manner and form determined by the Minister; and
 - (b) must be accompanied by such information as may be prescribed by the regulations.
- (4) The Minister may require the applicant to furnish the Minister with any additional information specified by the Minister (and the information must be furnished within any period specified by the Minister).
- 10
- (5) If an application for the renewal of a miscellaneous purposes 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.
- 15
- (6) If the Minister decides to grant a renewal, the miscellaneous purposes licence will be renewed for a term determined by the Minister and specified in the licence.

50—Substitution of section 56B

Section 56B—delete the section and substitute:

20 **56B—Special mining enterprises**

- 25
- (1) For the purposes of this Part, a mining enterprise (whether existing or proposed) is a *special mining enterprise* if—
- (a) the Governor is satisfied, after taking into account the advice of the Minister, that the enterprise is of major significance to the economy of the State; and
 - (b) the Minister and the person who conducts or proposes to establish the enterprise (the *proponent*) have entered into an agreement for the exercise of powers under this Part and the grant of an appropriate mineral tenement or tenements in relation to the enterprise; and
 - (c) the Governor has ratified the agreement between the Minister and the proponent.
- 30
- (2) This Part has effect subject to any guidelines issued by the Minister for the purposes of this Part.
- 35
- (3) The following provisions of this Act apply in relation to an application to the Minister under this Part as if the application were an application for a mining lease:
- (a) section 56E;
 - (b) section 56F;
 - (c) section 56G;
 - (d) section 56H;
- 40

(e) section 56I.

(4) An application may be made under this Part in relation to an existing mineral tenement (or tenements), or for the purposes of obtaining a mineral tenement (or tenements) in relation to an enterprise.

5

(5) An agreement under subsection (1)(b)—

(a) must be in a form determined by the Minister after consultation with the proponent; and

(b) has effect when ratified by the Governor and registered on the mining register; and

10

(c) subject to subsection (6), may be varied from time to time by further agreement between the parties after complying with any process or procedure prescribed by the regulations.

(6) An agreement under subsection (5)(c) has no force or effect unless or until it is ratified by the Governor and registered on the mining register.

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56BA—Concept phase

(1) The first step that a proponent who is seeking an agreement with the Minister under this Part must take is to consult with the Director of Mines about the proposal.

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(2) Consultation with the Director for the purposes of subsection (1) is initiated by an application made to the Director in a manner and form determined by the Director.

(3) An application—

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(a) must incorporate or be accompanied by such information as may be prescribed by the regulations; and

(b) must be accompanied by the prescribed fee.

(4) The Director may require the proponent—

30

(a) to furnish to the Director any additional information specified by the Director (and that information must be furnished within any period specified by the Director); and

(b) to undertake any consultation required by the guidelines issued by the Minister or specified by the Director (and that consultation must be undertaken within a period specified by the Director); and

35

(c) to take any other action specified by the Director.

(5) The Director may—

(a) bring the consultation envisaged by subsection (1) to an end as the Director thinks fit; and

(b) at the end of the consultation, advise the proponent—

40

(i) that the matter may proceed to an application to the Minister for the purposes of this Part; or

(ii) that the matter is not, in the opinion of the Director, suitable for further consideration under this Part.

(6) If subsection (5)(b)(i) applies, the proponent is entitled to proceed to make an application to the Minister (but otherwise the matter may not proceed further under this Part).

56BB—Application phase

(1) If a proponent is entitled to proceed to make an application to the Minister, the application—

(a) must be made in a manner and form determined by the Minister; and

(b) must be accompanied by a proposal containing the full particulars of the mining enterprise, including—

(i) information that identifies the boundaries of the land in respect of which the proposal relates which is in accordance with the requirements of section 56E; and

(ii) a statement of the nature, extent and proposed scheduling of the mining operations and related or ancillary operations or works that the proponent carries out or proposes to carry out under the enterprise; and

(iii) an economic analysis of the enterprise, including financial projections and details of the financial resources available to the proponent for the purposes of the enterprise; and

(iv) an assessment of the benefits to the State derived or expected to be derived from the enterprise; and

(v) an assessment of the expected environmental effects of the enterprise; and

(vi) a statement of the measures that the proponent 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

(vii) a statement of the measures that the proponent 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

(c) must be accompanied by such other information as may be prescribed by the regulations; and

(d) must be accompanied by the prescribed fee.

- 5 (2) The Minister may require the proponent to furnish the Minister with any additional information specified by the Minister (and that information must be furnished within any period specified by the Minister).
- 5 (3) An application will, in relation to any mineral tenement that may be subsequently granted under this Part (if the mining enterprise becomes a special mining enterprise), be taken to be an application duly made under this Act for that tenement.
- 10 (4) The Minister may, at any time and in the Minister's absolute discretion (and without consultation with the proponent or taking any other step), by notice to the proponent, refuse an application under this Part.
- 15 (5) No mineral claim may be established by, or a mineral tenement granted to, any other person over land to which an application under this Part relates until—
- (a) 28 days after the application is refused or withdrawn; or
 - (b) a mineral tenement (or tenements) are granted to the proponent over the land.
- 20 (6) The Minister must give notice of the approval of an application under this section in accordance with any prescribed requirements.

51—Amendment of section 56C—Power to exempt from or modify Act

- (1) Section 56C(2)—delete subsection (2) and substitute:
- (2) An exemption or modification cannot be granted or made to this Part in respect of the application of following provisions of this Act:
- (a) sections 9 and 9AA;
 - (b) section 61;
 - (c) Part 9B;
 - (d) Part 10A;
 - (e) any other provision specified by the regulations.
- 30 (2) Section 56C(7), penalty provision—delete "\$50 000" and substitute:
\$250 000

52—Amendment of section 56D—Existing tenements

- (1) Section 56D—delete "mining tenement" wherever occurring and substitute in each case:
- 35 mineral tenement
- (2) Section 56D(2)(b)—delete paragraph (b) and substitute:
- (b) the existing lease or licence is subject to a term or condition that has been included to protect the environment,

53—Insertion of Part 8B

After section 56D insert:

Part 8B—Common provisions

Division 1—Identifying areas and considering applications

56E—Identification of areas

- (1) This section applies in relation to—
- (a) establishing a mineral claim; and
 - (b) an application for an exploration licence; and
 - (c) an application by the holder of an exploration licence for retention status in relation to the licence; and
 - (d) an application for—
 - (i) a mining lease; or
 - (ii) a retention lease; or
 - (iii) a miscellaneous purposes licence; and
 - (e) any mineral tenement once it is registered under this Act.
- (2) An area that must be identified, delineated or defined in any case to which this section applies must be identified, delineated or defined in a manner and form determined or approved by the Mining Registrar.
- (3) Without limiting the operation of subsection (2), the boundaries of such an area may be identified in a way that accurately shows where the boundaries are located on the ground or allows the boundaries' location on the ground to be accurately worked out.
- (4) The holder of a mineral tenement which has an area identified by any pegs, markers or other items on the ground after the area has been identified, delineated or defined under this section must take reasonable steps to ensure that the area continues to be so identified during the term of the tenement.
- Administrative penalty.
- (5) Without limiting a preceding subsection, a person who holds a mineral tenement in respect of a subsurface stratum may identify a claim or tenement on land above the land comprised in the tenement in any way determined or approved by the Mining Registrar.

56F—Related environmental legislation

- (1) This section applies in relation to—
- (a) an application for an exploration licence or for the renewal of an exploration licence; and
 - (b) an application for a mining lease or for the renewal of a mining lease; and

- (c) an application for a retention lease or for the renewal of a retention lease; and
- (d) an application for a miscellaneous purposes licence or for the renewal of a miscellaneous purposes licence; and
- 5 (e) an application for a change in operations under Division 7 and
- (f) in relation to an exploration licence after it has been granted—an application for approval of a program that
10 applies in relation to the licence under Part 10A so as to authorise the use of declared equipment.

- (2) If an application to which this section applies 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
15 Act.

56G—Specially protected areas

- (1) This section applies in relation to—
 - (a) an application for an exploration licence or for the renewal of an exploration licence; and
 - 20 (b) an application for a mining lease or for the renewal of a mining lease; and
 - (c) an application for a retention lease or for the renewal of a retention lease; and
 - (d) an application for a miscellaneous purposes licence or for
25 the renewal of a miscellaneous purposes licence; and
 - (e) an application for a change in operations under Division 7; and
 - (f) in relation to an exploration licence after it has been granted—an application for approval of a program that
30 applies in relation to the licence under Part 10A so as to authorise the use of declared equipment.
- (2) If an application to which this section applies relates to an area within or adjacent to a specially protected area, the Minister must, before making a decision on the application, refer the application to the relevant Minister and consult with the relevant Minister in
35 relation to the matter.
- (3) If an application is referred to a relevant Minister and the Minister to whom the administration of this Act is committed and the relevant Minister cannot agree—
40
 - (a) on the decision to be made on the application; or
 - (b) on any terms or conditions that should be applied if the application is approved,

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

5 **Division 2—Notice**

56H—Notice

- (1) This section applies in relation to—
- (a) an application for—
 - (i) a mining lease; or
 - 10 (ii) a retention lease (unless exempt by the regulations);
or
 - (iii) a miscellaneous purposes licence; or
 - (b) an application under Division 7 (to the extent that the requirements of that Division are applied by the regulations).
- (2) The Minister must, as soon as practicable after receiving an application to which this section applies, in such manner as the Minister thinks fit, give notice of the application—
- (a) to the owner of the land to which the application relates; and
 - 20 (b) if the land is within the area of a council—to the council.
- (3) In addition, before the Minister makes a decision on an application to which this section applies, including as to the terms and conditions (if any) that will apply or attach to the relevant mineral tenement or approval, the Minister must publish, in such manner as the Minister thinks fit, a notice—
- 25 (a) describing the land to which the application relates and, if relevant, the particular stratum in relation to which the tenement would be, or has been, granted (as the case requires); and
 - 30 (b) specifying a place where the application may be inspected; and
 - (c) inviting written submissions in relation to the application to the Minister within a time specified in the invitation.
- (4) The Minister—
- 35 (a) must give to the applicant a copy of any submission received by the Minister under subsection (3) within the relevant period specified by the Minister; and
 - (b) may require the applicant to respond to any matter raised in any such submission within a period specified by the Minister.
- 40

- 5
- (5) A submission under subsection (3) cannot be made on the basis that the submission (or part of the submission) will be kept confidential and a response under subsection (4) cannot be made on the basis that the response (or part of the response) will be kept confidential.
- (6) In determining whether or not to grant an application to which this section applies and, if so, the terms and conditions on which it should be granted, the Minister must have regard to any submissions or response received under subsection (3) or (4).
- 10
- (7) The requirement to publish a notice under subsection (3), and the requirements of subsections (4), (5) and (6), do not apply if the Minister decides to refuse the application without inviting submissions on the application.
- 15
- (8) As soon as practicable after determining whether or not to grant or refuse an application to which this section applies, the Minister must cause notice of the determination to be published in accordance with the regulations.

Division 3—Terms and conditions

56I—Matters to be considered

- 20
- (1) This section applies in relation to an application for—
- (a) a mining lease; or
 - (b) a retention lease; or
 - (c) a miscellaneous purposes licence.
- 25
- (2) The Minister must, in determining the terms and conditions subject to which a mineral tenement is to be granted on an application to which this section applies, give proper consideration to—
- (a) any aspect of the environment that may be affected by the conduct of authorised operations under the tenement; and
 - (b) any other lawful activities that may be affected by those authorised operations; and
 - 30
 - (c) any Aboriginal sites or objects within the meaning of the *Aboriginal Heritage Act 1988* that may be affected by those authorised operations,
- and may take into consideration such other factors or matters as the Minister considers appropriate in the particular case.

56J—Alteration of terms and conditions

- 35
- (1) This section applies in relation to—
- (a) a mining lease; and
 - (b) a retention lease; and
 - (c) a miscellaneous purposes licence.

(2) Without limiting any other provision, the Minister may at any time add, vary or revoke a term or condition of a mineral tenement to which this section applies if the Minister considers that the addition, variation or revocation is necessary—

- 5 (a) to offset, stabilise, prevent, reduce, minimise or eliminate any potential, perceived or actual undue damage to the environment associated with authorised operations carried out under the tenement; or
- 10 (b) to ensure consistency with the conditions attached to the Commonwealth Minister's approval (if any) under the *Environment Protection and Biodiversity Conservation Act 1999* of the Commonwealth; or
- (c) taking into account any other matter prescribed by the regulations.

15 (3) The Minister must take reasonable steps to consult with the holder of the relevant mineral tenement before acting under subsection (2).

(4) If—

- (a) the Minister acts under subsection (2) during the term of the relevant mineral tenement; and
- 20 (b) the Minister acts without the agreement of the tenement holder,

the tenement holder may appeal to the ERD Court in relation to the matter.

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

- 25 (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;
- 30 (c) make any consequential or ancillary order that the Court considers necessary or expedient.

(6) Subsections (3), (4) and (5) do not apply in any circumstances prescribed by the regulations.

56K—Special term or condition relating to extractive minerals

The terms or conditions of a mineral tenement may—

- 35 (a) make provision for the management and use of extractive minerals produced during the course of carrying out authorised operations under the tenement; and
- (b) provide for the exemption of those extractive minerals from the payment of royalty.

56L—Offence to contravene term or condition

A person must not contravene, or fail to comply with, a term or condition of a mineral tenement.

Maximum penalty: \$250 000.

5 **Division 4—Rental**

56M—Rental

- (1) This section applies in relation to—
- (a) a mining lease; and
 - (b) a retention lease; and
 - 10 (c) a miscellaneous purposes licence.
- (2) A mineral tenement to which this section applies must provide for the payment, by way of rental, of such sum as may be prescribed by the regulations (and different sums may be prescribed according to different classes of tenement).
- 15 (3) Subject to this section, the amount by way of rental is payable to the Minister.
- (4) If a mineral tenement to which this section applies is granted over land consisting of, or including, land subject to an estate in fee simple (with the interest of any registered proprietor of such an estate being referred to as a *relevant interest*) then, except to the extent that
- 20 subsection (5) applies, the amount paid to the Minister under this section in relation to the tenement must, after deduction of 5% (with the net amount remaining after the 5% deduction being referred to as the *net amount available for distribution*) be dealt with in
- 25 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 tenement is represented by land in relation to which a relevant interest exists (with an appropriate allocation between entitlements if there is more than 1 registered proprietor in relation to any particular piece of land);
 - 30 (b) a proportion of the net amount available for distribution, equivalent to the registered proprietor's proportionate entitlement, must be paid to each holder of a relevant interest in land subject to the tenement;
 - 35 (c) if a balance remains after distribution under paragraph (b), the balance is to be retained by the Minister.

- 5
- (5) Despite subsections (2) and (4), if a tenement holder or any related body corporate is also a registered proprietor of an estate in fee simple of land—
- (a) the amount of rental is 5% of the amount that would otherwise be payable under subsection (2); and
- (b) the scheme under subsection (4) will not apply in relation to the holder; and
- 10 (c) that holder's interest in the land will be disregarded for the purposes of subsection (4) (and if there is no other registered proprietor of an estate in fee simple of the land, then the subsection will not apply).
- (6) If a mineral tenement to which this section applies is granted over land consisting of, or including, land subject to native title conferring a right to exclusive possession of the land (with the interest of any holder of such native title being referred to as a *relevant interest*) then the amount paid to the Minister under this section in relation to the tenement must, after deduction of 5% (with the net amount remaining after the 5% deduction being referred to as the *net amount available for distribution*) be dealt with in accordance with the following principles:
- 15
- (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 tenement is represented by land in relation to which a relevant interest exists (with an appropriate allocation between entitlements if there is more than 1 holder of native title in relation to any particular piece of land);
- 25
- (b) a proportion of the net amount available for distribution, equivalent to each person's proportionate entitlement, must be paid to each holder of a relevant interest in land subject to the tenement;
- 30
- (c) if a balance remains after distribution under paragraph (b), the balance is to be retained by the Minister.
- (7) In addition, if—
- 35
- (a) the Minister retains an amount paid by way of rental in relation to any land that is not subject to the operation of subsection (4) or (6); and
- (b) a valid claim for native title conferring a right to exclusive possession is subsequently made in relation to the land,
- 40
- then any such amount that is attributable to rental paid to the Minister in relation to the prescribed period is, after deduction of 5%, payable to the person or persons to whom native title is granted (and if there is more than 1 such person then their respective shares will be determined by applying the principles set out in subsection (6)).

(8) For the purposes of subsection (7), the *prescribed period* is the period of 5 years immediately preceding the registration of native title under the law of the State or the Commonwealth (as the case may be).

5 (9) Subsections (4) to (8) do not apply in relation to land owned by—

(a) a Minister; or

(b) the Commissioner for Highways; or

(c) any other agency or instrumentality of the Crown prescribed by the regulations.

10 (10) An amount paid to the holder of a relevant interest in land under this section will not be taken to be compensation for the purposes of any other section.

56N—Debt payable to Crown

15 The liability to pay any rental under this Division is a debt due to the Crown.

Division 5—Rectification of boundaries

56O—Rectification of boundaries

(1) This section applies in relation to any mineral tenement.

(2) The Mining Registrar may—

20 (a) vary the boundaries or delineation of a mineral tenement; or

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

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

25 (3) However—

(a) the Mining Registrar may only act under subsection (2)(a) or (b)—

(i) if the Mining Registrar is acting with the consent of the tenement holder; or

30 (ii) if authorised to do so by a determination of the Warden's Court made on application by the Mining Registrar; and

(b) the Mining Registrar may only act under subsection (2)(c) after consultation with the tenement holder.

Division 6—Amalgamation of areas

56P—Amalgamation of areas

(1) This section applies in relation to any mineral tenement.

- 5
- (2) The Minister may, on application by a tenement holder or by agreement with a tenement holder, amalgamate the areas of 2 or more mineral tenements (and 2 or more tenement holders may make application under this section in relation to 2 or more mineral tenements).
- (3) If an amalgamation proceeds under this section—
- 10
- (a) the relevant mineral tenements are amalgamated into the 1 tenement (and if more than 1 tenement holder has an interest in the amalgamated tenement, their respective interests will be determined according to an agreement between these parties); and
- (b) the terms and conditions of the tenement will be as determined by the Minister after consultation with the tenement holder (or tenement holders); and
- 15
- (c) the term of the tenement will be as determined by the Minister after consultation with the tenement holder (or tenement holders) and after taking into account such other interests as may be relevant in the circumstances; and
- 20
- (d) the Minister may make such other determinations relating to any other matter associated with the amalgamated tenement arising under this Act that are considered to be necessary or appropriate by the Minister (and any such determination will have effect according to its terms).

Division 7—Change in operations

56Q—Preliminary

- 25
- (1) This Division applies if both subsections (2) and (3) apply (subject to the operation of subsection (4)).
- (2) This Division applies in relation to—
- 30
- (a) a mining lease; and
- (b) a retention lease; and
- (c) a miscellaneous purposes licence.
- (3) This Division applies in relation to a proposal by the tenement holder—
- 35
- (a) to make a change to the authorised operations to be carried out under the tenement; or
- (b) without limiting paragraph (a)—to make a change—
- (i) in the mineral that is intended to be recovered; or

(ii) that may reduce the ability of the tenement holder to achieve a particular outcome, including an environmental outcome, or that is a change to the criteria to be adopted to measure a particular outcome; or

(iii) to the terms or conditions of the tenement; or

(c) to make a change of any prescribed kind.

(4) This Division does not apply in any circumstances prescribed by the regulations.

(5) A change to which this Division applies must not be made without the approval of the Minister.

Maximum penalty: \$250 000.

56R—Application

(1) An application for the approval of the Minister under this Division—

(a) must be made in a manner and form determined by the Minister; and

(b) must be accompanied by—

(i) a proposal relating to the change being proposed by the tenement holder that complies with any requirements prescribed by the regulations; and

(ii) such other information prescribed by the regulations; and

(c) must be accompanied by the prescribed fee.

(2) The Minister may require the applicant to furnish the Minister with any additional information specified by the Minister (and that information must be furnished within any period specified by the Minister).

56S—Consultation

The Minister—

(a) may undertake such consultation in relation to an application under this Division as the Minister thinks fit; and

(b) must undertake consultation under Division 2 in relation to an application under this Division if required to do so by the regulations.

56T—Consideration of proposal

(1) If—

(a) a change included in a proposal under this Division relates to extractive minerals; and

(b) the relevant mineral tenement has not previously applied in relation to extractive minerals; and

- (c) the extractive minerals are on land granted in fee simple or land in respect of which native title conferring a right to exclusive possession of land exists,

the Minister must not approve the change except with the written consent of the owner of the land.

- (2) Consent given by an owner of land under subsection (1) is binding on all subsequent owners of the land.
- (3) Subsection (1) does not apply if the purpose of the change is to vary the terms or conditions of the mineral tenement so as to make provision for the management and use of extractive minerals produced during the course of carrying out authorised operations under the tenement.
- (4) In addition, the Minister must not approve a change included in a proposal under this Division unless satisfied—
- (a) in the case of a mining lease—that the change will not adversely affect the ability of the tenement holder to ensure that land comprised in the tenement can be effectively and efficiently mined; and
- (b) that appropriate environmental outcomes will be able to be achieved; and
- (c) that the change will not adversely affect the ability of the tenement holder to comply with the other requirements of this Act.

56U—Terms and conditions

- (1) The Minister may, at the time of granting an approval under this Division, add, vary or revoke a term or condition of the relevant mineral tenement (to the extent that the Minister considers that the addition, variation or revocation is directly or indirectly relevant to the granting of the approval).
- (2) The Minister must, in acting under subsection (1), give proper consideration to—
- (a) any aspect of the environment that may be affected by the change in authorised operations under the tenement; and
- (b) any other lawful activities that may be affected by the change; and
- (c) any Aboriginal sites or objects within the meaning of the *Aboriginal Heritage Act 1988* that may be affected by the change,

and may take into consideration such other factors or matters as the Minister considers appropriate in the particular case.

56V—Registration

- 5
- (1) If the Minister decides to approve an application under this Division, the approval will be taken to be granted when the approval is registered on the mining register (and the approval will take effect from the date of registration).
 - (2) The Minister must give notice of the granting of an approval under this Division in the manner prescribed by the regulations.

Division 8—Cancellation, suspension and surrender

56W—Cancellation and suspension—action by Minister

- 10
- (1) This section applies in relation to—
 - (a) an exploration licence; or
 - (b) a mining lease; or
 - (c) a retention lease; or
 - (d) a miscellaneous purposes licence.
 - 15 (2) The Minister may cancel or suspend a mineral tenement to which this section applies if the tenement holder contravenes or fails to comply with—
 - (a) a term or condition of the tenement; or
 - (b) a provision of this Act.
 - 20 (3) The Minister may suspend all or some of the authorised operations under a mineral tenement to which this section applies—
 - (a) pending compliance with an obligation or requirement under this Act by the tenement holder; or
 - 25 (b) until the tenement holder takes some other step specified by the Minister; or
 - (c) on account of any other matter that, in the opinion of the Minister, warrants suspension of rights under the tenement.
 - 30 (4) The Minister must not take action under this section unless or until the Minister has—
 - (a) taken reasonable steps to notify the tenement holder of the proposed course of action (including in the notification the grounds on which the Minister is intending to act); and
 - 35 (b) provided the tenement holder with an opportunity to make written submissions in relation to the matter within a period specified by the Minister.
 - (5) The Minister may, after complying with subsection (4), by instrument registered on the mining register, cancel or suspend a mineral tenement.

- 5
- (6) The Minister must ensure that a notice of the cancellation or suspension of a mineral tenement under subsection (5) is given to the tenement holder.
- (7) A tenement holder may, within 28 days after receiving a notice under subsection (6), appeal to the ERD Court in relation to the matter.
- (8) The ERD Court may, on hearing an appeal under subsection (7), if satisfied that the ground or grounds on which the Minister acted were insufficient to justify the cancellation or suspension of the mineral tenement (as the case may be)—
- 10
- (a) revoke the cancellation or suspension; and
- (b) make any consequential or ancillary order that the Court considers necessary or appropriate.
- (9) If the ERD Court makes an order under subsection (8)(a), the Minister may, subject to any order of the Court, reinstate the mineral tenement to a date that coincides with the initial date of the cancellation or suspension, or such later date as the Minister considers to be appropriate in the circumstances.
- 15

56X—Surrender on application

- 20
- (1) A tenement holder may apply to the Minister for an approval to surrender—
- (a) the mineral tenement; or
- (b) a part of the area of the mineral tenement.
- (2) An application must be—
- (a) made in a manner and form determined by the Minister; and
- 25
- (b) must be accompanied by such information as may be prescribed by the regulations.
- (3) The Minister may, if or when satisfied that it is appropriate to do so, by instrument registered on the mining register, approve the surrender.
- 30
- (4) If a mineral tenement surrendered under this section is a private mine, the declaration of the relevant area as a private mine made under this Act will be taken to be revoked.
- (5) If a part of the area of a private mine is surrendered under this section, the declaration of the relevant area as a private mine under this Act will be taken to be varied to exclude the area to the extent of the surrender.
- 35

Division 9—Extension of term or reinstatement of tenement

56Y—Extension of term of tenement

- 40
- (1) This section applies in relation to—
- (a) a mining lease; or

- (b) a retention lease; or
- (c) a miscellaneous purposes licence.

5 (2) Without limiting any other provision, the Minister may at any time extend the term of a mineral tenement to which this section applies if the Minister considers—

- (a) that the tenement holder to which this section applies has contravened, or failed to comply with, a provision of this Act; and
- (b) that the term of the tenement should be extended in order to support the requirement that the tenement holder take action—
 - (i) to rehabilitate land in accordance with the requirements of a program under Part 10A; or
 - (ii) to rehabilitate land to a standard required to secure compliance with a condition of the mineral tenement; or
 - (iii) to prevent or address undue damage to the environment,

(including to land outside the area of the mineral tenement).

- 20 (3) In connection with subsection (2), the only operations that the tenement holder may undertake during the period of the extension are operations to give effect to the requirement referred to in subsection (2)(b).
- 25 (4) The Minister must take reasonable steps to consult with the holder of the relevant mineral tenement before acting under subsection (2).
- (5) If the Minister acts without the agreement of the tenement holder, the tenement holder may appeal to the ERD Court in relation to the matter.
- 30 (6) The ERD Court may, on hearing an appeal under subsection (5)—
 - (a) confirm the action taken by the Minister;
 - (b) impose any term or condition considered appropriate by the Court;
 - (c) make any consequential or ancillary order that the Court considers necessary or expedient.

35 **56Z—Reinstatement of tenement**

- (1) This section applies in relation to—
 - (a) if the regulations so provide—an exploration licence; or
 - (b) a mining lease; or
 - (c) a retention lease; or
 - 40 (d) a miscellaneous purposes licence,

(being a tenement that has expired).

- 5
- (2) This section sets out a scheme that will allow the Minister to reinstate a mineral tenement to which this section applies that has expired under another provision of this Act.
- (3) The Minister may act under this section if the Minister considers—
- (a) that the tenement holder to which this section applies has contravened, or failed to comply with, a provision of this Act; and
- 10 (b) that the tenement should be reinstated in order to support the requirement that the tenement holder take action—
- (i) to rehabilitate land in accordance with the requirements of a program under Part 10A; or
- 15 (ii) to rehabilitate land to a standard required to secure compliance with a condition of the mineral tenement; or
- (iii) to prevent or address undue damage to the environment,
- (including to land outside the area of the mineral tenement).
- (4) In connection with subsection (3), the only operations that the tenement holder may undertake during the period of the reinstatement are operations to give effect to the requirement referred to in subsection (3)(b).
- 20
- (5) The Minister may act under this section despite the cessation of authorised operations by the tenement holder on or before the expiration of the mineral tenement.
- 25
- (6) If the Minister decides to act under this section—
- (a) the mineral tenement will be taken to have been reinstated from the date on which the tenement expired or from a later date determined by the Minister; but
- 30 (b) any section of this Act prescribed by the regulations will not apply in relation to the mineral tenement.
- (7) The Minister may, in acting under this section, reinstate a mineral tenement in relation to an area that is smaller than the area of the original tenement at the time of its expiry.
- 35
- (8) The term of the mineral tenement, as reinstated under this section, will be—
- (a) a term determined by the Minister; or
- (b) a term that expires at some later time on a date to be determined by the Minister.
- 40
- (9) The Minister reinstates a mineral tenement under this section by instrument registered on the mining register.

- (10) The Minister must ensure that a notice of the reinstatement of a mineral tenement under this section is given to the tenement holder and the owner of the land.
- 5 (11) To the extent that the reinstatement of a mineral tenement under this section does not give rise to a right to mine under the *Native Title Act 1993* of the Commonwealth, Part 9B does not apply to the reinstatement of the mineral tenement under this section.

Division 10—Assessment reports

56ZA—Assessment reports

- 10 (1) The Minister must prepare a report (an *assessment report*) that sets out or includes the Minister's assessment in respect of the following:
- 15 (a) an application for a mineral tenement under this Act;
- (b) without limiting paragraph (a), the ranking of applications for exploration licences in relation to an exploration release area;
- (c) an application for retention status under section 33B;
- (d) an application to amalgamate the areas of 2 or more mineral tenements under Division 6;
- 20 (e) an application for a change in operations under Division 7;
- (f) a decision to cancel, suspend or surrender a mineral tenement under Division 8;
- (g) a decision to exempt a tenement holder from an obligation to comply with a term or condition of a mineral tenement, or from a requirement of this Act;
- 25 (h) any other matter prescribed by the regulations.
- (2) The Minister must, in preparing a report under this section—
- 30 (a) set out or include information about any submission that was made to the Minister in connection with a matter referred to in subsection (1); and
- (b) set out or include information or material provided by an applicant or tenement holder in connection with a matter referred to in subsection (1) (including any response provided to the Minister in relation to any submission made to the Minister); and
- 35 (c) include any other information or material that the Minister thinks fit.
- (3) The Minister may publish an assessment report in such manner, and to such extent, as the Minister thinks fit.
- (4) No liability attaches to the Minister in connection with—
- 40 (a) a decision by the Minister to include any particular matter, information or material in an assessment report; or

- (b) a decision by the Minister to publish an assessment report.

54—Amendment of section 57—Entry on land

- (1) Section 57—delete "prospect, explore or mine for minerals" and substitute:

undertake prospecting, exploration, mining for minerals or ancillary
operations

- (2) Section 57(a)—delete paragraph (a) and substitute:

- (a) may enter any mineral land (except exempt land) for the purpose of
carrying out authorised operations in accordance with this Act; and

- (3) Section 57(b)—delete "pegging out" and substitute:

establishing

55—Amendment of section 58—How entry on land may be authorised

- (1) Section 58—delete "mining operator" wherever occurring and substitute in each case:

tenement holder

- (2) Section 58—delete "mining operations" wherever occurring and substitute in each
case:

authorised operations

- (3) Section 58—after paragraph (a) insert:

- (ab) if the tenement holder has an agreement or order to waive the benefit
of an exemption under section 9AA; or

- (ac) if the tenement holder has obtained the written consent of the owner
of the land under section 75;

- (4) Section 58(c)(i)—delete "the prescribed notice of entry" and substitute:

any notice required under section 58A

- (5) Section 58, Explanatory note—delete "mining operator's" and substitute:

tenement holder's

- (6) Section 58, Explanatory note—delete "mining tenement" and substitute:

mineral tenement

56—Substitution of section 58A

Section 58A—delete the section and substitute:

58A—Notice requirements

- (1) A person who is—

- (a) intending to prospect for minerals under section 20; or

- (b) the holder of an exploration licence or a mineral claim,

must, at least 28 days before first entering land to carry out authorised operations, serve on the owner of the land notice of intention to enter the land in accordance with this section.

Maximum penalty: \$20 000.

- 5 (2) A person who is intending to commence advanced exploration operations that are not within the ambit of a notice under subsection (1) must, at least 28 days before first commencing those operations, serve on the owner of the relevant land notice of intention to commence those operations.

10 Maximum penalty: \$20 000.

- (3) A person who is intending to apply for a mineral lease, retention lease or miscellaneous purposes licence must serve on the owner of the land to which the application relates notice of intention to apply for the lease or licence.

- 15 (4) A notice under subsection (3)—

(a) must inform the owner of the land of the person's intention to enter the land to carry out authorised operations if the application is granted; and

20 (b) is of no effect for the purposes of this section if the person who served the notice does not apply for the lease or licence within 12 months of serving the notice on the owner of the land or if the application is refused.

- (5) A notice must be served in accordance with the regulations.

25 (6) A copy of a notice must be served on the Mining Registrar (for registration on the mining register) in accordance with the regulations.

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

- (8) However, a notice is not required under subsection (7) 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.

35 (9) If the land is held under a form of title (other than a licence under the *Petroleum and Geothermal Energy Act 2000*) that confers a right to exclusive possession of the land or under a pastoral lease—

(a) the notice must contain a statement of the owner's rights of objection and compensation under this Act; and

40 (b) the owner may, within 3 months after service of the notice, lodge a notice of objection with the appropriate court objecting—

(i) to entry on the land by the person who served the notice; or

(ii) to the use, or the unconditional use, of the land, or a portion of the land, for authorised operations.

(10) The court must send a copy of a notice of objection received under subsection (9) to the person who served the notice.

(11) The court may, if the court thinks fit, postpone the hearing of an objection to entry on land by a person who has given notice under subsection (3) of an intention to apply for a lease or licence until after the application has been made.

(12) If the court is satisfied on the hearing of an objection that the conduct of the authorised operations on the land would be likely to result in substantial hardship or substantial damage to the land, the court may—

(a) determine that the land, or a particular part of the land, should not be used for the purposes of the proposed authorised operations; or

(b) determine conditions on which operations may be carried out on the land with least detriment to the interests of the owner and least damage to the land.

(13) A person who conducts authorised operations in contravention of a determination under this section is guilty of an offence.

Maximum penalty: \$150 000.

(14) A notice under this section is not required if—

(a) the land to be entered is in a precious stones field; or

(b) the person who would otherwise be required to give such a notice is authorised to enter the land by agreement with the owner of the land; or

(c) the person who would otherwise be required to give such a notice is authorised to enter the land under a native title mining determination; or

(d) the person who would otherwise be required to give such a notice is authorised to enter the land under an indigenous land use agreement registered under the *Native Title Act 1993* of the Commonwealth; or

(e) the person who would otherwise be required to give such a notice, or a related body corporate, has previously given notice under this section as a prospective applicant under subsection (3) or as the holder of an earlier mineral tenement over the land to be entered (whether or not other land was also subject to the same application or tenement).

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

(16) Nothing in this section requires a tenement holder to serve a new notice if or when there is a change in ownership of land.

57—Repeal of section 59

Section 59—delete the section

58—Amendment of section 61—Compensation

(1) Section 61(1)—delete subsection (1) and substitute:

5 (1) The owner of any land on which authorised operations are carried out under this Act is entitled to receive compensation for any economic loss, hardship or inconvenience suffered by the owner in consequence of authorised operations.

10 (2) Section 61(2)—delete "mining operations" wherever occurring and substitute in each case:

authorised operations

(3) Section 61(2a)(a)—delete "licensee" and substitute:

tenement holder

(4) Section 61(3)—delete "mining operator" and substitute:

15 tenement holder

(5) Section 61(4)—delete "mining operator" and substitute:

tenement holder

(6) Section 61(5)—delete "mining operator" and substitute:

tenement holder

20 (7) Section 61—after subsection (5a) insert:

 (5b) It will be a condition of a mineral tenement that the Minister may, at any time, require the tenement holder to pay to any person an amount of compensation, specified by the Minister, to which the person is, in the opinion of the Minister, entitled on account of loss or damage suffered by the person as a result of operations carried out under the tenement.

 (5c) Subsection (5b) operates in addition to any other provision made by this or any other section.

(8) Section 61(6)(a)—delete "mining operations" and substitute:

30 authorised operations

(9) Section 61(6)(b)—delete "mining operator" and substitute:

tenement holder

59—Amendment of section 62—Bond and security

(1) Section 62(1)—delete "mining tenement, require him" and substitute:

35 mineral tenement, require them

(2) Section 62(1)—delete "mining operations" wherever occurring and substitute in each case:

authorised operations

(3) Section 62—after subsection (2) insert:

(2a) If an applicant for a mineral tenement fails to comply with a requirement under this section, the Minister may refuse the application.

5 (4) Section 62(3)—delete "mining tenement" and substitute:

mineral tenement

(5) Section 62(3)(a)—delete "mining operations" and substitute:

authorised operations

(6) Section 62(4), (5) and (6)—delete subsections (4), (5) and (6) and substitute:

10 (4) The liability to pay an amount under this section is a debt due to the Crown.

(5) A person must not contravene a prohibition under subsection (3).
Maximum penalty: \$150 000.

15 (6) If the Minister holds, or is entitled to hold, any money under a bond entered into by a tenement holder, the Minister may, in the Minister's discretion, expend any portion of that money—

(a) to compensate any person who has suffered, or is likely to suffer, financial loss as a result of authorised operations carried out by that tenement holder or in rehabilitating any land disturbed by any such authorised operations; or

20 (b) to satisfy any liability to pay an amount that is due to the Crown under this Act.

25 (7) The Minister may, on application under this subsection, (in the Minister's absolute discretion) agree to the assignment of a liability or obligation under this section to a third party on terms or conditions determined by the Minister.

(8) No action lies against the Minister in respect of the expenditure of money under this section.

60—Insertion of section 62AA

30 After section 62 insert:

62AA—Mining Rehabilitation Fund

(1) The Minister must establish a fund entitled the Mining Rehabilitation Fund.

(2) The fund will consist of—

35 (a) amounts required to be paid under subsections (3) and (4);
and

(b) amounts required to be paid into the fund under any other section; and

40 (c) amounts required to be paid into the fund under the regulations; and

- 5
- (d) amounts required to be paid into the fund under any other Act; and
 - (e) any income or accretions produced by the investment of money from the fund (and the Minister is authorised to invest any amount standing to the credit of the fund in such manner as the Minister thinks fit).
- 10
- (3) The Minister may, after taking into account the matters specified in subsection (4), require a tenement holder (or former tenement holder) to pay an amount determined by the Minister into the fund—
- (a) before the relevant mineral tenement is cancelled, surrendered or expires under this Act; or
 - (b) within the prescribed period after the relevant mineral tenement is cancelled, surrendered or expires under this Act.
- 15
- (4) The following matters are specified:
- (a) the extent to which it appears that resources may be required to achieve appropriate environmental outcomes on the closure of authorised operations on land comprised in the relevant mineral tenement;
 - (b) without limiting paragraph (a), the extent and likelihood of action that may be required—
 - (i) to reinstate, supplement or improve rehabilitation of land that fails to establish a safe, stable and self-contained environment; and
 - (ii) to maintain environmental management processes; and
 - (iii) to take further action to restore the environment because of environmental damage or impairment resulting from authorised operations.
- 20
- 25
- 30
- (5) The Minister may impose a requirement under this section even if a mineral tenement has been reinstated under Part 8B Division 9.
- (6) The imposition of a requirement under this section does not limit any other action or requirement that may be taken or arise under any other section.
- 35
- (7) The Minister may impose a requirement under this section by notice served on the relevant tenement holder (or former tenement holder).
- (8) An amount required to be paid into the fund under subsection (3) must be paid within a period (of at least 28 days) specified by the Minister in a notice under subsection (7).
- 40
- Maximum penalty: \$20 000.
- (9) The liability to pay an amount under this section is a debt due to the Crown.

(10) Money standing to the credit of the fund may be used by the Minister for all or any of the following purposes:

- (a) to fund monitoring and maintenance of any land in relation to which a requirement under this section has been imposed;
- (b) to fund programs, including as to the collection or provision of information and the carrying out of work, relating to the rehabilitation of any land in relation to which a requirement under this section has been imposed;
- (c) to achieve any other environmental outcomes that are related to the ceasing of authorised operations;
- (d) to fund other programs, or to achieve other outcomes, prescribed by the regulations;
- (e) to provide for the costs of administering the fund.

(11) For the purposes of carrying out any operations associated with using money for a purpose under subsection (10), the Minister or the Director of Mines, or any person authorised in writing by the Minister or the Director of Mines, may—

- (a) enter and remain on any land with such assistants, vehicles and equipment as may be necessary or expedient for any such purpose; and
- (b) carry out tests or any work.

(12) A person who interferes with or obstructs any person in the exercise of a power under subsection (11) is guilty of an offence.

Maximum penalty: \$20 000 or imprisonment for 6 months.

61—Amendment of section 62A—Right to require acquisition of land

(1) Section 62A(1)—delete "mining operator" and substitute:

tenement holder

(2) Section 62A(2)—delete "mining tenement" wherever occurring and substitute in each case:

mineral tenement

62—Amendment of section 63—Extractive Areas Rehabilitation Fund

Section 63(3)—delete "mining operations" wherever occurring and substitute in each case:

authorised operations

63—Repeal of Part 9A

Part 9A—delete the Part

64—Amendment of section 63F—Qualification of rights conferred by exploration authority

(1) Section 63F(4)—delete "mining operator's" and substitute:
tenement holder's

5 (2) Section 63F(4)—delete "mining operator" and substitute:
tenement holder

65—Amendment of section 63K—Types of agreement authorising mining operations on native title land

10 (1) Section 63K—delete "mining operator" wherever occurring and substitute in each case:

tenement holder

(2) Section 63K—delete "mining operators" wherever occurring and substitute in each case:

tenement holders

15 **66—Amendment of section 63L—Negotiation of agreements**

(1) Section 63L, Explanatory note—delete "two months" and substitute:
4 months

(2) Section 63L(2)(a)—delete "mining operator" and substitute:
tenement holder

20 (3) Section 63L(2)(b)—delete "mining operators" and substitute:
tenement holders

67—Amendment of section 63N—What happens when there are no registered native title parties with whom to negotiate

Section 63N(1)—delete "two months" and substitute:

25 4 months

68—Amendment of section 63O—Expedited procedure where impact of operations is minimal

Section 63O(4)—delete "two months" and substitute:

4 months

30 **69—Amendment of section 63R—Effect of registered agreement**

(1) Section 63R(3)—delete "mining operator" and substitute:
tenement holder

(2) Section 63R(4)—delete "mining tenement" and substitute:
mineral tenement

70—Amendment of section 63S—Application for determination

- (1) Section 63S(1)—delete the second sentence and substitute:

In this subsection, the *relevant period* is 6 months from when the negotiations were initiated.

- (2) Section 63S(4)—delete the second sentence and substitute:

In this subsection, the *relevant period* is 6 months from when the application is made.

71—Amendment of section 63V—Effect of determination

Section 63V(5)—delete "mining tenement" and substitute:

mineral tenement

72—Amendment of section 63ZB—Review of compensation

Section 63ZB(4)(c) —delete "mining operators" and substitute:

tenement holders

73—Amendment of section 63ZBA—Mining Native Title Register

Section 63ZBA(7), penalty provision—delete the penalty provision and substitute:

Maximum penalty: \$50 000.

74—Substitution of heading to Part 10

Heading to Part 10—delete the heading and substitute:

Part 10—Warden's Court—general provisions

75—Amendment of section 64—Establishment of Warden's Court

Section 64—after subsection (1) insert:

- (1a) The jurisdiction of the Warden's Court will be such jurisdiction as is—

(a) conferred by or under this or any other Act; or

(b) contemplated by this or any other Act.

76—Amendment of section 65—Powers etc of Warden's Court

Section 65(1) to (1c)—delete subsections (1) to (1c) (inclusive) and substitute:

- (1) For the purposes of proceedings before the Warden's Court, the Court has—

(a) the powers and authorities of the Magistrates Court of South Australia (other than a prescribed power or authority); and

(b) any additional powers or authorities prescribed by the regulations for the purposes of this subsection.

- (1a) A summons may be issued on behalf of the Court by—

(a) a warden; or

- (b) any other officer (including an officer of another court)
authorised by the rules of the Court to issue summonses.

77—Amendment of section 66—Rules of Warden's Court

Section 66(1)—delete "The Governor" and substitute:

5 The senior warden

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

- (1) Section 67(1)—delete "mining tenement" wherever occurring and substitute in each
case:

10 mineral tenement

- (2) Section 67(1a)—delete "\$100 000" and substitute:

\$150 000

- (3) Section 67(1a)(a)—delete "mining tenement" wherever occurring and substitute in
each case:

15 mineral tenement

- (4) Section 67(1a)(b)—delete "mining operations" and substitute:

authorised operations

79—Repeal of section 69

Section 69—delete the section

20 **80—Amendment of section 70—Forfeiture and transfer of mineral tenement**

- (1) Section 70(1) and (2)—delete subsections (1) and (2) and substitute:

- (1) This section applies in relation to—

- (a) a mineral claim; or
(b) if the regulations so provide—an exploration licence; or
25 (c) a mining lease; or
(d) a retention lease.

- (2) Subject to this section, the Warden's Court may, on application under
this section, adjudge that a mineral tenement to which this section
applies is liable to forfeiture and recommend to the Minister that the
30 tenement be forfeited.

- (2a) The regulations may—

- (a) provide that an applicant must satisfy any prescribed
requirements before an application may be made under this
section; and
35 (b) provide that an applicant must be able to demonstrate any
prescribed capability or other requirement as part of an
application under this section; and

- (c) provide that an application must be supported by any evidence of a kind prescribed by the regulations; and
- (d) provide for limitations on, or exclusions from, an ability to make an application under this section; and
- (e) provide for other matters associated with making an application under this section.

(2b) A recommendation may not be made by the Warden's Court under this section unless the Court is satisfied that 1 or more of the following have occurred in a material respect and that the matter is of sufficient gravity to justify the forfeiture of the mineral tenement:

- (a) a breach of this Act or any regulation;
- (b) without limiting paragraph (a)—
 - (i) a breach of a term or condition of the tenement; or
 - (ii) a breach of a program under Part 10A;
- (c) undue damage to the environment in connection with any authorised operations carried out under the tenement;
- (d) a failure to carry out activities associated with holding the relevant type of tenement within a reasonable time or to a reasonable extent.

(2) Section 70(3)—delete "lease" wherever occurring and substitute in each case:
mineral tenement

(3) Section 70—after subsection (3) insert:

(3a) A right to the transfer of a mineral tenement under subsection (3)—

- (a) does not arise in any circumstance prescribed by the regulations; and
- (b) expires at the end of a period prescribed by the regulations.

(4) Section 70(4)—delete "lease" and substitute:
mineral tenement

(5) Section 70(4a)—delete "lease" and substitute:
mineral tenement

(6) Section 70(5)—delete subsection (5)

81—Amendment of heading to Part 10A

Heading to Part 10A—delete "Programs" and substitute:

Operating approval—program

82—Amendment of section 70A—Object of Part

(1) Section 70A(1)—delete "mining tenements" and substitute:
mineral tenements

(2) Section 70A(1)—before paragraph (a) insert:

(aa) ensure that an operating approval in the form of a program for environment protection and rehabilitation is in force; and

(3) Section 70A(1)—delete "mining operations" wherever occurring and substitute in each case:

authorised operations

(4) Section 70A(2)—delete subsection (2)

83—Amendment of section 70B—Preparation or application of program

(1) Section 70B(1)—delete "The holder of a mining tenement must not carry out mining operations" and substitute:

A person must not carry out authorised operations

(2) Section 70B(2)(a)—delete paragraph (a) and substitute:

(a) specify the authorised operations that are proposed to be carried out under this Act; and

(3) Section 70B(2)(b)(i)—delete "mining operations" and substitute:

authorised operations

(4) Section 70B(2)(b)(i)—delete "holder of the tenement" and substitute:

tenement holder

(5) Section 70B(2)(b)(ii)—delete subparagraph (ii) and substitute:

(ii) a statement of the criteria to be adopted to measure those environmental outcomes, in a form prescribed by the regulations; and

(6) Section 70B(2)(c)—delete "holder of the mining tenement" and substitute:

tenement holder (and any other person who may be acting on behalf of the tenement holder)

(7) Section 70B(3)—delete "mining tenements" wherever occurring and substitute in each case:

mineral tenements

(8) Section 70B(4)—delete subsection (4) and substitute:

(4) A program under subsection (2) or (3) must be submitted to the Minister for approval.

(4a) An application for the approval of a program must be made in a manner and form determined by the Minister.

(4b) The Minister may require a person who has submitted a program to furnish the Minister with any additional information specified by the Minister (and that information must be furnished within any period specified by the Minister).

(9) Section 70B(5)(b)—delete paragraph (b) and substitute:

- (b) require alterations to the program after consultation with the tenement holder (or tenement holders) in order to ensure that the program complies with the requirements of subsection (2) (and to ensure consistency with the other provisions of this Act); or
- (c) reject the program on the basis that the program fails to comply with the requirements of subsection (2) (and any other relevant provision of this Act).

(10) Section 70B(6)—delete subsection (6) and substitute:

- (6) A tenement holder in relation to whom a decision is made by the Minister under subsection (5)(b) or (c) may apply to the ERD Court for a review of the decision within 28 days after receiving notice of the decision or such longer period as the Minister may allow in a particular case.

(11) Section 70B(7)(a)—delete "requirement" and substitute:

decision

(12) Section 70B(7)(b)—delete "requirement" and substitute:

decision

(13) Section 70B—after subsection (7) insert:

(7a) A program approved under this section is subject to—

- (a) such conditions as may be prescribed; and
- (b) such additional conditions (if any) as the Minister thinks fit and specifies by notice to the tenement holder (or tenement holders).

(14) Section 70B(8)—delete "mining operations" and substitute:

authorised operations

(15) Section 70B(9)(b)—delete paragraph (b) and substitute:

- (b) the authorised operations to be carried out under a mineral tenement fall within the ambit of that program,

(16) Section 70B(9)—delete "the holder of the mining tenement" and substitute:

the tenement holder (and any other person who may be acting on behalf of the tenement holder)

(17) Section 70B(10)—delete subsection (10) and substitute:

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

(11) A program may be developed and approved under this section even though it may relate (wholly or in part) to exempt land (on the basis that the tenement holder will seek to gain access to the land under a waiver of the benefit of the exemption).

84—Amendment of section 70C—Review of programs

(1) Section 70C(1)—delete "holder of the relevant mining tenement" and substitute:
relevant tenement holder

(2) Section 70C(2) and (3)—delete subsections (2) and (3) and substitute:

5 (2) A program must be reviewed—

(a) if the tenement holder is seeking approval under Part 8B Division 7 to a change in authorised operations that may be carried out under the relevant mineral tenement and the change is inconsistent with the program; or

10 (b) if the Minister directs that the program should be reviewed (whether on the basis of a report provided to the Minister under section 70DA or for some other reason); or

(c) if a review is required by the regulations.

(3) A review must be conducted—

15 (a) in accordance with any requirements prescribed by the regulations; and

(b) taking into account the requirements of section 70B(2) (and so as to provide consistency with those requirements); and

(c) within a period prescribed by the regulations.

20 (3) Section 70C(5)(b)—delete "holder of the mining tenement (or holders of the mining tenements)" and substitute:

tenement holder (or tenement holders)

(4) Section 70C(6)—delete "The holder of a mining tenement" and substitute:

A tenement holder

25 (5) Section 70C—after subsection (7) insert:

(8) The Minister may, on approving a revised program under this section, add, vary or revoke a condition applying in relation to the program.

85—Substitution of section 70D

30 Section 70D—delete the section and substitute:

70D—Notice of certain programs

(1) This section applies in relation to a program under this Part if—

35 (a) authorised operations that are proposed to be carried out constitute a controlled action within the meaning of the *Environment Protection and Biodiversity Conservation Act 1999* of the Commonwealth; and

(b) the controlled action is not to be assessed under Part 8 of that Act but instead assessed under a bilateral agreement in accordance with that Act.

- (2) The Minister must, before approving or reviewing a program to which this section applies, publish, in such manner as the Minister thinks fit, a notice—
- (a) describing the land to which the program relates; and
 - (b) specifying a place where the program may be inspected; and
 - (c) inviting written submissions in relation to the program to the Minister within a time specified in the invitation.
- (3) The Minister—
- (a) must give to the person who has submitted the program a copy of any submission received by the Minister under subsection (2) within the relevant period specified by the Minister; and
 - (b) may require the person to respond to any matter raised in any such submission within a period specified by the Minister.
- (4) A submission under subsection (2) cannot be made on the basis that the submission (or part of the submission) will be kept confidential and a response under subsection (3) cannot be made on the basis that the response (or part of the response) will be kept confidential.
- (5) In determining whether or not to approve a program under section 70B and, if so, any terms and conditions to which the program may be subject, the Minister must have regard to any submissions or response received under subsection (2) or (3).

70DA—Audit of program

- (1) A tenement holder must, at the direction of the Minister, do 1 or both of the following:
- (a) carry out specified tests, environmental monitoring or other investigations (a *program audit*) relating to any authorised operations carried out under the relevant mineral tenement;
 - (b) comply with the requirements or outcomes of a program audit to the satisfaction of the Minister.
- (2) The Minister may, in acting under subsection (1), provide directions about 1 or more of the following:
- (a) the independence, qualifications or experience of a person who will carry out a program audit;
 - (b) the period within which a program audit must be completed;
 - (c) the provision of a report or reports to the Minister.
- (3) A program audit must be carried out in accordance with any requirements prescribed by the regulations.
- (4) Without limiting subsection (1)(b), the Minister may rely on any information provided in a report under this section for the purposes of requiring a review of a program under section 70C.

- (5) Without limiting subsection (2)(a), the Minister may require that the audit be conducted by a person approved by the Minister.
- (6) Any cost associated with a requirement under this section will be borne by the tenement holder.

5 **70DB—Publication of program**

The Minister may publish a program or part of a program in such manner as the Minister thinks fit.

70DC—Offences

- 10 (1) A tenement holder must not carry out authorised operations under a mineral tenement if the person is in breach of a requirement under this Part.

Maximum penalty: \$250 000.

- (2) A tenement holder must not contravene, or fail to comply with, a condition of a program under this Part.

15 Maximum penalty: \$250 000.

- (3) A tenement holder must not fail to comply with a requirement under this Part to review a program under this Part.

Maximum penalty: \$250 000.

- 20 (4) A tenement holder must not fail to comply with a requirement under this Part relating to—

- (a) the conduct of a program audit; or
(b) the action to be taken as a result of a program audit.

Maximum penalty: \$250 000.

- (5) A person, who in connection with any authorised operations—

- 25 (a) contravenes or fails to comply with a program under this Part that applies in relation to those operations; or
(b) contravenes or fails to comply with a condition of a program under this Part that applies in relation to those operations,

is guilty of an offence.

30 Maximum penalty: \$250 000.

86—Substitution of heading to Part 10B

Heading to Part 10B—delete the heading and substitute:

Part 10B—Compliance and enforcement

35 **87—Amendment of section 70E—Power to direct persons to take action to prevent or minimise environmental harm**

- (1) Section 70E(1)—delete "mining operations" and substitute:

authorised operations

- (2) Section 70E(2)—delete subsection (2)

(3) Section 70E(3)(d)—delete paragraph (d) and substitute:

(d) a requirement that a person specified or identified in the direction undertake specified tests or monitoring and, in relation to such a requirement—

(i) a requirement that the tests or monitoring be carried out by a person with specified qualifications or experience;

(ii) a requirement that a report or reports be provided to the Minister, or to any other specified person;

(4) Section 70E(3)—after paragraph (e) insert:

(ea) a requirement that a person specified or identified in the direction prepare a plan of action (that complies with any specified requirements and to the satisfaction of the Minister) to prevent or address—

(i) undue damage to the environment; or

(ii) a breach of an environmental outcome under a program under Part 10A; or

(iii) any other breach of this Act;

(5) Section 70E(7)—delete subsection (7)

(6) Section 70E(8)—delete "mining operations" wherever occurring and substitute in each case:

authorised operations

(7) Section 70E(8)—delete "mining tenement" and substitute:

mineral tenement

88—Amendment of section 70F—Power to direct rehabilitation of land

(1) Section 70F(1)—delete "mining operations" and substitute:

authorised operations

(2) Section 70F(1)—delete "mining tenement" wherever occurring and substitute in each case:

mineral tenement

(3) Section 70F(4) and (5)—delete subsections (4) and (5)

(4) Section 70F(6)—after "this section" insert:

a rehabilitation direction may be issued at any time (including after a mineral tenement has expired or been cancelled or surrendered) and

(5) Section 70F(6)—delete "mining operations" wherever occurring and substitute in each case:

authorised operations

(6) Section 70F(6)—delete "mining tenement" wherever occurring and substitute in each case:

mineral tenement

89—Insertion of sections 70FA, 70FB and 70FC

After section 70F insert:

70FA—Compliance directions

- 5
- (1) The Minister may issue a direction under this section (a *compliance direction*) for the purpose of—
- 10
- (a) securing compliance with a requirement under this Act, a mineral tenement (including a term or condition of a mineral tenement) or any authorisation or direction under or in relation to a mineral tenement; or
- 15
- (b) preventing or bringing to an end specified operations that are contrary to this Act or a mineral tenement (including a term or condition of a mineral tenement); or
- (c) without limiting any other provision, requiring the rehabilitation of land on account of any authorised operations carried out without an authority required by this Act.
- (2) A compliance direction—
- 20
- (a) must be in the form of a written notice given to the person to whom the direction is issued; and
- (b) must—
- 25
- (i) specify the person to whom it is issued (whether by name or by description sufficient to identify the person); and
- (ii) specify the grounds on which it is issued; and
- 30
- (c) may impose any requirement reasonably required for the purpose for which the direction 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;
- 35
- (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.
- (3) The Minister may, by written notice given to the person to whom a compliance direction is issued, vary or revoke the direction.
- 40
- (4) A person to whom a compliance direction relates must comply with a direction under this section within the time allowed in the direction.
- Maximum penalty: \$250 000.

70FB—Emergency directions

- (1) If, in the opinion of an authorised officer—
- (a) authorised operations are being carried out 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 an environmental outcome under a program under Part 10A; or
 - (iii) a breach of a term or condition of a mineral tenement; and
 - (b) it is urgently necessary to take action under this section, the authorised officer may, by written notice given to any person involved in undertaking the authorised operations, issue a direction under this section (an *emergency direction*).
- (2) An emergency direction—
- (a) subject to subsection (3), must be in the form of a written notice given to the person to whom the direction is issued; and
 - (b) must specify the grounds on which it is issued; and
 - (c) may impose any requirement reasonably required for the purpose for which the direction is issued including 1 or more of the following:
 - (i) 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 an authorised officer;
 - (ii) a requirement that a person specified or identified in the direction take specified action within a specified period;
 - (iii) a requirement that a person specified or identified in the direction furnish the Minister or a specified authorised officer with a specified report or reports.
- (3) An authorised officer may, if of the opinion that urgent action is required under this section, issue an emergency direction imposing requirements of a kind referred to in subsection (2)(c) orally but, in that event, the authorised officer must confirm it in writing at the earliest opportunity (and in any event within 2 business days) by written notice given to the person to whom the direction applies.

5 (4) An emergency direction issued under this section will cease to have effect at the expiration of 3 business days after the day on which it is issued unless the Director of Mines, within that period, confirms the direction in the manner prescribed by the regulations (and then the direction will continue to have effect for a period determined by the Director or until revoked by an authorised officer).

(5) An authorised officer may, with the approval of the Director, by written notice served on the person to whom an emergency direction has been issued, vary or revoke the direction.

10 (6) A person to whom an emergency direction relates must comply with a direction under this section within the time allowed in the direction.
Maximum penalty: \$250 000.

70FC—Contravention of Act

15 The Minister or an authorised officer may, if of the opinion that it is reasonably necessary to do so in the circumstances, include in a direction under this Part a requirement for an act or omission that might otherwise constitute a contravention of this Act and, in that event, a person incurs no liability to a penalty under this Act for compliance with the requirement.

90—Amendment of section 70G—Application for review of direction

20 (1) Section 70G(1)—delete "an environmental direction or a rehabilitation direction" and substitute:

a direction under this Part

(2) Section 70G(1)—after "the Minister" insert:

25 or the Director of Mines

(3) Section 70G(2)—delete subsection (2) and substitute:

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

30 (4) Section 70G(3)—delete "an environmental direction or a rehabilitation direction" and substitute:

a direction

91—Amendment of section 70H—Action if non-compliance occurs

35 (1) Section 70H(1)—delete "an environmental direction or a rehabilitation direction" and substitute:

a direction under this Part

(2) Section 70H(1)—after "the Minister" insert:

or the Director of Mines

- (3) Section 70H(2)—delete subsection (2) and substitute:
- (2) Any action to be taken under subsection (1) may be taken by an authorised officer or by another person authorised by the Minister or the Director for the purpose.
- 5 (4) Section 70H(3)(a)—after "Minister" insert:
or the Director
- (5) Section 70H(4)—delete subsection (4) and substitute:
- (4) The reasonable costs and expenses incurred by the Minister or the Director of Mines taking action under this section constitute a debt due to the Crown.
- 10

92—Insertion of sections 70HA and 70HB

After section 70H insert:

70HA—Restriction of claims

- 15 (1) Without limiting any other provision of 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 Part until the requirements of the direction have been satisfied.
- (2) If an order is made under subsection (1), 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.
- 20

70HB—Self-incrimination

- 25 (1) It is not an excuse for a natural person to refuse to provide information required by or under a direction under this Part on the ground that to do so might tend to incriminate the person or make the person liable to a penalty.
- (2) However, if compliance with a requirement to provide information might tend to incriminate the person or make the person liable to a penalty, then the fact of the provision of the information 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 making a false or misleading statement).
- 30

93—Insertion of Part 10C

After Part 10B insert:

Part 10C—Offences and penalties

70HC—Penalty for illegal mining

- (1) A person who—
- (a) carries out authorised operations without being duly authorised by or under this Act; or

- (b) sells, or disposes of, minerals recovered by the person in the course of authorised operations, or utilises any such minerals, in a manner that is contrary to a provision of this Act,

5 is guilty of an offence.

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

- (2) Subsection (1) does not apply in relation to prescribed classes of ancillary operations authorised under another Act.

70HD—Obstruction of person authorised to mine etc

10 A person must not, without lawful excuse, obstruct or hinder a tenement holder in the reasonable exercise of rights conferred under this Act.

Maximum penalty: \$150 000.

70HE—Civil penalties

15 (1) Subject to this section, if the Director of Mines is satisfied that a person has committed an offence by contravening a provision of this Act, the Director may, as an alternative to criminal proceedings, recover, by negotiation or by application to the ERD Court, an amount as a civil penalty in respect of the contravention.

20 (2) The Director of Mines may not recover an amount under this section in respect of a contravention if the relevant offence requires proof of intention or some other state of mind, and must, in respect of any other contravention, determine whether to initiate proceedings for an offence or take action under this section, having regard to the seriousness of the contravention, the previous record of the offender and any other relevant factors.

25 (3) The Director of Mines may not make an application to the Court under this section to recover an amount from a person as a civil penalty in respect of a contravention—

30 (a) unless the Director has served on the person a notice in the prescribed form advising the person that the person may, by written notice to the Director, elect to be prosecuted for the contravention and the person has been allowed not less than 21 days after service of the Director's notice to make such an election; or

35 (b) if the person serves written notice on the Director, before the making of such an application, that the person elects to be prosecuted for the contravention.

40 (4) The maximum amount that the Director of Mines may recover by negotiation as a civil penalty in respect of a contravention is—

(a) the amount specified by this Act as the criminal penalty in relation to that contravention; or

(b) \$150 000,

whichever is the lesser.

- 5
- (5) If, on an application by the Director of Mines, the ERD Court is satisfied on the balance of probabilities that a person has contravened a provision of this Act, the Court may order the person to pay to the Director an amount as a civil penalty (but not exceeding the amount specified by this Act as the criminal penalty in relation to that contravention).
- 10
- (6) In determining the amount to be paid by a person as a civil penalty, the Court must have regard to—
- (a) the nature and extent of the contravention; and
- (b) any detriment to the public interest resulting from the contravention; and
- (c) any financial saving or other benefit that the person stood to gain by committing the contravention; and
- 15
- (d) whether the person has previously been found, in proceedings under this Act, to have engaged in any similar conduct; and
- (e) any other matter it considers relevant.
- 20
- (7) The jurisdiction conferred by this section is to be part of the civil jurisdiction of the ERD Court.
- (8) If conduct of a person constitutes a contravention of 2 or more provisions of this Act, an amount may be recovered from the person under this section in relation to the contravention of any 1 or more of those provisions (provided that the person is not liable to pay more than 1 amount as a civil penalty in respect of the same conduct).
- 25
- (9) Proceedings for an order under this section that a person pay an amount as a civil penalty in relation to a contravention of this Act, or for enforcement of such an order, are stayed if criminal proceedings are started or have already been started against the person for an offence constituted by conduct that is substantially the same as the conduct alleged to constitute the contravention.
- 30
- (10) Proceedings referred to in subsection (9) may only be resumed if the criminal proceedings do not result in a formal finding of guilt being made against the person.
- 35
- (11) Evidence of information given or evidence of the production of documents by a person is not admissible in criminal proceedings against the person if—
- (a) the person gave the evidence or produced the documents in the course of negotiations or proceedings under this section for the recovery of an amount as a civil penalty in relation to a contravention of this Act; and
- 40
- (b) the conduct alleged to constitute the offence is substantially the same as the conduct that was alleged to constitute the contravention.

- 5
- (12) However, subsection (11) does not apply to criminal proceedings in respect of the making of a false or misleading statement.
- (13) Proceedings for an order under this section may be commenced at any time within 3 years after the date of the alleged contravention or, with the authorisation of the Attorney-General, at any later time within 10 years after the date of the alleged contravention.
- 10
- (14) An apparently genuine document purporting to be signed by the Attorney-General authorising the commencement of proceedings for an order under this section will be accepted in any legal proceedings, in the absence of proof to the contrary, as proof of the authorisation.
- (15) The Court may, in any proceedings under this section, make such orders in relation to the costs of the proceedings as it thinks just and reasonable.
- 15
- (16) An amount recovered as a civil penalty under this section will be paid into the Mining Rehabilitation Fund.

70HF—Additional orders on conviction

- 20
- (1) If a person is convicted of an offence against this Act, the court by which the conviction is recorded may, in addition to any penalty that it may impose, and to any other order that may be made under this or any other Act, make 1 or more of the following orders:
- 25
- (a) an order requiring the person to take any specified action (including an order to rectify the consequences of any contravention of this Act, or to ensure that a further contravention does not occur);
- (b) without limiting paragraph (a)—an order requiring the person to make good any environmental damage and, if appropriate, to take specified action to prevent or mitigate further harm to the environment;
- 30
- (c) an order requiring the person to publicise the contravention of this Act and any environmental or other consequences, and the other orders (if any) made against the person;
- 35
- (d) an order requiring the person to pay into the Mining Rehabilitation Fund an amount determined by the court to be equal to a fair assessment or estimate of the financial benefit that the person, or a related body corporate, has gained, or can reasonably be expected to gain, as a result of the contravention of this Act;
- 40
- (e) an order requiring the person to pay to any person who has suffered loss or damage to property as a result of the acts or omissions constituting the offence, or incurred costs or expenses in taking action to prevent or mitigate such loss or damage, compensation for that loss or damage and reasonable reimbursement for those costs or expenses.

- (2) For the purposes of subsection (1)(d), a financial benefit obtained by delaying or avoiding costs will be taken to be a financial benefit gained as a result of a contravention of the Act if the contravention can be attributed (in whole or in part) to that delay or avoidance.
- 5 (3) The court may, by an order under this section, fix a period for compliance and impose other requirements the court considers necessary or expedient for the enforcement of the order.

70HG—Continuing offences

- 10 (1) A person convicted of an offence against a provision of this Act in respect of a continuing act or omission—
- (a) is liable, subject to any determination of a court, in addition to the penalty otherwise applicable to the offence, to a penalty for each day during which the act or omission continued for not more than one-tenth of the maximum penalty prescribed for that offence; and
- 15 (b) is, if the act of omission continues after the conviction, subject to any determination of a court, guilty of a further offence against the provision and liable, in addition to the penalty otherwise applicable to the further offence, to a penalty for each day during which the act or omission continued after the conviction of not more than one-tenth of the maximum penalty prescribed for the offence.
- 20 (2) If an offence consists of an omission to do something that is required to be done, the omission will be taken to continue for as long as the thing required to be done remains undone after the end of the period for compliance with the requirement.
- 25

70HH—Offences by bodies corporate

If a body corporate is guilty of an offence against this Act, each director of the body corporate is guilty of an offence and liable to the same penalty as is prescribed for the principal offence if the prosecution proves that—

30

- (a) the director knew, or ought reasonably to have known, that there was a significant risk that such an offence would be committed; and
- 35 (b) the director was in a position to influence the conduct of the body corporate in relation to the commission of such an offence; and
- (c) the director failed to exercise due diligence to prevent the commission of the offence.

70HI—Time limits

- 40 (1) Criminal proceedings under this Act may be commenced at any time within 3 years after the date of the alleged offence or, with the authorisation of the Attorney-General, at any later time within 10 years after the alleged offence.

- (2) An apparently genuine document purporting to be signed by the Attorney-General authorising the commencement of criminal proceedings under this Act will be accepted in any legal proceedings, in the absence of proof to the contrary, as proof of the authorisation.

5 **70HJ—Summary offences**

All offences under this Act are classified as summary offences.

70HK—Evidentiary provisions

- 10 (1) 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 a tenement holder; or
- (b) that a specified provision was a term or condition of a specified mineral tenement at a specified time; or
- 15 (c) that a specified provision was a requirement or condition of a program under Part 10A; or
- (d) that a specified determination, direction, decision, order or requirement was made or given on a specified day; or
- 20 (e) that at a specified time the Minister, the Director of Mines or the Mining Registrar gave notice of any specified matter under or in connection with the operation of this Act; or
- (f) that at a specified time the Minister, the Director of Mines or the Mining Registrar had not received any notice, instrument or other document, or had not received any information of a
- 25 (g) that at a specified time a specified person was an authorised officer under this Act; or
- (h) that a particular delegation was in force under this Act at a specified time,

30 is, in the absence of proof to the contrary, proof of the matter so certified.

- 35 (2) 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 under this Act, will be taken to be proved in the absence of evidence to the contrary.
- (3) In any proceedings for an offence against this Act, a document purporting to be a lease or licence under this Act will be accepted as such in the absence of evidence to the contrary.
- 40 (4) If in any proceedings for an offence against this Act in relation to any operations it is proved that there has been a contravention of, or a failure to comply with—
- (a) a term or condition of a mineral tenement; or

- (b) a requirement or condition of a program under Part 10A applying in respect of a mineral tenement,

it must be presumed, in the absence of evidence to the contrary, that the contravention or failure (as the case requires) occurred as a result of an act or omission of the tenement holder.

- (5) In any proceedings for an offence against this Act, 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.

94—Amendment of section 71—Minister may assist in conduct of operations

Section 71(1)—delete "mining operations" wherever occurring and substitute in each case:

authorised operations

95—Amendment of section 72—Research and investigations

Section 72(a)(ii)—delete "mining operations" and substitute:

authorised operations

96—Repeal of Part 11A

Part 11A—delete the Part

97—Amendment of section 73C—Interpretation

- (1) Section 73C(1)—after the definition of *compliance order* insert:

emergency order—see section 73KA;

- (2) Section 73C(1), definition of *environment*—delete the definition and substitute:

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) public health, safety or amenity;

- (3) Section 73C(1), definition of *private mine*—delete the definition

98—Amendment of section 73D—Application of Act

- (1) Section 73D(1)—delete "the operator of a private mine" and substitute:

a person carrying out operations in relation to a private mine

- (2) Section 73D(2)—delete "mining tenement" and substitute:

mineral tenement

(3) Section 73D—after subsection (2) insert:

(3) Without limiting any other provision that makes explicit application as envisaged by subsection (1), the following provisions apply to or in relation to a private mine or a person carrying out operations in relation to a private mine:

- (a) section 6 (subject to the operation of section 6(6) and (7));
- (b) sections 7, 8, 8A, 9A and 10;
- (c) Part 2;
- (d) Part 2A;
- (e) Part 3;
- (f) section 56P
- (g) section 56X;
- (h) section 63;
- (i) Part 10, other than section 70;
- (j) Part 10C, other than section 70HG;
- (k) sections 72 and 73;
- (l) sections 74 and 74AA;
- (m) sections 75A and 79;
- (n) sections 83A and 85;
- (o) sections 88 to 92 (inclusive);
- (p) any other provision specified by the regulations.

99—Repeal of sections 73E, 73EA and 73F

Sections 73E, 73EA and 73F—delete the sections

100—Amendment of section 73G—Mine operations plans

Section 73G—after subsection (12) insert:

(12a) The Minister may publish a mine operations plan in such manner, and to such extent, as the Minister thinks fit.

101—Amendment of section 73H—General duty to avoid undue environmental damage

Section 73H(3)—delete subsection (3)

102—Amendment of section 73I—Compliance orders

Section 73I(4), penalty provision—delete "\$120 000" and substitute:
\$250 000

103—Amendment of section 73J—Rectification orders

Section 73J(4), penalty provision—delete "\$120 000" and substitute:

\$250 000

104—Insertion of sections 73KA and 73KB

After section 73K insert:

73KA—Emergency order

- (1) If, in the opinion of an authorised officer—
- (a) mining operations are being carried out in a way that results in, or that is reasonably likely to result in—
 - (i) a breach of an objective under a mine operations plan; or
 - (ii) undue damage to the environment; and
 - (b) it is urgently necessary to take action under this section, the authorised officer may, by written notice given to any person involved in undertaking the mining operations, issue an order under this section (an *emergency order*).
- (2) An emergency order—
- (a) subject to subsection (3), must be in the form of a written notice given to the person to whom the order is issued; and
 - (b) must 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 a person specified or identified in the order discontinue, or not commence, a specified activity indefinitely or for a specified period or until further notice from an authorised officer;
 - (ii) a requirement that a person specified or identified in the order take specified action within a specified period;
 - (iii) a requirement that a person specified or identified in the order furnish the Minister or a specified authorised officer with a specified report or reports.
- (3) An authorised officer may, if of the opinion that urgent action is required under this section, issue an emergency order imposing requirements of a kind referred to in subsection (2)(c) orally but, in that event, the authorised officer must confirm it in writing at the earliest opportunity (and in any event within 2 business days) by written notice given to the person to whom the order applies.

5 (4) An emergency order issued under this section will cease to have effect at the expiration of 3 business days after the day on which it is issued unless the Director of Mines, within that period, confirms the order in the manner prescribed by the regulations (and then the order will continue to have effect for a period determined by the Director or until revoked by an authorised officer).

(5) An authorised officer may, with the approval of the Director, by written notice served on the person to whom an emergency order has been issued, vary or revoke the order.

10 (6) A person to whom an emergency order relates must comply with an order under this section within the time allowed in the order.

Maximum penalty: \$250 000.

73KB—Contravention of Act

15 The Minister or an authorised officer may, if of the opinion that it is reasonably necessary to do so in the circumstances, include in an order under this Part a requirement for an act or omission that might otherwise constitute a contravention of this Act and, in that event, a person incurs no liability to a penalty under this Act for compliance with the requirement.

105—Amendment of section 73L—Application for review of direction

20 Section 73L(1)—delete "or a rectification order" and substitute:

, a rectification order or an emergency order

106—Substitution of sections 73M to 73Q

Sections 73M to 73Q (inclusive)—delete the sections and substitute:

73M—Action if non-compliance occurs

25 (1) If the requirements of an order under this Part are not complied with, the Minister or the Director may take the action required by the order.

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

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

35 (a) the Minister or the Director 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.

40 (4) The reasonable costs and expenses incurred by the Minister or the Director taking action under this section constitute a debt due to the Crown.

73N—Revocation of private mine

- 5
- (1) The Governor may, by proclamation, vary or revoke the declaration of an area as a private mine under this Act.
- (2) A proclamation may only be made under subsection (1) on the recommendation of the Minister.
- (3) The Minister must not make a recommendation under subsection (2) unless—
- 10
- (a) the Minister has served on the proprietor of the private mine a notice under this subsection indicating that it is considered that a declaration of a specified area as a private mine should be varied or revoked on the basis of the designated criteria set out in subsection (4); and
- 15
- (b) the Minister has provided the proprietor of the private mine an opportunity to make written submissions in relation to the matter within a period specified by the Minister in the notice; and
- (c) the Minister is satisfied, after taking into account—
- 20
- (i) any submission under paragraph (b); and
- (ii) the designated criteria set out in subsection (4); and
- (iii) such other matters as the Minister thinks fit,
- that such a recommendation is appropriate.
- (4) The designated criteria are as follows:
- (a) that—
- 25
- (i) the whole or any part of the private mine is not being effectively operated; or
- (ii) it is no longer possible to carry out operations on the whole or any part of the private mine;
- (b) that the area that is relevant for the purposes of a proclamation under this section has been rehabilitated to an appropriate extent and standard.
- 30

73O—Evidentiary provisions

- 35
- (1) In proceedings for an offence against this Part, an apparently genuine document purporting to be a certificate signed by the Minister certifying that a specified provision was a requirement or condition of a mine operations plan under section 73G is, in the absence of proof to the contrary, proof of the matter so certified.

- 5 (2) If in any proceedings for an offence against this Part in relation to any operations it is proved that there has been a contravention of, or a failure to comply with a requirement or condition of a mine operations plan under section 73G, it must be presumed, in the absence of evidence to the contrary, that the contravention or failure (as the case requires) occurred as a result of an act or omission of the person carrying out, or intending to carry out, mining operations in relation to the private mine.

107—Substitution of sections 74 and 74AA

10 Sections 74 and 74AA—delete the sections and substitute:

74—Civil remedies

- 15 (1) Applications may be made to the ERD Court for 1 or more of the following orders:
- 15 (a) if a person has engaged, is engaging or is proposing to engage in conduct in contravention of this Act—an order restraining the person from engaging in the conduct and, if the Court considers it appropriate to do so, requiring the person to take any specified action;
 - 20 (b) if a person has refused or failed, is refusing or failing or is proposing to refuse or fail to take any action required by this Act—an order requiring the person to take that action;
 - 25 (c) if a person has suffered injury or loss or damage to property as a result of a contravention of this Act, or incurred costs and expenses in taking action to prevent or mitigate such injury, loss or damage—an order against the person who committed the contravention for payment of compensation for the injury, loss or damage, or for payment of the reasonable costs and expenses incurred in taking that action;
 - 30 (d) if the Court considers it appropriate to do so, an order against a person who has contravened this Act for payment (for the credit of the Mining Rehabilitation Fund) of an amount in the nature of exemplary damages determined by the Court.
- 35 (2) An application under this section may be made by the Minister or the Director.
- (3) The power of the Court to make an order restraining a person from engaging in conduct of a particular kind may be exercised—
- 40 (a) if the Court is satisfied that the person has engaged in conduct of that kind—whether or not it appears to the Court that the person intends to engage again, or to continue to engage, in conduct of that kind; or

- 5
- (b) if it appears to the Court that, in the event that an order is not made, it is likely that the person will engage in conduct of that kind—whether or not the person has previously engaged in conduct of that kind and whether or not there is an imminent danger of substantial harm or damage if the person engages in conduct of that kind.
- (4) The power of the Court to make an order requiring a person to take specified action may be exercised—
- 10
- (a) if the Court is satisfied that the person has refused or failed to take that action—whether or not it appears to the Court that the person intends to refuse or fail again, or to continue to refuse or fail, to take that action; or
- (b) if it appears to the Court that, in the event that an order is not made, it is likely that the person will refuse or fail to take that action—whether or not the person has previously refused or failed to take that action and whether or not there is an imminent danger of substantial harm or damage if the person refuses or fails to take that action.
- 15
- (5) In assessing an amount to be ordered in the nature of exemplary damages, the Court must have regard to—
- 20
- (a) any undue damage to the environment or detriment to the public interest resulting from the contravention; and
- (b) any financial saving or other benefit that the respondent stood to gain by committing the contravention; and
- 25
- (c) any other matter it considers relevant.
- (6) The power to order payment of an amount in the nature of exemplary damages may only be exercised by a judge of the Court.
- (7) An application may be made without notice to any person and, if the Court is satisfied on the application that the respondent has a case to answer, it may grant permission to the applicant to serve a summons requiring the respondent to appear before the Court to show cause why an order should not be made under this section.
- 30
- (8) An application under this section must, in the first instance, be referred to a conference under section 16 of the *Environment, Resources and Development Court Act 1993* (and the provisions of that Act will then apply in relation to the application).
- 35
- (9) If, on an application under this section or before the determination of the proceedings commenced by the application, the Court is satisfied that, in order to preserve the rights or interests of parties to the proceedings or for any other reason, it is desirable to make an interim order under this section, the Court may make such an order.
- 40
- (10) An interim order—
- (a) may be made on an application without notice to any person; and

- (b) may be made whether or not the proceedings have been referred to a conference; and
- (c) will be made subject to such conditions as the Court thinks fit; and
- 5 (d) will not operate after the proceedings in which it is made are finally determined.
- (11) The Court may order an applicant in proceedings under this section—
- 10 (a) to provide security for the payment of costs that may be awarded against the applicant if the application is subsequently dismissed; or
- (b) to give an undertaking as to the payment of any amount that may be awarded against the applicant under subsection (12).
- 15 (12) If, on an application under this section alleging a contravention of this Act, the Court is satisfied—
- (a) that the respondent has not contravened this Act; and
- (b) that the respondent has suffered loss or damage as a result of the actions of the applicant; and
- 20 (c) that in the circumstances it is appropriate to make an order under this provision,
- the Court may, on the application of the respondent (and in addition to any order as to costs), require the applicant to pay to the respondent an amount, determined by the Court, to compensate the respondent for the loss or damage suffered by the respondent.
- 25 (13) The Court may, if it considers it appropriate to do so, either on its own initiative or on the application of a party, vary or revoke an order previously made under this section.
- (14) Proceedings under this section based on a contravention of this Act may be commenced at any time within 3 years after the date of the alleged contravention or, with the authorisation of the Attorney-General, at any later time.
- 30 (15) An apparently genuine document purporting to be signed by the Attorney-General authorising the commencement of proceedings under this section will be accepted in any legal proceedings, in the absence of proof to the contrary, as proof of the authorisation.
- 35 (16) The Court may, in any proceedings under this section, make such orders in relation to the costs of the proceedings as it thinks just and reasonable.

74AA—Enforceable voluntary undertakings

- 40 (1) The Minister may accept (by written notice) a written undertaking given by a person in connection with a matter relating to a contravention or alleged contravention by the person of this Act.

- (2) The giving of an undertaking does not constitute an admission of guilt by the person giving the undertaking in respect of the contravention or alleged contravention to which the undertaking relates.
- 5 (3) A person must not contravene an undertaking made by the person that is in effect.
Maximum penalty: \$50 000.
- (4) If the Minister considers that a person has contravened an undertaking accepted by the Minister, the Minister may apply to the ERD Court for enforcement of the undertaking.
- 10 (5) If the ERD Court is satisfied that the person has contravened the undertaking, the Court, in addition to the imposition of any penalty, may make any of the following orders:
- 15 (a) an order that the person must comply with the undertaking or take specified action to comply with the undertaking;
- (b) an order discharging the undertaking;
- (c) an order directing the person to pay to the Minister—
- 20 (i) the costs of the proceedings; and
- (ii) the reasonable costs of the Minister in monitoring compliance with the undertaking in the future;
- (d) any other order that the Court considers appropriate in the circumstances.
- (6) A person who has made an undertaking may, at any time, with the written agreement of the Minister—
- 25 (a) vary the undertaking; or
- (b) withdraw the undertaking.
- (7) Subject to this section, no proceedings for a contravention or alleged contravention of this Act may be brought against a person if an undertaking is in effect in relation to that contravention.
- 30 (8) No proceedings for a contravention or alleged contravention of this Act may be brought against a person who has made an undertaking under this section in relation to that contravention and who has completely discharged the undertaking.
- (9) The Minister may accept an undertaking in relation to a contravention or alleged contravention before proceedings in respect of that contravention have been finalised.
- 35 (10) If the Minister accepts an undertaking before the proceedings are finalised, the Minister must take all reasonable steps to have the proceedings discontinued as soon as possible.

108—Amendment of section 74A—Compliance orders

Section 74A(1)—delete "mining operations" and substitute:
authorised operations

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

5 (1) Section 75(1)—delete "No claim" and substitute:

Subject to subsection (1a), no claim

(2) Section 75—after subsection (1) insert:

10 (1a) Subsection (1) does not apply in relation to a claim or a lease in respect of extractive minerals on land described in that subsection if the terms of the mineral tenement specifically authorise (or will specifically authorise) the holder of the tenement to recover and use the extractive minerals on account of being extractive minerals produced during the course of carrying out authorised operations under the tenement.

15 (1b) Consent given by an owner of land under subsection (1) is binding on all subsequent owners of the land.

(3) Section 75(2)—delete subsection (2) and substitute:

20 (2) Subject to subsection (3), the owner of land does not require a mineral tenement under this Act for the recovery of extractive minerals from the land for the owner's personal use or, if the owner is a body corporate, disposal of the minerals to a related body corporate for the related body corporate's personal use.

(3) Subsection (2) does not apply in relation to authorised operations for the recovery of extractive minerals if—

25 (a) the Minister has determined that the operations should be the subject of a mineral tenement under this Act (and subject to the other provisions of this Act)—

30 (i) after taking into account the nature or scale of the operations; or

(ii) because the Minister believes that action has been taken to attempt to avoid the requirements of this Act through the establishment of particular ownership arrangements; or

35 (iii) on any other ground determined by the Minister to be a reasonable basis on which to act under this subsection; and

40 (b) the Minister has, on the basis of the Minister's determination under paragraph (a), required the owner of the land to apply for a mineral tenement within a period (of at least 3 months) specified by the Minister; and

(c) 1 of the following has occurred:

- (i) a mineral tenement has been granted in relation to the authorised operations;
- (ii) the period specified by the Minister under paragraph (b) has expired without the owner of the land making the application envisaged by that paragraph;
- (iii) an application for a mineral tenement made by the owner of the land to the Minister within the period specified by the Minister under paragraph (b) has been rejected by the Minister.

- (4) In subsection (2), *personal use* of minerals does not include use of the minerals by a council.

110—Amendment of section 75A—Avoidance of double compensation

- (1) Section 75A—after "a body or person under" insert:

a provision of

- (2) Section 75A—delete "under other laws" and substitute:

, whether under another provision of this Act or under any other law

111—Repeal of sections 76 to 77D

Sections 76 to 77D (inclusive)—delete the sections

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

- (1) Section 78(1)—delete "mining tenement" and substitute:

mineral tenement

- (2) Section 78(2)—delete "mining tenement" and substitute:

mineral tenement

113—Amendment of section 79—Minister may grant exemptions

- (1) Section 79(1)—delete "him in so doing, he" and substitute:

so doing, the Minister

- (2) Section 79(1)(a)—after "comply with a" insert:

term or

- (3) Section 79(1)(b)—delete "mining tenement" and substitute:

mineral tenement

114—Substitution of section 79A

Section 79A—delete the section and substitute:

79A—False or misleading information

5 A person who furnishes information to the Minister, the Director, the Mining Registrar or any other person involved in the administration of this Act that is false or misleading in a material particular is guilty of an offence.

Maximum penalty: \$150 000.

115—Amendment of section 80—Conditions under which land may be simultaneously subject to more than 1 tenement

10 (1) Section 80(1)—delete "mining tenement" and substitute:

mineral tenement

(2) Section 80(1a)—delete subsection (1a)

(3) Section 80(1d), penalty provision—delete "\$5 000" and substitute:

15 \$20 000

(4) Section 80(2)—delete "mining tenement" wherever occurring and substitute in each case:

mineral tenement

(5) Section 80(2)—delete "pegged out" and substitute:

20 established

(6) Section 80—after subsection (2) insert:

(2a) Where a mineral tenement and a further claim under subsection (2) would be held—

(a) by 1 person; or

25 (b) by related bodies corporate,

a consent under that subsection is not effective unless it is given with the approval of the Minister.

(7) Section 80(3)—delete "pegging" and substitute:

establishing

30 (8) Section 80(4)—delete subsection (4) and substitute:

(4) The Warden's Court may, on the application of a tenement holder, make an order to regulate, restrict or prohibit authorised operations where 2 or more tenements include the same land.

(9) Section 80(5)—after subsection (5) insert:

35 (6) The Minister must not grant a mineral tenement in relation to land which already has another mineral tenement over a different stratum unless or until the Minister is satisfied that the applicant is a party to an agreement that provides for access to each tenement.

116—Substitution of sections 81, 82 and 83

Sections 81, 82 and 83—delete the sections and substitute:

81—Additional provisions relating to liability

- 5
- (1) If there are 2 or more persons who are tenement holders in relation to the same mineral tenement, each tenement holder is jointly and severally liable for compliance with any requirement under this Act that applies in respect of the tenement.
- (2) For the purposes of this Act, an act or omission of an employee or agent will be taken to be the act or omission of the employer or principal unless it is proved that the act or omission did not occur in the course of employment or agency.
- 10

82—Deemed consent or agreement

- (1) If—
- 15
- (a) a matter arising under this Act in relation to a mineral tenement (or proposed mineral tenement) requires the consent or agreement of an owner of land; and
- (b) the owner of the land and the tenement holder (or the applicant for a proposed mineral tenement) are the same person,
- 20
- it will be taken that the consent or agreement has been provided by the owner of the land (and, if relevant, it will be taken that the consent or agreement has been provided in writing).
- (2) A consent or agreement taken to be provided under subsection (1) is binding on all subsequent owners of the land.
- 25
- (3) This section does not apply—
- (a) in a case where section 80(2a) applies; or
- (b) in any circumstance prescribed by the regulations.

117—Repeal of sections 84 and 84A

Sections 84 and 84A—delete the sections

118—Substitution of sections 85 and 86

Sections 85 and 86—delete the sections and substitute:

85—Charge on property if debt due to Crown

- 35
- (1) This section applies to property (other than real property) if the owner of the property is liable to pay a debt due to the Crown under this Act.
- (2) A charge on the property to secure payment of the debt to the Crown is created by force of this section.

- (3) A charge created on property under subsection (2)—
- (a) has priority over any other interest in the property (including a security interest within the meaning of the *Personal Property Securities Act 2009* of the Commonwealth); and
 - (b) has priority over all other encumbrances; and
 - (c) is not affected by a change in ownership of the property.
- (4) Section 73(2) of the *Personal Property Securities Act 2009* of the Commonwealth applies to the charge.
- (5) The charge remains in force until the debt is paid in full or otherwise discharged.

86—Removal of machinery etc

- (1) The owner of any machinery or goods on land—
- (a) that is within a mineral tenement that has been transferred; or
 - (b) that has ceased to be subject to a mineral tenement,
- may, at any time within the period of 3 months after the date of the transfer or the date on which the land ceased to be subject to the tenement (as the case may be), enter the land and remove the machinery or goods from the land.
- (2) The Minister may cause any machinery or goods that have been abandoned on land that has been subject to a mineral tenement (whether or not a new tenement has been granted over the land) to be seized.
- (3) Any machinery or goods seized under subsection (2) are forfeited to the Crown and may be sold by the Minister.
- (4) Any proceeds from a sale under subsection (3) will be paid to the Treasurer.
- (5) The Treasurer may, on application under this subsection, pay an amount equal to the proceeds of a sale under subsection (3) to the person who abandoned the relevant machinery or goods, after deduction of an amount determined by the Treasurer to be reasonable costs associated with seizing, holding, maintaining, repairing, cleaning or selling the machinery or goods.
- (6) An application under subsection (5) must be made within 2 years from the date of sale (and after the expiration of that period no further claim may be made in relation to the machinery or goods).

119—Substitution of sections 88 and 89

Sections 88 and 89—delete the sections and substitute:

88—Hindering authorised officers

5 A person who, without reasonable excuse, hinders or obstructs an authorised officer or other person engaged in the administration or enforcement of this Act is guilty of an offence.

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

120—Insertion of section 89B

After section 89A insert:

89B—Penalties and expiation fees payable into Mining Rehabilitation Fund

The following are payable into the Mining Rehabilitation Fund:

- (a) penalties payable in respect of offences against this Act;
- (b) expiation fees paid under this Act.

121—Substitution of section 90

Section 90—delete the section and substitute:

90—Reports and verification of information

- (1) A tenement holder must, at the request of the Minister, provide a report setting out or accompanied by any information or material that is relevant to—
 - (a) the operation or administration of any provision of this Act (insofar as is relevant to any operations carried out (or to be carried out) by the tenement holder under the tenement); or
 - (b) without limiting paragraph (a)—
 - (i) an assessment of the tenement holder's capability to comply with the requirements of this Act; or
 - (ii) the identification, delineation or accuracy of any boundary of a mineral tenement.
- (2) A tenement holder must, at the request of the Minister, provide a report verifying any information or material provided to the Minister or the Director under this Act.
- (3) A report under subsection (1) or (2), and any information or material required under this section, must, if the Minister so requires, be verified by an independent person with qualifications, and in a manner, specified by the Minister.
- (4) A report must be provided to the Minister within a period specified by the Minister.
- (5) Any cost associated with a requirement under this section will be borne by the tenement holder.

(6) A tenement holder must not fail to comply with a requirement under this section within the period specified by the Minister.

Maximum penalty: \$20 000.

(7) If a requirement under this section is not complied with, the Minister may take action to obtain the relevant information or material, or to obtain the verification, so required.

(8) The reasonable costs and expenses incurred by the Minister taking action under subsection (7) constitute a debt due to the Crown.

122—Amendment of section 91—Administrative penalties

(1) Section 91(2)—delete "mining tenement" and substitute:

mineral tenement

(2) Section 91(2)—delete "the Minister" and substitute:

the Director of Mines

(3) Section 91(2)—After "on the person" insert:

(and the Director may act under this subsection without prior consultation with the person and without the need to give a warning or any prior notice in relation to the matter)

(4) Section 91(3)—delete "\$10 000) fixed" and substitute:

\$15 000) prescribed

(5) Section 91—after subsection (4) insert:

(4a) An amount recovered as an administrative penalty under this section will be paid into the Mining Rehabilitation Fund.

123—Repeal of section 91A

Section 91A—delete the section

124—Amendment of section 92—Regulations

(1) Section 92—delete "mining tenement" wherever occurring and substitute in each case:

mineral tenement

(2) Section 92—delete "mining tenements" wherever occurring and substitute in each case:

mineral tenements

(3) Section 92—delete "mining operations" wherever occurring and substitute in each case:

authorised operations

(4) Section 92(1)—delete "he" and substitute:

the Governor

(5) Section 92(1)(f)—delete "of men" and substitute:

of people

(6) Section 92(1)(g)—delete paragraph (g)

(7) Section 92(1)—after paragraph (na) insert:

(nb) provide for the service of any notice, direction, order or other document under this Act; and

5 (8) Section 92(1)(q)—delete "\$10 000" and substitute:

\$20 000

(9) Section 92(1)—after paragraph (q) insert:

and

10 (r) prescribe an expiation fee, not exceeding \$7 500, in respect of any offence against this Act or the regulations.

(10) Section 92(2)(b)—delete "the holders of mining tenements" and substitute:

tenement holders

(11) Section 92—after subsection (7) insert:

15 (8) The Governor may, by regulation, make provisions of a saving or transitional nature consequent on the amendment of this Act by another Act.

(9) A provision made by a regulation under subsection (8) may be in addition to any provision of a saving or transitional nature made by the Act that makes the amendment.

20 (10) A provision made by a regulation under subsection (8) may, if the regulations so provide, take effect from the commencement of the amendment or from a later day.

25 (11) To the extent to which a provision takes effect under subsection (10) from a day earlier than the day of the publication of the regulation in the Gazette, the provision does not operate to the disadvantage of a person by—

(a) decreasing the person's rights; or

(b) imposing liabilities on the person.

30 (12) The Governor may make regulations for the purposes of clause 8 Schedule 1 of the *Statutes Amendment (Mineral Resources) Act 2018* (including any regulation that could have been made under a repealed section of this Act as in force immediately before its repeal).

125—Amendment of Schedule

35 Schedule, clause 1—delete clause 1

126—Renumbering

When all provisions of this Act that provide for the amendment of the *Mining Act 1971* have been brought into operation, the subsections, sections, Divisions and Parts, and all paragraphs and subparagraphs, of that Act are to be renumbered or redesignated in consecutive order (with necessary consequential changes to cross-references).

Part 3—Amendment of *Mines and Works Inspection Act 1920*

127—Amendment of section 4—Interpretation

- (1) Section 4(1), definition of *manager*—delete the definition
- (2) Section 4(1), definition of *mining* or *mining operation*—after "means" insert:
in respect of operations to which this Act applies

128—Substitution of section 5

Section 5—delete the section and substitute:

5—Application of Act

This Act applies in respect of operations undertaken—

- (a) under the Indenture under the *Roxby Downs (Indenture Ratification) Act 1982*; and
- (b) under the Indenture under the *Whyalla Steel Works Act 1958*; and
- (c) by a person to whom a sale or lease of any seam of coal vested in the Crown at or near Leigh Creek has been made or granted by or on behalf of the Crown (including any successors at law of such a person) as authorised under section 48(1) of the *Electricity Corporations Act 1994*; and
- (d) by a person authorised under section 48(2) or (3) of the *Electricity Corporations Act 1994* to mine any seam of coal vested in the Crown or SAGC, at or near Leigh Creek.

129—Amendment of section 8—Disqualification for office of inspector

- (1) Section 8(1)(a)—delete "manager,"
- (2) Section 8(1)(a)—delete ", agents, or managers of mines" and substitute:
or agents

130—Amendment of section 10—Power of inspector on inspection

- (1) Section 10(2)(a)—delete ", agent, or manager of a mine," and substitute:
or agent
- (2) Section 10(3)(a)—delete ", or manager, or any other person," and substitute:
or any other person

- (3) Section 10(3)(b)—delete ", agent, or manager of a mine" and substitute:
or agent

131—Amendment of section 12—Miners' inspectors

- (1) Section 12(1)—delete "manager" and substitute:

owner

- (2) Section 12(2)—delete "manager" and substitute:

owner

- (3) Section 12(3)—delete subsection (3) and substitute:

(3) The owner or agent must take steps to facilitate an inspection, and the owner or agent may, if the owner or agent thinks fit, accompany the persons making the inspection.

- (4) Section 12(4)—delete "manager" and substitute:

owner

132—Amendment of section 13—Obstructing or refusing to assist inspector

- (1) Section 13(2)—delete ", agent, or manager of a mine" and substitute:

or agent

- (2) Section 13(2)—delete "that mine" and substitute:

the mine

133—Substitution of section 16

Section 16—delete the section and substitute:

16—Notice

A notice or document required to be given to or served on a person under this Act may be given or served—

- (a) by giving it to the person personally; or
(b) by posting it by registered post to the person's last known residential, business or (in the case of a corporation) registered address; or
(c) by leaving it for the person at the person's last known residential, business or (in the case of a corporation) registered address with someone apparently over the age of 16 years; or
(d) by transmitting it by fax or email to a fax number or email address provided by the person (in which case the notice will be taken to have been given or served at the time of transmission).

134—Amendment of section 20—Imprisonment for wilful neglect

Section 20—delete ", agent or manager of any mine" and substitute:
or agent

135—Amendment of section 22—General provisions as to proceedings for offences

Section 22(a)(ii)—delete ", agent, or manager of any mine, is not an owner, agent or manager of" and substitute:
or agent is not an owner or agent in relation to

136—Amendment of Schedule—Subject matter of regulations

- (1) Schedule, clause 4—delete clause 4
- (2) Schedule, clause 5—delete ", and of mine managers and other persons" and substitute:
and of other persons
- (3) Schedule, clause 6(a)—delete ", agent, or manager of the mine" and substitute:
or agent

Part 4—Amendment of *Opal Mining Act 1995*

137—Amendment of section 3—Interpretation

- (1) Section 3(1), definition of *Chief Inspector*—delete the definition
- (2) Section 3(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;

- (3) Section 3(1)—after the definition of *Director* insert:

director of a company includes a person occupying or acting in the position of a director or member of the governing body of the company, by whatever name called and whether or not validly appointed to occupy or duly authorised to act in the position, and includes any person in accordance with whose directions or instructions the directors or members of the governing body are accustomed to act;

- (4) Section 3(1), definitions of *Mining Register*, *a mining registrar* and *the Mining Registrar*—delete the definitions and substitute:

Mintabie Township Lease Agreement and *Mintabie township lease area* have the same meaning as in the *Anangu Pitjantjatjara Yankunytjatjara Land Rights Act 1981*;

- (5) Section 3(1)—after the definition of *opal development lease* insert:

opal mining register means the register kept by the Opal Mining Registrar under section 76;

opal mining registrar means a person appointed as an opal mining registrar under section 75A and includes the Opal Mining Registrar;

Opal Mining Registrar means a person appointed as the Opal Mining Registrar under section 75A and includes a person who is acting in the position of the Opal Mining Registrar;

138—Amendment of section 6—Exempt land

- 5 (1) Section 6(1)(a)(ii)(A)—delete "of \$200 or more" and substitute:
equal to or exceeding the prescribed amount
- (2) Section 6(1)(a)(ii)(B)—after "dam" insert:
that has some commercial value or use
- (3) Section 6(9)—before "Mining" insert:
10 Opal

139—Amendment of section 7—Application for permit

- (1) Section 7(2)(a)—after "made in a" insert:
manner and
- (2) Section 7(2)(b)—delete paragraph (b)
- 15 (3) Section 7(4)—delete "A mining registrar" and substitute:
An opal mining registrar

140—Amendment of section 8—Nature of permit

Section 8(4), penalty provision—delete the penalty provision and substitute:
Administrative penalty.

20 **141—Amendment of section 9—Terms and renewal of permit**

- (1) Section 9(3)(b)—after "made in a" insert:
manner and
- (2) Section 9(3)(c)—delete paragraph (c)
- (3) Section 9(4)—delete "a mining registrar" and substitute:
25 an opal mining registrar

142—Amendment of section 10—Rights of holder of permit

Section 10—after subsection (5) insert:

- (6) It is a condition of every precious stones prospecting permit that the
30 holder of the permit (being a holder who is a natural person) must
not reside on the precious stones field other than in the Mintabie
township lease area in accordance with a licence issued under
section 29D of the *Anangu Pitjantjatjara Yankunytjatjara Land
Rights Act 1981*, or as otherwise allowed under that Act.

143—Amendment of section 10A—Special provisions in relation to Mintabie precious stones field

- (1) Section 10A(1)—delete "a mining" and substitute:
an opal mining
- 5 (2) Section 10A(4)—delete "a mining" and substitute:
an opal mining
- (3) Section 10A(4)—before "mining registrar must" insert:
opal
- (4) Section 10A(5)—delete subsection (5) and substitute:
10 (5) A precious stones prospecting permit that authorises prospecting for
precious stones on the Mintabie precious stones field is subject to
conditions specified by the opal mining registrar by notice in writing
given to the holder of the permit.
- (5) Section 10A(6)—delete "(b)"
- 15 (6) Section 10A(9)—delete "A mining" and substitute:
An opal mining
- (7) Section 10A(10)—delete "A mining" and substitute:
An opal mining
- (8) Section 10A(13)(a)—delete "a mining" and substitute:
20 an opal mining
- (9) Section 10A(13)(b)—delete "(b)"
- (10) Section 10A(13)—delete "the mining" and substitute:
the opal mining
- (11) Section 10A(15)(a)(i)—delete "a mining" and substitute:
25 an opal mining
- (12) Section 10A(15)(a)(i)—delete "the mining" and substitute:
the opal mining
- (13) Section 10A(15)(a)(ii)—delete "(b)"
- (14) Section 10A(15)(b)—delete "a mining" and substitute:
30 an opal mining
- (15) Section 10A(16)—delete "A mining" and substitute:
An opal mining
- (16) Section 10A(17)—delete subsection (17)

144—Amendment of section 11—Qualifications to permits

(1) Section 11—after subsection (6) insert:

(6a) A precious stones prospecting permit does not authorise the pegging out of an area that is not either wholly within, or wholly outside, a precious stones field.

(2) Section 11(8)(b)—before "Mining" insert:

Opal

(3) Section 11(9)—before "Mining" wherever occurring insert:

Opal

145—Amendment of section 15—Effect of pegging an area

Section 15(2)(a)—delete "not wholly within" and substitute:

wholly outside

146—Amendment of section 16—Ballot may be conducted in certain cases

(1) Section 16(5)(c)—before "Mining" insert:

Opal

(2) Section 16(6)—delete "A mining" and substitute:

An opal mining

(3) Section 16(9)—delete subsection (9) and substitute:

(9) A person must not prospect for precious stones in contravention of this section.

Maximum penalty: \$5 000.

(9a) A person must not peg out an area for a precious stones tenement in contravention of this section.

Administrative penalty.

(9b) A pegging purportedly made by a person in contravention of this section is of no effect.

(4) Section 16(13)(b)—before "Mining" insert:

Opal

147—Substitution of section 18

Section 18—delete the section and substitute:

18—Contravention of Part

(1) A person must not—

(a) purport to peg out an area for a precious stones tenement if not authorised to do so under a valid precious stones prospecting permit; or

- (b) while being the holder of a precious stones prospecting permit, peg out an area in contravention of this Act or otherwise than in accordance with an authority conferred by this Act.

5 Administrative penalty.

- (2) A person must not, having pegged out an area, carry out operations within the area unless those operations are authorised under this Act.
Maximum penalty: \$5 000.

10 (3) A pegging purportedly made by a person in contravention of this section is of no effect.

148—Amendment of section 18A—Special conditions for tenements in relation to Mintabie precious stones field

- (1) Section 18A(1)—delete subsection (1) and substitute:

15 (1) Each precious stones tenement on the Mintabie precious stones field is subject to the conditions specified by the Director by notice in writing given to the holder of the tenement.

- (2) Section 18A(2)—delete "(b)"

- (3) Section 18A(7)(a)—delete "(b)"

- (4) Section 18A(11)—delete subsection (11)

20 **149—Amendment of section 19—Application for registration of tenement**

- (1) Section 19(2)(a) and (b)—delete paragraphs (a) and (b) and substitute:

(a) must be made in a manner and form determined by the Director or as otherwise determined by the Opal Mining Registrar; and

- (2) Section 19(3)—delete subsection (3)

25 (3) Section 19(4)—delete "not wholly within" and substitute:

wholly outside

150—Amendment of section 19A—Special provision related to application for and registration of tenements on Mintabie precious stones field

- (1) Section 19A(2)—before "Mining" insert:

30 Opal

- (2) Section 19A(3)—before "Mining" wherever occurring insert:

Opal

- (3) Section 19A(4)—before "Mining" wherever occurring insert:

Opal

35 (4) Section 19A(5)—before "Mining" wherever occurring insert:

Opal

- (5) Section 19A(7)—before "Mining" wherever occurring insert:

Opal

151—Amendment of section 20—Registration of tenement

- (1) Section 20(1)—before "Mining" insert:

5

Opal

- (2) Section 20(1)—after "claim" second occurring insert:

on the opal mining register

- (3) Section 20(2)—delete "lodged at the appropriate office of the Mining Registrar" and substitute:

10

made

- (4) Section 20(3)—before "Mining" insert:

Opal

- (5) Section 20(4)—before "Mining" insert:

Opal

15

- (6) Section 20(5)—before "Mining" insert:

Opal

- (7) Section 20(6)—before "Mining" insert:

Opal

- (8) Section 20(7)—before "Mining" insert:

20

Opal

- (9) Section 20(8)—before "Mining" insert:

Opal

- (10) Section 20(8)—delete "to the mining industry" and substitute:

responsible for the administration of the Mining Act

25

152—Amendment of section 22—Term and renewal of tenement

- (1) Section 22(3)(b) and (c)—delete paragraphs (b) and (c) and substitute:

(b) must be made in a manner and form determined by the Director or as otherwise determined by the Opal Mining Registrar; and

- (2) Section 22(4)—before "Mining" wherever occurring insert:

30

Opal

- (3) Section 22(8)—before "Mining" insert:

Opal

153—Amendment of section 23—Rights conferred by tenement

Section 23—after subsection (2) insert:

- 5 (3) It is a condition of every registered precious stones claim and every registered opal development lease that the holder of the claim or lease (being a holder who is a natural person) must not reside on the land comprising the claim or lease other than in the Mintabie township lease area in accordance with a licence issued under section 29D of the *Anangu Pitjantjatjara Yankunytjatjara Land Rights Act 1981*, or as otherwise allowed under that Act.

154—Amendment of section 25—Unlawful entry on tenement

Section 25(1), penalty provision—delete the penalty provision and substitute:

Maximum penalty: \$10 000.

155—Substitution of section 26

Section 26—delete the section and substitute:

26—Caveats

- 15 (1) A person (a *caveator*) who has, or who is claiming, an interest in a matter relevant to the registration of a tenement may apply to the Opal Mining Registrar to have a caveat registered under this section.
- 20 (2) An application for the registration of a caveat must be in a form determined by the Opal Mining Registrar.
- (3) A caveat under subsection (1) may—
- 25 (a) forbid the registration of any transfer, mortgage or voluntary surrender affecting a specified interest in the tenement (an *absolute caveat*); or
- (b) forbid the registration of any transfer, mortgage or voluntary surrender affecting the tenement unless the transfer or mortgage expressly states that it is to be subject to the interest claimed by the caveator (a *claim caveat*).
- 30 (4) However, if a caveat is being registered without the express consent of the tenement holder for the tenement to which the caveat relates—
- (a) the caveator must be a person who has entered into an agreement with the tenement holder relating to—
- 35 (i) the sale or transfer (or both) of the tenement holder's interest in the relevant tenement; or
- (ii) any other matter connected with the tenement holder's interest in the relevant tenement; and
- (b) the agreement must provide for the registration of a caveat under this section; and
- 40 (c) a copy of the agreement must accompany the application under subsection (2).

- 5
- (5) A caveat may—
- (a) set out a date of expiry (if any); or
 - (b) set out that the caveat will expire—
 - (i) on a specified transfer or mortgage of an interest in the tenement; or
 - (ii) at the end of a specified period.
- 10
- (6) In connection with the preceding subsections, an application for the registration of a caveat—
- (a) must be accompanied by—
 - (i) the prescribed fee; and
 - (ii) such other documents or information as the Opal Mining Registrar may require; and
 - (b) if the caveat is being registered without the express consent of the tenement holder for the tenement to which the caveat relates—must include a statutory declaration as to the truthfulness and accuracy of any matter specified by the caveator in the application.
- 15
- (7) The Opal Mining Registrar does not have, on the receipt of an application to register a caveat, any duty to determine whether or not—
- (a) the caveat relates to a valid caveatable interest; or
 - (b) a caveatable interest has been sufficiently described; or
 - (c) there is sufficient evidence to support the caveat; or
 - (d) any matter specified in the application is true and accurate.
- 20
- (8) The registration of a caveat does not warrant the validity of any interest claimed in the caveat.
- 25
- (9) On the registration of a caveat under this section, a notice of the registration of the caveat must be sent by the Opal Mining Registrar to any tenement holder whose interests are affected by the caveat, other than where the tenement holder is also the caveator.
- 30
- (10) A caveat registered under this section—
- (a) does not affect or prevent the renewal of a tenement; and
 - (b) does not lapse on the renewal of a tenement (while the caveat is registered); and
 - (c) does not affect or prevent any dealing with the tenement (or any interest in the tenement) that is required by an order of a court or tribunal constituted by law.
- 35
- (11) A caveat registered under this section will lapse on—
- (a) any order of the Warden's Court providing for the lapsing of the caveat; or
- 40

- (b) the withdrawal of the caveat by the caveator; or
- (c) the expiry of the caveat as contemplated by subsection (5).

(12) If—

- (a) a caveat is registered in respect of a tenement; and
- (b) the caveat lapses,

the caveator or any related corporation may not apply to register a second or subsequent caveat relating to the same interest in the tenement to which the original caveat related without the approval of the Warden's Court, or unless that second or subsequent caveat is being registered with the express consent of the tenement holder for the tenement to which the caveat relates.

(13) In this section—

related corporation, in relation to a particular entity (being a corporation), is a corporation that is related to the entity under section 50 of the *Corporations Act 2001* of the Commonwealth.

26A—Application to Warden's Court to lapse caveat or obtain compensation

(1) A person who—

- (a) has an interest in a tenement subject to a caveat registered under section 26; or
- (b) has an interest that is directly affected by a caveat registered under section 26,

may apply to the Warden's Court under this section.

(2) An application may be made for 1 or more of the following:

- (a) a declaration that an interest claimed by the caveator is not a valid caveatable interest;
- (b) an order that a caveat lapse;
- (c) an order that a transfer, mortgage or surrender relating to a tenement be registered despite the registration of a caveat under section 26;
- (d) an order that a caveator pay compensation for any loss or damage suffered because a caveat registered under section 26 does not relate to a valid caveatable interest, or an amount for or towards any such loss or damage.

(3) Any compensation payable under an order under subsection (2)(d) may be recovered as if it were a debt due to the person in whose favour the order is made in a court of competent jurisdiction.

(4) This section does not limit any other jurisdiction or power of the Warden's Court in relation to caveats under section 26.

156—Amendment of section 27—Power of Opal Mining Registrar to cancel tenement

(1) Section 27(1)—before "Mining" wherever occurring insert:

Opal

(2) Section 27(2)—before "Mining" insert:

Opal

(3) Section 27(4)—before "Mining" insert:

Opal

(4) Section 27(5)(a)—before "Mining" insert:

Opal

(5) Section 27(6)—before "Mining" insert:

Opal

157—Insertion of section 27A

After section 27 insert:

27A—Cancellation and suspension

(1) The Opal Mining Registrar may cancel or suspend a precious stones tenement if the tenement holder contravenes or fails to comply with—

(a) a term or condition of the tenement; or

(b) a provision of this Act.

(2) The Opal Mining Registrar may suspend all or some of the operations under a tenement—

(a) pending compliance with an obligation or requirement under this Act by the tenement holder; or

(b) until the tenement holder takes some other step specified by the Minister; or

(c) on account of any other matter that, in the opinion of the Minister, warrants suspension of rights under the tenement.

(3) The Opal Mining Registrar must not take action under this section unless or until the Opal Mining Registrar has—

(a) taken reasonable steps to notify the tenement holder of the proposed course of action (including in the notification the grounds on which the Opal Mining Registrar is intending to act); and

(b) provided the tenement holder with an opportunity to make written submissions in relation to the matter within a period specified by the Opal Mining Registrar.

- 5
- (4) The Opal Mining Registrar may, after complying with subsection (3), by instrument registered on the opal mining register, cancel or suspend a tenement.
- (5) The Opal Mining Registrar must ensure that a notice of the cancellation or suspension of a tenement under subsection (4) is given to the tenement holder.
- (6) A tenement holder may, within 28 days after receiving a notice under subsection (5), appeal to the ERD Court in relation to the matter.
- 10 (7) The ERD Court may, on hearing an appeal under subsection (6), if satisfied that the ground or grounds on which the Opal Mining Registrar acted were insufficient to justify the cancellation or suspension of the tenement (as the case may be)—
- (a) revoke the cancellation or suspension; and
- (b) make any consequential or ancillary order that the Court considers necessary or appropriate.
- 15
- (8) If the ERD Court makes an order under subsection (7)(a), the Opal Mining Registrar may, subject to any order of the Court, reinstate the tenement to a date that coincides with the initial date of the cancellation or suspension, or such later date as the Opal Mining Registrar considers to be appropriate in the circumstances.
- 20

158—Amendment of section 28—Surrender of tenement, removal of posts etc

- (1) Section 28(1)—before "Mining" insert:
Opal
- (2) Section 28(2)—delete subsection (2)
- 25 (3) Section 28(3)—delete "(or partly outside)"
- (4) Section 28(3)—before "Mining" insert:
Opal
- (5) Section 28(4)(a)—delete "a mining" and substitute:
an opal mining
- 30 (6) Section 28(4)(b)—delete "in any other case" and substitute:
in the case of a tenement that is wholly outside a precious stones field
- (7) Section 28(4)(b)—delete "a mining" and substitute:
an opal mining
- (8) Section 28(5), definition of *authorised person*—before "Mining" insert:
Opal
- 35

159—Substitution of section 29

Section 29—delete the section and substitute:

29—Removal of machinery

- (1) The owner of any machinery or goods on land that has ceased to be subject to a tenement may, at any time within the period of 3 months after the date on which the land ceased to be subject to the tenement, enter the land and remove the machinery or goods from the land.
- (2) The Minister may cause any machinery or goods that have been abandoned on land that has been subject to a tenement (whether or not a new tenement has been granted over the land) to be seized.
- (3) Any machinery or goods seized under subsection (2) are forfeited to the Crown and may be sold by the Minister.
- (4) Any proceeds from a sale under subsection (3) will be paid to the Treasurer.
- (5) The Treasurer may, on application under this subsection, pay an amount equal to the proceeds of a sale under subsection (3) to the person who abandoned the relevant machinery or goods, after deduction of an amount determined by the Treasurer to be reasonable costs associated with seizing, holding, maintaining, repairing, cleaning or selling the machinery or goods.
- (6) An application under subsection (5) must be made within 2 years from the date of sale (and after the expiration of that period no further claim may be made in relation to the machinery or goods).

160—Amendment of section 30—Maintenance of posts

Section 30—after its present contents insert:

Administrative penalty.

161—Amendment of section 32—Notice of entry

- (1) Section 32(5)—before "Mining" insert:

Opal

- (2) Section 32(7), penalty provision—delete "\$5 000" and substitute:

\$50 000

162—Amendment of section 33—Duration of notice of entry

Section 33(1)—delete "six months" wherever occurring and substitute in each case:

12 months

163—Amendment of section 34—Use of declared equipment

- (1) Section 34(1), penalty provision—delete the penalty provision and substitute:

Maximum penalty: \$120 000.

(2) Section 34(5), penalty provision—delete "\$5 000" and substitute:
\$120 000

(3) Section 34(9)—before "Mining" insert:
Opal

5 (4) Section 34(11), penalty provision—delete "\$10 000" and substitute:
\$120 000

164—Amendment of section 35—Rehabilitation of land

(1) Section 35(1)—delete "(or partly outside)"

(2) Section 35(2)(d)—delete paragraph (d) and substitute:

10 (d) may be issued at any time (including after a tenement has come to an
end)

(3) Section 35(3), penalty provision—delete "\$5 000" and substitute:
\$120 000

(4) Section 35(4), penalty provision—delete "\$5 000" and substitute:
15 \$120 000

165—Insertion of sections 35A and 35B

After section 35 insert:

35A—Compliance directions

20 (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
tenement (including a term or condition of a tenement) or
any authorisation or direction under or in relation to a
tenement; or

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

30 (c) without limiting any other provision, requiring the
rehabilitation of land on account of any operations carried
out without an authority required by this Act; or

(d) requiring the taking of any action that, in the opinion of the
Minister, is required to ensure public safety.

(2) A compliance direction—

35 (a) must be in the form of a notice in writing given to the person
to whom the direction is issued; and

(b) must—

- (i) specify the person to whom it is issued (whether by name or by description sufficient to identify the person); and
- (ii) specify the grounds on which it is issued; and
- 5 (c) may impose any requirement reasonably required for the purpose for which the direction 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;
- 10 (ii) a requirement that the person not carry on specified operations except at specified times or subject to specified conditions;
- 15 (iii) a requirement that the person take specified action within a specified period.
- (3) The Minister may, by notice in writing given to the person to whom a compliance direction is issued, vary or revoke the direction.
- (4) A person to whom a compliance direction relates must comply with a direction under this section within the time allowed in the direction.
- 20 Maximum penalty: \$250 000.

35B—Contravention of Act

25 The Minister or an authorised officer may, if of the opinion that it is reasonably necessary to do so in the circumstances, include in a direction under this Part a requirement for an act or omission that might otherwise constitute a contravention of this Act and, in that event, a person incurs no liability to a penalty under this Act for compliance with the requirement.

166—Amendment of section 36—Bonds

- 30 (1) Section 36(1)—delete "(or partly outside)"
- (2) Section 36(7)—before "Mining" insert:
Opal
- (3) Section 36(8)—delete subsection (8)
- (4) Section 36(9)—before "Mining" insert:
35 Opal
- (5) Section 36(10)—before "Mining" insert:
Opal
- (6) Section 36(10), penalty provision—delete "\$5 000" and substitute:
\$120 000

- (7) Section 36(12), penalty provision—delete "\$5 000" and substitute:
\$120 000

167—Amendment of section 37—Application of bonds

Section 37(4)—before "Mining" wherever occurring insert:

5 Opal

168—Amendment of section 43—Registration of agreement

- (1) Section 43(1)—before "Mining" insert:

Opal

- (2) Section 43(3)—before "Mining" insert:

10 Opal

- (3) Section 43(3)(b)—before "Mining" insert:

Opal

- (4) Section 43(4)—before "Mining" insert:

Opal

- 15 (5) Section 43(5)—before "Mining" wherever occurring insert:

Opal

169—Amendment of section 44—Agreement may be varied or revoked

- (1) Section 44(2)—before "Mining" wherever occurring insert:

Opal

- 20 (2) Section 44(4)(a)—before "Mining" insert:

Opal

- (3) Section 44(5)—before "Mining" insert:

Opal

170—Amendment of section 45—Appeal to Warden's Court

25 Section 45—before "Mining" wherever occurring insert:

Opal

171—Amendment of section 49—Qualification of rights conferred by permit

- (1) Section 49(1)—after paragraph (b) insert:

or

30 (c) an indigenous land use agreement registered under the *Native Title Act 1993* of the Commonwealth provides that statutory rights to negotiate are not intended to apply in relation to the mining operations.

- (2) Section 49—after note 2 insert:

35 3 Cf. *Native Title Act 1993* (Cwth), section 24EB(1)(c).

172—Amendment of section 50—Limits on grant of tenement

(1) Section 50—after paragraph (b) insert:

or

(c) an indigenous land use agreement registered under the *Native Title Act 1993* of the Commonwealth provides that statutory rights to negotiate are not intended to apply in relation to the mining operations.

(2) Section 50—after note 1 insert:

2 Cf. *Native Title Act 1993* (Cwth), section 24EB(1)(c).

173—Amendment of section 51—Applications for tenements

Section 51(2)—before "Mining" wherever occurring insert:

Opal

174—Amendment of section 59—Agreement

(1) Section 59(4)—before "Mining" wherever occurring insert:

Opal

(2) Section 59(5)—before "Mining" insert:

Opal

175—Amendment of section 64—Effect of determination

Section 64(1)(a)—before "Mining" insert:

Opal

176—Amendment of section 70A—Opal Mining Native Title Register

(1) Section 70A(1)—delete subsection (1) and substitute:

(1) The Opal Mining Registrar must establish a distinct part of the opal mining register (which may be referred to as the *Opal Mining Native Title Register*) for the registration of agreements and determinations under this Part.

(2) Section 70A(2)—before "Mining" insert:

Opal

(3) Section 70A(3)—delete subsection (3) and substitute:

(3) The Opal Mining Registrar may also note in any other part of the opal mining register any agreement or determination registered under this Part (as the Opal Mining Registrar thinks fit).

(4) Section 70A(4)(a)—before "Mining" insert:

Opal

(5) Section 70A(5)(d)—before "Mining" insert:

Opal

- (6) Section 70A(7), penalty provision—delete "\$10 000" and substitute:
\$50 000

177—Amendment to section 72—Jurisdiction relating to tenements and monetary claims

- 5 (1) Section 72(2a)—delete "\$100 000" and substitute:
\$150 000
- (2) Section 72(4)(a)—before "Mining" insert:
Opal
- (3) Section 72(4)(b)—before "Mining" wherever occurring insert:
10 Opal

178—Insertion of section 75A

Before section 76 insert:

75A—Opal mining registrar

- 15 (1) There is to be an Opal Mining Registrar and other opal mining registrars.
- (2) The Opal Mining Registrar and the opal mining registrars are to be Public Service employees.
- (3) The Opal Mining Registrar may delegate a power or function of the Opal Mining Registrar to another opal mining registrar.
- 20 (4) If the terms of an instrument of delegation allows for subdelegation, the delegate may subdelegate the power or function in accordance with the instrument (and a reference in this section to a delegation will then extend to any such subdelegation).
- (5) A delegation under this section—
- 25 (a) may be absolute or conditional; and
- (b) may be made—
- (i) to a specified person; or
- (ii) to a person for the time being holding or acting in a specified office or position; and
- 30 (iii) does not derogate from the power of the delegator to act in any matter; and
- (iv) is revocable at will by the delegator.
- (6) An opal mining registrar may be assigned to act as the Opal Mining Registrar—
- 35 (a) during a vacancy in the office of Opal Mining Registrar; or
- (b) when the Opal Mining Registrar is absent from, or unable to discharge, official duties.

179—Amendment of section 76—Opal Mining Register

(1) Section 76(1)—delete subsection (1) and substitute:

(1) The Opal Mining Registrar will keep a register (the *opal mining register*).

5 (2) Section 76(2)—delete "The Mining Registrar must, in that part of the Mining Register, keep" and substitute:

The opal mining register will be

(3) Section 76(2)—delete "in the register any other information he or she" and substitute:

any other information the Opal Mining Registrar

10 (4) Section 76(3)—delete "Mining Registrar must note in the relevant part of the register" and substitute:

Opal Mining Registrar must note in the opal mining register

(5) Section 76(4)—delete "register" and substitute:

opal mining register

15 **180—Amendment of section 77—Appointment of authorised persons**

(1) Section 77(5)(a) and (b)—delete paragraphs (a) and (b) and substitute:

(a) enter, search, inspect and examine any premises, land or vehicle that has been or is intended to be, used for, or in connection with, any operations or activity regulated by this Act and, where necessary for the purpose, break into or open a part of, or anything in, the premises, land or vehicle;

(b) inspect or examine anything;

(2) Section 77(5)(c)—delete "take, and remove from land," and substitute:

seize and retain

25 (3) Section 77(8), penalty provision—delete "\$2 500" and substitute:

\$10 000 or imprisonment for 6 months

(4) Section 77(9), penalty provision—delete "\$2 500" and substitute:

\$10 000 or imprisonment for 6 months

(5) Section 77(10) to (12)—delete subsections (10) to (12) (inclusive) and substitute:

30 (10) It is not an excuse for a natural person to refuse to answer a question or to provide information under a preceding subsection on the ground that to do so might tend to incriminate the person or make the person liable to a penalty.

(11) However, if compliance with a requirement to answer a question or to provide information might tend to incriminate the person or make the person liable to a penalty, then—

5 (a) in the case of a person who is required to provide information, including by the production of a document—the fact of the provision of the information or document (as distinct from the information itself or the contents of a document); or

10 (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).

15 (12) An authorised person may require a person who the authorised officer reasonably suspects has committed, is committing or is about to commit, a contravention of this Act to state the person's full name and usual place of residence and to produce evidence of the person's identity.

20 (13) A person of whom a requirement is made under subsection (12) must comply with the requirement.

Maximum penalty: \$5 000.

(14) An authorised person may only exercise a power under subsection (5)(a) in respect of premises on the authority of a warrant issued by a magistrate (including as a warden) or justice.

25 (15) However, a warrant is not required to exercise a power under subsection (5)(a) in relation to non-residential premises if—

(a) the premises are used by a tenement holder for, or in connection with, operations under this Act; or

30 (b) the authorised person has reason to believe that, in the circumstances, urgent action is required.

(16) A warrant may not be issued unless the magistrate, warden or justice (as the case may be) is satisfied that the warrant is reasonably required in the circumstances.

(17) An application for the issue of a warrant—

35 (a) may be made personally, electronically or by telephone; and

(b) must be made in accordance with any procedures prescribed by the regulations.

181—Amendment of section 79—Exemptions

(1) Section 79(1)—delete subsection (1) and substitute:

(1) If the Minister is satisfied that it is justifiable to do so, the Minister may—

- 5
- (a) exempt the holder of a tenement from the obligation to comply with a term or condition of the tenement; or
 - (b) exempt the holder of a tenement from the obligation to comply with a provision of this Act (except Part 7).

(2) Section 79(5), penalty provision—delete "\$5 000" and substitute:

10 \$50 000

182—Amendment of section 82—Offences

(1) Section 82(1), penalty provision—delete the penalty provision and substitute:

Maximum penalty: \$150 000 or imprisonment for 2 years.

(2) Section 82(3), penalty provision—delete "\$1 250" and substitute:

15 \$10 000

(3) Section 82(4), penalty provision—delete "\$2 500" and substitute:

\$10 000

(4) Section 82(5), penalty provision—delete "\$2 500" and substitute:

\$10 000

20 (5) Section 82(6)—after "this Act" insert:

(other than a provision to which an administrative penalty applies)

(6) Section 82(6)—delete "\$2 500" and substitute:

\$10 000

183—Amendment of section 84—Prohibition orders

25 Section 84(5), penalty provision—delete the penalty provision and substitute:

Maximum penalty: \$150 000 or imprisonment for 2 years.

184—Amendment of section 85—Power of Opal Mining Registrar to require pegs be removed

Section 85—before "Mining" wherever occurring insert:

30 Opal

185—Amendment of section 87—Evidentiary provision

(1) Section 87(2)—delete "Mining Registrar as to a matter relating to" and substitute:

Opal Mining Registrar certifying

(2) Section 87(2)(a) and (b)—delete paragraphs (a) and (b) and substitute:

35 (a) as to a matter relating to a permit or tenement under this Act; or

- 5
- (b) as to a matter relating to a notice or requirement under this Act; or
- (c) that a person named in the certificate was or was not at a specified time the holder of a tenement; or
- (d) that a specified provision was a term or condition of a specified tenement at a specified time; or
- 10
- (e) that a specified determination, decision, order or requirement was made or given on a specified day; or
- (f) that at a specified time the Minister, the Director or the Opal Mining Registrar gave notice of any specified matter under or in connection with the operation of this Act; or
- (g) that at a specified time the Minister, the Director or the Opal Mining Registrar had not received any notice, instrument or other document, or had not received any information of a specified kind; or
- 15
- (h) that at a specified time a specified person was an authorised officer under this Act; or
- (i) that a particular delegation was in force under this Act at a specified time,

186—Amendment of section 89—Disposal of waste

- 20
- (1) Section 89(2), penalty provision—delete "\$2 500" and substitute:
\$10 000
- (2) Section 89(5), penalty provision—delete "\$2 500" and substitute:
\$10 000

187—Repeal of section 91

Section 91—delete the section

25 **188—Amendment of section 93—Interaction with Mining Act**

- (1) Section 93(1)—delete "mining" first occurring
- (2) Section 93(1)—delete "mining tenement" and substitute:
mineral tenement
- (3) Section 93(2)—delete "mining tenement" and substitute:
30 mineral tenement
- (4) Section 93(3), penalty provision—delete "\$5 000" and substitute:
\$20 000
- (5) Section 93(6), penalty provision—delete "\$5 000" and substitute:
\$10 000

189—Insertion of sections 98A and 98B

After section 98 insert:

98A—Administrative penalties

- 5
- (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 tenement is alleged to have contravened a provision to which this section applies, the Director may, by notice in writing to the person, impose an administrative penalty on the person (and the Director may act under this subsection without prior consultation with the person and without the need to give a warning or any prior notice in relation to the matter).
- 10
- (3) The amount of an administrative penalty is an amount (not exceeding \$15 000) prescribed by regulation in relation to the relevant provision.
- 15
- (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.
- 20

98B—Penalties payable into Mining Rehabilitation Fund

25 The following are payable into the Mining Rehabilitation Fund established under the *Mining Act 1971*:

- (a) penalties payable in respect of offences against this Act;
- (b) administrative penalties paid under this Act.

190—Amendment of section 99—Regulations

- 30 (1) Section 99(2)(o)—delete "\$2 500" and substitute:

\$10 000

- (2) Section 99(3)(e)—before "Mining" insert:

Opal

- (3) Section 99—after subsection (3) insert:

- 35 (4) The Governor may, by regulation, make provisions of a saving or transitional nature consequent on the amendment of this Act by another Act.
- (5) A provision made by a regulation under subsection (4) may be in addition to any provision of a saving or transitional nature made by the Act that makes the amendment.
- 40

- (6) A provision made by a regulation under subsection (4) may, if the regulations so provide, take effect from the commencement of the amendment or from a later day.
- (7) To the extent to which a provision takes effect under subsection (6) from a day earlier than the day of the publication of the regulation in the Gazette, the provision does not operate to the disadvantage of a person by—
- (a) decreasing the person's rights; or
 - (b) imposing liabilities on the person.

Schedule 1—Transitional provisions

Part 1—Transitional provisions—*Mining Act 1971*

1—Interpretation

In this Schedule—

principal Act means the *Mining Act 1971*.

2—References

On and after the day on which section 4 comes into operation, a reference in any Act, statutory instrument or other document or instrument to a mining tenement under the principal Act will, unless the context otherwise requires, be taken to include a reference to a mineral tenement.

3—Waiver of exemption

- (1) In this clause—

mining operator has the same meaning as in the principal Act, as in force immediately before the day on which section 4 comes into operation.

- (2) Section 9AA of the principal Act, as in force immediately before the day on which section 9 comes into operation, will continue to apply where a mining operator has given a notice to a person under subsection (1) of that section before the day on which section 22 comes into operation.

4—Registers

All registers kept under section 15A of the principal Act immediately before the repeal of that section by this Act will, on that repeal, be taken to form part of the mining register under section 15AA of the principal Act as enacted by this Act.

5—Mortgages

- (1) A mortgage may be registered under section 15AC of the principal Act, as enacted by this Act, whether it was created before or after the commencement of that section.
- (2) An application may be made under section 15AD of the principal Act, as enacted by this Act, in relation to a mortgage—
- (a) registered on a register under the principal Act before the commencement of that section; or

- (b) created before the commencement of that section and registered on the mining register on or after that commencement.

6—Registered documents and dealings

5 Section 15AH of the principal Act, as enacted by this Act, extends to the registration of any interest, instrument, agreement, statement, notice, order, direction, bond, penalty or other document or dealing on the mining register before the commencement of section 22 of this Act.

7—Royalty

- 10 (1) The principal Act, as in force immediately before the commencement of section 23 of this Act, applies for the purposes of the first return required to be furnished by a tenement holder following that commencement and to the calculation of royalty in respect of minerals recovered during the period to which the return relates.
- 15 (2) If a relevant event has occurred under section 73E of the principal Act, as in force immediately before the commencement of section 23 of this Act, that event will be taken to be a relevant event for the purposes of section 17AB of the principal Act as enacted by this Act.

8—Exploration licences

- (1) In this clause—

grant date is the date of the original grant of an exploration licence;

relevant day means the day on which section 41 comes into operation.

- 20 (2) An exploration licence in existence immediately before the relevant day, other than a licence that has been granted under section 30AB of the principal Act, will continue to be subject to the operation of section 30A of the principal Act, as in existence immediately before the relevant day, until the expiration of 5 years from the date on which the licence was granted, and then will be subject to the operation of section 30A of the principal Act, as amended by this Act, as if the term or aggregate term of the licence had reached the period of 6 years, rather than 5 years, and with the grant date for the licence being taken to be 1 year earlier than the actual grant date.

- (3) If—

- 30 (a) an exploration licence in existence immediately before the relevant day has been granted under section 30AB of the principal Act; and
- (b) immediately before the relevant day, the term of that licence when aggregated with the term of the former licence under section 30A of the principal Act, as in existence immediately before the relevant day, has not reached a period of
- 35 10 years,

the licence will be subject to the operation of section 30A of the principal Act as in force immediately before the relevant day until the expiration of 10 years from the date on which the former licence was granted, and will then be subject to the operation of section 30A(7)(a) of the principal Act, as amended by this Act, as if the term or aggregate term of the licence had reached the period of 6 years.

40

(4) If—

- (a) an exploration licence in existence immediately before the relevant day has been granted under section 30AB of the principal Act; and
- (b) that licence is a successor to a former licence granted under section 30AB of the principal Act; and
- (c) immediately before the relevant day, the term of the licence when aggregated with the terms of the former licence or licences under section 30A and 30AB of the principal Act, as in existence immediately before the relevant day, has reached a period of 10 years or more,

the licence will be subject to the operation of section 30A of the principal Act as in force immediately before the relevant day until the expiry of the 5 year aggregate term of the licence and—

- (d) the aggregate period of the licence and any former licence will be taken to be 12 years (with the grant date for the licence being adjusted accordingly); and
- (e) if the holder of the licence seeks a further renewal of the licence, they will be required to make an application for the renewal of the licence under section 30A of the principal Act, as amended by this Act, and will then be subject to the operation of section 30A(7)(b) (other than subparagraph (ii) of that paragraph) and the licence may continue in force pending the outcome of the application.

9—Expenditure

- (1) An expenditure obligation imposed under section 30(1)(b) of the principal Act as a condition of an exploration licence in existence immediately before the relevant day will be taken to set out the level of expenditure that applies in relation to the licence for the purposes of section 30AAA of the principal Act as enacted by this Act.
- (2) The Minister may exercise a power under section 30AAA of the principal Act, as enacted by this Act, in relation to any exploration licence in existence immediately before the commencement of that section.

10—Reinstatement of tenements

Section 56Z of the principal Act, as enacted by this Act, cannot apply in relation to a mineral tenement that expired before the commencement of that section.

11—Mining Rehabilitation Fund

The Minister may impose a requirement under section 62AA of the principal Act, as enacted by this Act, in relation to a mining tenement (or mineral tenement) granted before the enactment of that section.

12—Jurisdiction relating to tenements and monetary claims

The amendment to section 67(1a) of the principal Act by section 78—

- (a) does 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).

13—Programs for environment protection and rehabilitation

- 5 (1) In this clause—

ADP means a development program approved under regulation 9 of the *Mines and Works Inspection Regulations 2013*;

relevant day means the day on which section 83 comes into operation;

PEPR means a program under Part 10A of the principal Act;

- 10 *prescribed item* means—

- (a) an exploration work program; or
- (b) a declaration of environmental factors; or
- (c) a program for mining and rehabilitation of land,

15 within the meaning of regulation 114 of the *Mining Regulations 2011* as in force immediately before the relevant day.

- (2) A prescribed item—

- (a) continues as a PEPR for the purposes of the principal Act; and
- (b) insofar as it is relevant to authorised operations conducted under the principal Act on or after the relevant day, will be taken to be an approved program under Part 10A of the principal Act and to be subject to the operation and requirements of—
 - (i) regulation 114 of the *Mining Regulations 2011*; and
 - (ii) Part 10A of the principal Act (including so as to require the prescribed item, as a PEPR, to be reviewed under that Part as required and to be relevant to the operation of section 70D of the principal Act as in force immediately before the relevant day and section 70DA of the principal Act as enacted by this Act on or after the relevant day).

- (3) An ADP in force immediately before the relevant day—

- (a) will be taken to be a PEPR for the purposes of the principal Act; and
- (b) insofar as it is relevant to authorised operations conducted under the principal Act on or after the relevant day, will be taken to be an approved program under Part 10A of the principal Act and to be subject to the operation and requirements of Part 10A of the principal Act (including so as to require the ADP, as a PEPR, to be reviewed under that Part as required and to be subject to the operation of sections 70D and 70DA of the principal Act as enacted by this Act on or after the relevant day).

- (4) Subclause (3) does not apply in relation to operations within the ambit of section 5 of the *Mines and Works Inspection Act 1920*, as enacted by this Act.

- (5) The Minister may, on or after the enactment of paragraph (c) of section 70C(5) of the principal Act, reject a program that has been submitted under section 70B of the principal Act before that enactment.
- 5 (6) The Minister may require a program audit to be conducted under section 70D of the principal Act, as enacted by this Act, in relation to a PEPR that has been approved before the relevant day.
- 10 (7) If a person who has applied for a mineral tenement before the commencement of this Act submits a program for approval under section 70B(4) of the principal Act as substituted by this Act, the program must be consistent with any proposal provided to the Minister during the relevant mineral tenement application process.

14—Caveats

If a caveat lodged under Part 11A of the principal Act is in force immediately before the repeal of that Part by this Act—

- 15 (a) the provisions of that Part will continue to apply in relation to the caveat as if the repeal had not been effected; and
- (b) Division 3 of Part 2A of the principal Act, as enacted by this Act, will not apply in relation to the caveat.

15—Private mines

- (1) In this clause—

20 *prescribed day* means the day falling 15 years after the day on which this clause comes into operation.

- (2) On and after the prescribed day—

- 25 (a) a mine operations plan in force under section 73G of the principal Act immediately before that day will be taken to be an approved program under Part 10A of the principal Act; and
- (b) Part 10A of the principal Act will apply to and in relation to a private mine and a person carrying out mining operations in relation to a private mine; and
- 30 (c) section 73G of the principal Act will cease to apply to and in relation to a private mine (and that section will be taken to have been repealed on that day); and
- (d) sections 73I and 73KA of the principal Act will apply—
- (i) as if a reference to a mine operations plan included a reference to a program under Part 10A of the principal Act; and
- 35 (ii) as if a reference to objectives contained in a mine operations plan included a reference to environmental outcomes under a program under Part 10A of the principal Act.

16—Safety net

The repeal of section 84A of the principal Act does not affect the operation of any agreement in force under that section before the repeal.

Part 2—Transitional provisions—*Opal Mining Act 1995*

17—Interpretation

In this Part—

principal Act means the *Opal Mining Act 1995*.

5 18—Opal mining register

The distinct part of the Mining Register kept under section 76 of the principal Act by the Mining Registrar under the Mining Act, will on the commencement of this Act, be taken to form part of the opal mining register under section 76 as amended by this Act.

19—Caveats

10 If a caveat lodged under section 26 of the principal Act is in force immediately before the repeal of that section by this Act—

- (a) the provisions of that section will continue to apply in relation to the caveat as if the repeal had not been effected; and
- (b) section 26 of the principal Act, as enacted by this Act, will not apply in
15 relation to the caveat.

20—Safety net

The repeal of section 91 of the principal Act does not affect the operation or validity of any agreement in force under that section immediately before the repeal.

21—Jurisdiction relating to tenements and monetary claims

20 The amendment of section 72(2a) by section 177—

- (a) does 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) applies in respect of proceedings commenced after the commencement of that section (including proceedings in respect of a claim arising before the
25 commencement of that section).