

# Mining Act 1992 No 29

[1992-29]



New South Wales

## Status Information

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Does not include amendments by**
  - Justices Legislation Repeal and Amendment Act 2001 No 121* (not commenced)
  - Mining Legislation Amendment (Health and Safety) Act 2002 No 50* (not commenced)
  - Surveying Act 2002 No 83* (not commenced)
  - Coal Mine Health and Safety Act 2002 No 129* (not commenced)

### Authorisation

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File last modified 1 February 2003

# Mining Act 1992 No 29



New South Wales

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# Mining Act 1992 No 29



New South Wales

An Act to make provision with respect to prospecting for and mining minerals; to repeal the *Mining Act 1973* and the *Coal Mining Act 1973*; and for other purposes.

## Part 1 Preliminary

### 1 Name of Act

This Act may be cited as the *Mining Act 1992*.

### 2 Commencement

This Act commences on a day or days to be appointed by proclamation.

### 3 Act binds Crown

This Act binds the Crown in right of New South Wales and, in so far as the legislative power of Parliament permits, the Crown in all its other capacities.

### 4 Definitions

Expressions used in this Act that are defined in the Dictionary at the end of this Act have the meanings set out in the Dictionary.

#### 4A Application of Act

This Act does not apply to any area to which the *Offshore Minerals Act 1999* applies.

#### 4B Notes

Notes included in this Act are explanatory notes and do not form part of this Act.

## Part 2 Prospecting and mining generally

### Division 1 General

#### 5 Mining etc for publicly owned minerals

A person must not prospect for or mine any publicly owned mineral on any land otherwise than in accordance with an authority, mineral claim or opal prospecting licence that is in

force in respect of that mineral and that land.

Maximum penalty for prospecting in contravention of this section: 200 penalty units.

Maximum penalty for mining in contravention of this section:

- (a) 1,000 penalty units or imprisonment for 5 years, or both, in the case of an offence dealt with on indictment, or
- (b) 200 penalty units or imprisonment for 2 years, or both, in the case of an offence dealt with summarily.

## **6 Mining etc for privately owned minerals on land subject to authority etc**

- (1) A person must not prospect for or mine any privately owned mineral on any land over which some other person is the holder of an authority or mineral claim.

Maximum penalty for prospecting in contravention of this subsection: 200 penalty units.

Maximum penalty for mining in contravention of this subsection:

- (a) 1,000 penalty units or imprisonment for 5 years, or both, in the case of an offence dealt with on indictment, or
  - (b) 200 penalty units or imprisonment for 2 years, or both, in the case of an offence dealt with summarily.
- (2) This section applies whether or not the mineral for which the person prospects or mines is a mineral to which the authority or mineral claim relates.

## **7 Mining etc for privately owned minerals on land subject to pending application for authority etc**

- (1) A person must not prospect for or mine any privately owned mineral on any land over which some other person is the applicant for an authority or mineral claim unless the person commenced to do so before the application was made.

Maximum penalty for prospecting in contravention of this subsection: 200 penalty units.

Maximum penalty for mining in contravention of this subsection:

- (a) 1,000 penalty units or imprisonment for 5 years, or both, in the case of an offence dealt with on indictment, or
  - (b) 200 penalty units or imprisonment for 2 years, or both, in the case of an offence dealt with summarily.
- (2) This section applies whether or not the mineral for which the person prospects or

mines is a mineral to which the application relates.

### **8 Mining etc for privately owned minerals without due notice to Director-General**

- (1) A person must not, on any land, prospect for or mine any privately owned mineral unless:
- (a) the person has caused notice of intention to do so to be given to the Director-General, and
  - (b) the person has caused security, in a form and an amount determined in accordance with the regulations, to be lodged with the Director-General, and
  - (c) the person prospects for or mines the mineral in accordance with the conditions (if any) prescribed by the regulations.

Maximum penalty for prospecting in contravention of this subsection: 200 penalty units.

Maximum penalty for mining in contravention of this subsection:

- (a) 1,000 penalty units or imprisonment for 5 years, or both, in the case of an offence dealt with on indictment, or
  - (b) 200 penalty units or imprisonment for 2 years, or both, in the case of an offence dealt with summarily.
- (2) The notice referred to in subsection (1) (a) must contain the following particulars:
- (a) (Repealed)
  - (b) the mineral in relation to which prospecting or mining operations are to be carried on,
  - (c) a description, prepared in the manner prescribed by the regulations, of the land on which the prospecting or mining operations are to be carried on,
  - (d) if the person is not the owner of the mineral—the name and address of the owner of the mineral and the date on which the person obtained the consent of the owner of the mineral to the person's carrying on prospecting or mining operations.
- (3) The regulations referred to in subsection (1) (c) may prescribe requirements relating to:
- (a) the rehabilitation, levelling, regrassing, reforesting or contouring of any parts of the land on which prospecting or mining operations are carried on that are damaged or otherwise adversely affected by those operations, and
  - (b) the filling in, sealing or fencing off of excavations, shafts and tunnels,

and other requirements directed at the restoration of the land or the protection of the environment.

- (4) This section does not apply to a person to the extent to which the person is prospecting or mining in accordance with an authority, mineral claim or opal prospecting licence that is in force in respect of the land and mineral concerned.

## **9 Mining etc for privately owned coal**

A person must not prospect for or mine privately owned coal on any land otherwise than in accordance with an authority for coal in force in respect of the land.

Maximum penalty for prospecting in contravention of this section: 200 penalty units.

Maximum penalty for mining in contravention of this section:

- (a) 1,000 penalty units or imprisonment for 5 years, or both, in the case of an offence dealt with on indictment, or
- (b) 200 penalty units or imprisonment for 2 years, or both, in the case of an offence dealt with summarily.

## **10 Defence to prosecutions under Part 2**

It is a sufficient defence to a prosecution under this Part if the person who was prospecting for or mining a mineral establishes that the person was doing so:

- (a) by virtue of an entitlement arising from a legal or equitable interest that is registered under section 161, or
- (b) in the course of lawful fossicking.

## **11 Property in minerals lawfully mined**

- (1) For the purposes of this or any other Act or law, it is declared that any mineral that is lawfully mined becomes the property of the person by or on behalf of whom it is mined at the time the material from which it is recovered is severed from the land from which it is mined.
- (2) For the purposes of this or any other Act or law, it is declared that any mineral contained in:
- (a) a stockpile of material that has been lawfully mined for the purpose of enabling the mineral to be recovered, or
- (b) a pile of tailings arising from the recovery of a mineral from material that has been so mined,

remains the property of the person by or on behalf of whom the material was mined and does not become part of the land on which it is situated.

- (3) However, any mineral that has been mined pursuant to a mining lease or mineral claim but is still contained in such a stockpile or pile of tailings when the lease or claim ceases to have effect:
  - (a) ceases to be the property of the person by or on behalf of whom the material in the stockpile or pile of tailings was mined, and
  - (b) becomes part of the land on which the stockpile or pile of tailings is situated, at the time the mining lease or mineral claim ceases to have effect.
- (4) This section is subject to the provisions of any private agreement.

#### **11A Certain activities taken not to be prospecting or mining**

- (1) The regulations may declare that a specified activity is taken not to be prospecting or mining for the purposes of this Act.
- (2) A regulation referred to in subsection (1):
  - (a) may require a person who proposes to carry out any such activity to give notice of intention to do so to the Director-General, and
  - (b) may require a person who carries out any such activity to pay royalty to the Minister in respect of any publicly owned minerals recovered as a consequence of the carrying out of that activity.
- (3) Part 14 applies to royalty payable under subsection (2) (b) in the same way as it applies to royalty payable on a mineral recovered under a mining lease.

#### **12 Fossicking**

- (1) For the purposes of this or any other Act or law, it is declared that fossicking is a lawful activity.
- (2) Subsection (1):
  - (a) does not affect any other Act or law that prohibits, regulates or restricts fossicking or that has the effect of prohibiting, regulating or restricting fossicking and, in particular, does not make fossicking a lawful authority or lawful excuse for the purposes of any such Act or law, and
  - (b) does not confer on any person a right of entry on to land (other than land prescribed by subsection (2A)) for fossicking purposes.
- (2A) For the purposes of subsection (2) (b), the prescribed land is Crown land (within the meaning of the [Crown Lands Act 1989](#)):
  - (a) that is not held under a lease, licence or permissive occupancy under the [Crown Lands Act 1989](#), the [Crown Lands \(Continued Tenures\) Act 1989](#) or the [Western](#)



*Lands Act 1901*, unless it is so held for grazing purposes, and

(b) that is not under the management or control of a trustee or a public or local authority.

(3) Any publicly owned mineral that is recovered in the course of lawful fossicking becomes the property of the person by whom it is found at the time it is severed from the land on which it is found.

(4) A person must not carry out fossicking on any land the subject of an authority, mineral claim or opal prospecting licence except with the consent of the holder of the authority, claim or licence.

Maximum penalty: 50 penalty units.

(5) Subsection (4) does not apply to the carrying out of fossicking on land the subject of an exploration licence if the land is within a fossicking district.

(6) A person must not carry out fossicking on any land that is, or in waters that are, the subject of an approved determination of native title under the Commonwealth Native Title Act to the effect that native title exists, except with the consent of the relevant registered native title body corporate with respect to that native title.

Maximum penalty: 50 penalty units.

## **Division 2 Offences concerning theft of minerals**

### **12A Definitions**

In this Division:

**mining land** means any land the subject of a mining lease or mineral claim.

**owner** in relation to a mine or mining land, means a person:

(a) who is authorised (whether under a mining lease or mineral claim or otherwise) to mine for minerals in or on the mine or mining land, or

(b) who is entitled to receive any minerals recovered from the mine or mining land.

### **12B Stealing minerals**

A person who:

(a) steals, or attempts to steal, a mineral from any mine or mining land, or

(b) severs, or attempts to sever, a mineral from any mine or mining land with intent to steal,

is guilty of an offence.

Maximum penalty:

- (a) 1,000 penalty units or imprisonment for 5 years, or both, in the case of an offence dealt with on indictment, or
- (b) 200 penalty units or imprisonment for 2 years, or both, in the case of an offence dealt with summarily.

### **12C Fraudulent removal and concealment of minerals by employees**

A person employed in or about any mine or mining land who removes or conceals, or attempts to remove or conceal, a mineral found in that mine or mining land with intent to defraud an owner of the mine or mining land is guilty of an offence.

Maximum penalty:

- (a) 1,000 penalty units or imprisonment for 5 years, or both, in the case of an offence dealt with on indictment, or
- (b) 200 penalty units or imprisonment for 2 years, or both, in the case of an offence dealt with summarily.

### **12D Fraudulent removal and concealment of minerals by partners**

An owner of any mine or mining land who removes or conceals, or attempts to remove or conceal, a mineral found in that mine or mining land with intent to defraud any other owner of the mine or mining land is guilty of an offence.

Maximum penalty:

- (a) 1,000 penalty units or imprisonment for 5 years, or both, in the case of an offence dealt with on indictment, or
- (b) 200 penalty units or imprisonment for 2 years, or both, in the case of an offence dealt with summarily.

### **12E (Repealed)**

## **Part 3 Exploration licences**

### **Division 1 Applications and tenders**

#### **13 Applications**

- (1) Any person may apply for an exploration licence.
- (2) An application for an exploration licence:
  - (a) must specify the group or groups of minerals in respect of which it is made, and
  - (b) must be lodged with a mining registrar, and

- (c) must be accompanied by the required particulars, and
- (d) must be accompanied by the appropriate lodgment fee.

(3) The required particulars are as follows:

- (a) a description, prepared in the manner prescribed by the regulations, of the land over which the exploration licence is sought,
- (b) particulars of the financial resources available to the applicant,
- (c) particulars of the technical advice available to the applicant,
- (d) particulars of the program of work proposed to be carried out by the applicant on the land over which the exploration licence is sought,
- (e) particulars of the estimated amount of money that the applicant proposes to expend on prospecting.

(4) An application that relates to land within a mineral allocation area may not be made, except with the consent of the Minister, in relation to any group of minerals that includes an allocated mineral.

#### **14 Invitations for tenders**

(1) This section applies only in relation to allocated minerals in land within a mineral allocation area.

(2) The Minister may, by notice published:

- (a) in a newspaper circulating generally throughout the State, and
- (b) in one or more newspapers circulating in the locality in which the land concerned is situated,

invite tenders for an exploration licence for an allocated mineral.

(3) An invitation:

- (a) must describe the land to which it relates, and
- (b) must identify the allocated mineral to which it relates, and
- (c) must specify the place at which, and the date on or before which, tenders for the exploration licence should be lodged.

#### **15 Tenders**

(1) A tender for an exploration licence:

- (a) must be lodged with the Director-General in accordance with the invitation for the

tender, and

(b) must be accompanied by the required particulars, and

(c) must be accompanied by the appropriate lodgment fee.

(2) The required particulars are as follows:

(a) particulars of the financial resources available to the tenderer,

(b) particulars of the technical advice available to the tenderer,

(c) particulars of the program of work proposed to be carried out by the tenderer on the land over which the exploration licence is sought,

(d) particulars of the estimated amount of money that the tenderer proposes to expend on prospecting.

(3) A tender may specify that, in the event that the tender is successful, the tenderer will pay a specified amount in addition to the cash reserve price (if any) specified in the invitation for the tender.

(4) A tender may be made in respect of the whole or any part of the land described in the invitation for the tender.

#### **16 Minister may require further information**

The Minister may require the applicant or tenderer to furnish further information in connection with the application or tender, including (if the applicant or tenderer is a corporation) information as to the extent to which the controlling power in the corporation's affairs is held by:

(a) a foreign company within the meaning of the *Corporations Act 2001* of the Commonwealth, or

(b) a company registered under that Act that is taken for the purposes of that Act to be registered in a State or Territory other than New South Wales, or

(c) an individual who is a resident of a foreign country.

#### **17 Minister may exclude land from application or tender**

(1) The Minister may, by order in writing, direct that any part of the land to which an application or tender relates be excluded from the application or tender.

(2) A direction takes effect on the date on which written notice of the direction is served on the applicant or tenderer.

(3) A tenderer affected by any such direction may amend the tender by written notice lodged with the Director-General on or before such date as may be specified in the

direction.

## **Division 2 Restrictions on the grant of exploration licences**

### **18 Land in reserve or opal prospecting area**

An exploration licence may not be granted over any land within:

- (a) an opal prospecting area, or
- (b) a reserve in respect of which an order prohibiting the granting of exploration licences is in force under section 367.

### **19 Land subject to authority**

(1) An exploration licence may not be granted over any land:

- (a) the subject of some other exploration licence that includes a group of minerals in respect of which the firstmentioned exploration licence is sought, or
- (b) the subject of a mining lease, assessment lease or mineral claim, or
- (c) the subject of an application for an exploration licence, assessment lease, mining lease or mineral claim that was lodged before the application for the firstmentioned exploration licence was lodged,

otherwise than to or with the written consent of the holder of, or the applicant for, that licence, lease or claim.

(2) A written consent given under this section is irrevocable.

(3) If, as a result of such a consent, an exploration licence is granted over any such land, that land:

- (a) ceases to be subject to the exploration licence, assessment lease, mining lease or mineral claim concerned, or
- (b) is excluded from the application for the exploration licence, assessment lease, mining lease or mineral claim concerned,

as the case requires.

### **20 Land on which private mining operations being carried on**

(1) An exploration licence may not be granted over any land:

- (a) if mining operations for a privately owned mineral are being carried out on the land by or with the consent of the owner of the mineral, and
- (b) if the notice referred to in section 8 (1) (a) and the security referred to in section 8

(1) (b) have each been duly lodged with the Director-General,  
except with the written consent of the owner of the mineral.

(2) A written consent given under this section is irrevocable.

(3) Any dispute as to whether or not this section applies in any particular case is to be referred to a warden for inquiry and report and is to be decided by the Director-General on the basis of the warden's report.

## **21 Colliery holdings**

An exploration licence may not be granted over land within a colliery holding unless the chief inspector of coal mines is satisfied that prospecting operations may be carried out under the licence without any adverse effect on, and without any risk to the safety of the persons engaged in, the carrying out of coal mining operations in the exploration area.

## **Division 3 Granting of exploration licences**

### **22 Power of Minister in relation to applications**

(1) After considering an application for an exploration licence, the Minister:

- (a) may grant an exploration licence to the applicant, or
- (b) may refuse the application.

(2) Without limiting the generality of subsection (1), an application may be refused on the ground that the applicant has been convicted of an offence against this Act or the regulations or any other offence relating to mining or minerals.

(3) The Minister may grant a single exploration licence in respect of 2 or more applications or 2 or more exploration licences in respect of a single application.

### **23 Power of Minister in relation to tenders**

(1) After considering a tender in respect of land in respect of which one tender only is lodged, the Minister:

- (a) may grant an exploration licence to the tenderer, or
- (b) may refuse the tender.

(2) After considering all tenders in respect of land in respect of which more than one tender is lodged, the Minister:

- (a) may grant an exploration licence to any one of the tenderers and refuse the other tenders, or
- (b) may refuse all of the tenders.

- (3) Without limiting the generality of subsections (1) and (2), a tender may be refused on the ground that the tenderer has been convicted of an offence against this Act or the regulations or any other offence relating to mining or minerals.
- (4) For the purposes of this section, only one tender is lodged in respect of land if no other tender is lodged in respect of the land or any part of the land.

#### **24 Land over which exploration licence may be granted**

- (1) An exploration licence may be granted over land of any title or tenure.
- (2) An exploration licence may be granted in respect of any group or groups of minerals, regardless of whether the minerals in any such group are publicly owned, privately owned or partly publicly and partly privately owned.
- (3) An exploration licence may be granted over the surface of land, over the surface of land and the subsoil below the surface, over the surface of land and the subsoil down to a specified depth below the surface or over the subsoil below or between any specified depth or depths below the surface of land.

#### **25 Shape and dimensions of land over which exploration licence may be granted**

- (1) The land over which an exploration licence is granted must be at least 1, but not more than 100, units in area unless the Minister determines that it is appropriate, in the particular circumstances of the case, for the licence to be granted over a larger area of land.
- (2) The land over which an exploration licence is granted may differ in size or shape from, but may not include land other than, the land over which the licence was sought.
- (3) Land that, by operation of section 19, is excluded from the land over which an exploration licence is granted because, when the licence is granted, the land is the subject of an assessment lease, a mining lease or a mineral claim becomes subject to the exploration licence:
  - (a) if the assessment lease, mining lease or mineral claim ceases to have effect in respect of the land, and
  - (b) if, when it does so, the land is not then subject to a further assessment lease, mining lease or mineral claim.
- (4) Land that, by operation of section 19, is excluded from the land over which an exploration licence is granted because, when the licence is granted, the land is subject to a pending application for an assessment lease, mining lease or mineral claim becomes subject to the exploration licence:
  - (a) if the application is subsequently refused or withdrawn, or

- (b) if, when the assessment lease, mining lease or mineral claim is granted, the land does not become subject to the lease or claim.

## **26 Conditions of exploration licence**

- (1) An exploration licence is subject to such conditions as the Minister may, when granting the licence, impose.
- (2) Without limiting the generality of subsection (1), conditions of the following kind may be imposed on an exploration licence:
  - (a) conditions requiring the holder of the licence to pay royalty to the Minister on any minerals recovered under the licence,
  - (b) conditions requiring the holder of the licence to give and maintain security (in such amount and form, and on or before such date, as the Minister may determine) for the fulfilment of the obligations arising under this Act in respect of the licence.
- (3) Part 14 applies to royalty payable under a condition referred to in subsection (2) (a) in the same way as it applies to royalty payable on a mineral recovered under a mining lease.
- (4) A condition requiring security to be given and maintained by the holder of an exploration licence (the **new exploration licence**) may be expressed so as to require the security given and maintained in relation to some other exploration licence or licences, whether under this section or under section 29A, to be extended to the new exploration licence.
- (5) If the Minister proposes to grant an exploration licence to a person on the condition that the person gives and maintains security, the Minister may cause a written notice to be served on the person requiring the person to lodge the security with the Minister on or before the date specified in the notice.

## **27 Term of exploration licence**

An exploration licence:

- (a) takes effect on the date on which it is granted or on such later date as the Minister may determine, and
- (b) ceases to have effect at the expiration of such period (not exceeding 5 years) as the Minister may determine.

## **28 Form of exploration licence**

An exploration licence is to be in the approved form and is to include the following particulars:



- (a) a description of the land over which it is granted,
- (b) a list of the group or groups of minerals in respect of which it is granted,
- (c) the conditions to which it is subject,
- (d) the period for which it is to have effect.

## **Division 4 Rights and duties under an exploration licence**

### **29 Rights under exploration licence**

- (1) The holder of an exploration licence may, in accordance with the conditions of the licence, prospect on the land specified in the licence for the group or groups of minerals so specified.
- (2) If an application for an assessment lease, mining lease or mineral claim made by the holder of an exploration licence is not finally dealt with before the date on which the licence would otherwise cease to have effect, the licence continues to have effect, in relation only to the land to which the application relates, until the application is finally dealt with.
- (3) Subsection (2) does not operate to extend an exploration licence for more than 2 years, or such further period as the Minister may approve in a particular case, after the date on which it would otherwise expire.

### **29A Amendment of exploration licence in respect of certain conditions**

- (1) The Minister may amend an exploration licence that does not contain a condition requiring the holder to give and maintain security for the fulfilment of the obligations of the holder arising under this Act so as to include such a condition.
- (2) The Minister may amend an exploration licence that contains such a condition so as to vary the amount and form of the security that is required to be given and maintained.
- (3) The Minister may amend any 2 or more exploration licences held by the same holder that contain such a condition so as to require a single security to be given and maintained.
- (4) The amendment of an exploration licence takes effect on the date on which written notice of the amendment is served on the holder of the exploration licence or on such later date as may be specified in the notice.

### **30 Exempted areas**

- (1) The holder of an exploration licence may not, except with the consent of the Minister, exercise any of the rights conferred by the licence within land in an exempted area.
- (2) Such consent may be given either unconditionally or subject to conditions.

### **31 Dwelling-houses, gardens and improvements**

- (1) The holder of an exploration licence may not exercise any of the rights conferred by the licence over the surface of land:
  - (a) on which, or within the prescribed distance of which, is situated a dwelling-house that is the principal place of residence of the person occupying it, or
  - (b) on which, or within the prescribed distance of which, is situated any garden, or
  - (c) on which is situated any improvement (being a substantial building, dam, reservoir, contour bank, graded bank, levee, water disposal area, soil conservation work or other valuable work or structure) other than an improvement constructed or used for mining purposes and for no other purposes,except with the written consent of the owner of the dwelling-house, garden or improvement (and, in the case of the dwelling-house, the written consent of its occupant).
- (2) The prescribed distance is:
  - (a) 200 metres (or, if a greater distance is prescribed by the regulations, the greater distance) for the purposes of subsection (1) (a), and
  - (b) 50 metres (or, if a greater distance is prescribed by the regulations, the greater distance) for the purposes of subsection (1) (b).
- (3) A written consent given under this section is irrevocable.
- (4) Any dispute as to whether or not subsection (1) applies in any particular case is to be referred to a warden for inquiry and report and is to be decided by the Minister on the basis of the warden's report.

### **32 Exploration areas over which authority is subsequently granted**

Land over which an exploration licence is granted and over which some other authority (other than an exploration licence for some other group or groups of minerals) is subsequently granted ceases to be part of the exploration area when the other authority takes effect.

## **Division 5 Low-impact exploration licences—special provisions**

### **32A Object of Division**

The object of this Division is to provide for the grant of a class of low-impact exploration licence that may be approved under section 26A of the Commonwealth Native Title Act.

**Note—**

See clause 14 (3) of Part 5 of Schedule 5 to the [Native Title Amendment Act 1998](#) of the Commonwealth for

preservation of approvals previously granted by the Commonwealth.

### **32B Special low-impact class of licence**

- (1) There is to be a special class of exploration licence called a low-impact exploration licence.
- (2) An exploration licence may be granted as a low-impact exploration licence if this Division is complied with.
- (3) The provisions of this Act relating to exploration licences apply to low-impact exploration licences, except as otherwise provided by this Division.

### **32C Authority conferred by low-impact licence**

- (1) The Minister may, by order published in the Gazette, determine the kind of prospecting operations that may be authorised by a low-impact exploration licence, being operations that the Minister is satisfied are unlikely to have a significant impact on the land over which the licence may be granted.

#### **Editorial note—**

For orders under this subsection see Gazette No 120 of 15.10.1999, p 10011.

- (2) The conditions to which a low-impact exploration licence is subject are to limit the prospecting operations authorised by the licence to all or some of the prospecting operations of the kind determined by the Minister under this section.
- (3) A change in the prospecting operations determined by the Minister under this section does not affect a low-impact exploration licence that is in force at the time the change is made.

### **32D Provisions relating to applications for low-impact licence**

- (1) A person may not be granted a low-impact exploration licence unless notice of the application for the licence has been served on all:
  - (a) registered native title bodies corporate, and
  - (b) registered native title claimants, and
  - (c) representative Aboriginal/Torres Strait Islander bodies,in relation to any of the land that will be affected by the proposed prospecting operations to be authorised by the licence.
- (2) The notice must contain a map or other description of the land over which the exploration licence is sought and a description of the kind of prospecting operations that may be authorised by the licence.
- (3) An applicant may request the Minister to grant a low-impact exploration licence either

at the time the application for a licence is made or at any later time before the grant of the licence.

- (4) The regulations may make other provision for or with respect to the making and grant of applications for low-impact exploration licences.
- (5) In this section, **application** includes tender.

### **32E Change of class of licence—additional prospecting operations**

- (1) The holder of a low-impact exploration licence may apply to the Minister for a variation of the prospecting operations authorised by the licence.
- (2) After considering the application, the Minister may vary the licence or may refuse the application.
- (3) If the prospecting operations authorised by a licence as so varied are not of a kind permitted by this Division, the licence ceases to be a low-impact exploration licence.
- (4) The variation of an exploration licence takes effect on the date on which written notice of the variation is served on the holder of the licence or such later date as may be specified in the notice.

#### **Note—**

The right to negotiate or other procedures may apply to the variation of the licence under the Commonwealth Native Title Act if section 26A of that Act no longer applies because of the variation.

### **32F Access arrangement required for prospecting operations under low-impact licences**

- (1) In this section, **relevant land** means land in relation to which there are registered native title bodies corporate or registered native title claimants.
- (2) A low-impact exploration licence is subject to the condition that the holder of the licence is not authorised to carry out prospecting operations on any relevant land otherwise than in accordance with an access arrangement under Division 2 of Part 8 between the holder of the licence and each registered native title body corporate or each registered native title claimant, being an access arrangement:
  - (a) that is agreed between them in accordance with that Division, or that is determined for them by an arbitrator in accordance with that Division, and
  - (b) that has involved consultation by the holder of the licence that satisfies the requirements of section 26A of the Commonwealth Native Title Act.
- (3) This section does not apply in any case in which Division 2 of Part 8 is excluded because of section 138 (2) (which relates to prospecting title granted after compliance with the full native title right to negotiate procedure or an indigenous land use agreement).

- (4) This section does not limit the operation of Division 2 of Part 8 with respect to landholders who are not native title holders.

### **32G Renewal of low-impact licences**

The requirements of this Division with respect to the grant of a low-impact exploration licence apply to the renewal of such a licence, subject to any modifications prescribed by the regulations.

## **Part 4 Assessment leases**

### **Division 1 Applications**

#### **33 Applications**

- (1) Any person may apply for an assessment lease.
- (2) An application for an assessment lease:
- (a) must specify the mineral or minerals in respect of which it is made, and
  - (b) must be lodged with a mining registrar, and
  - (c) must be accompanied by the required particulars, and
  - (d) must be accompanied by the appropriate lodgment fee.
- (3) The required particulars are as follows:
- (a) a description, prepared in the manner prescribed by the regulations, of the land over which the assessment lease is sought,
  - (b) an assessment of the mineral bearing capacity of that land and of the extent of any mineral deposits in that land,
  - (c) particulars of the financial resources available to the applicant,
  - (d) particulars of the technical advice available to the applicant,
  - (e) particulars of the program of work proposed to be carried out by the applicant on the land over which the assessment lease is sought,
  - (f) particulars of any program of marketing or environmental study proposed to be carried out by the applicant,
  - (g) particulars of the estimated amount of money that the applicant proposes to expend on prospecting.
- (4) An application that relates to land within a mineral allocation area may not be made in relation to a mineral or group of minerals for which the mineral allocation area is

constituted except:

- (a) by the holder of an exploration licence or mining lease over that land in respect of that mineral or group of minerals, or
- (b) with the consent of the Minister.

### **34 Minister may require further information**

The Minister may require the applicant to furnish further information in connection with the application, including (if the applicant is a corporation) information as to the extent to which the controlling power in the corporation's affairs is held by:

- (a) a foreign company within the meaning of the *Corporations Act 2001* of the Commonwealth, or
- (b) a company registered under that Act that is taken for the purposes of that Act to be registered in a State or Territory other than New South Wales, or
- (c) an individual who is a resident of a foreign country.

### **35 Minister may exclude land from application**

- (1) The Minister may, by order in writing, direct that any part of the land to which an application relates be excluded from the application.
- (2) A direction takes effect on the date on which written notice of the direction is served on the applicant.

## **Division 2 Restrictions on the grant of assessment leases**

### **36 Land in reserve or opal prospecting area**

An assessment lease may not be granted over any land within:

- (a) an opal prospecting area, or
- (b) a reserve in respect of which an order prohibiting the granting of assessment leases is in force under section 367.

### **37 Land subject to authority**

- (1) An assessment lease may not be granted over any land:
  - (a) the subject of an exploration licence that includes any mineral or minerals in respect of which the assessment lease is sought, or
  - (b) the subject of an assessment lease, mining lease or mineral claim, or
  - (c) the subject of an application for an exploration licence, assessment lease, mining lease or mineral claim that was lodged before the application for the

firstmentioned assessment lease was lodged,

otherwise than to or with the written consent of the holder of, or the applicant for, that licence, lease or claim.

- (2) A written consent given under this section is irrevocable.
- (3) If, as a result of such a consent, an assessment lease is granted over any such land, that land:
  - (a) ceases to be subject to the exploration licence, assessment lease, mining lease or mineral claim concerned, or
  - (b) is excluded from the application for the exploration licence, assessment lease, mining lease or mineral claim concerned,as the case requires.

### **38 Land subject to exploration licence**

- (1) If an application for an assessment lease is made in respect of land that is wholly or partly subject to one or more exploration licences (other than exploration licences that include any mineral or minerals in respect of which the assessment lease is sought), the Minister must cause notice of the application to be served on the holder of every such exploration licence.
- (2) The holder of an exploration licence served with such a notice may object to the granting of the assessment lease by lodging with the Director-General, on or before the date specified in the notice, a written notice stating the grounds of the objection.
- (3) If such an objection is made, the Minister must refer the application and the objection to an inspector for investigation and report and must determine the objection on the basis of the inspector's report.
- (4) This section does not apply to an application that is made with the written consent of the holder of every exploration licence over the land concerned.
- (5) A written consent given under this section is irrevocable.

### **39 Land on which private mining operations being carried on**

- (1) An assessment lease may not be granted over any land:
  - (a) if mining operations for a privately owned mineral are being carried out on the land by or with the consent of the owner of the mineral, and
  - (b) if the notice referred to in section 8 (1) (a) and the security referred to in section 8 (1) (b) have each been duly lodged with the Director-General,

except with the written consent of the owner of the mineral.

- (2) A written consent given under this section is irrevocable.
- (3) Any dispute as to whether or not this section applies in any particular case is to be referred to a warden for inquiry and report and is to be decided by the Minister on the basis of the warden's report.

#### **40 Colliery holdings**

An assessment lease may not be granted over land within a colliery holding unless the chief inspector of coal mines is satisfied that prospecting operations may be carried out under the lease without any adverse effect on, and without any risk to the safety of the persons engaged in, the carrying out of coal mining operations in the assessment area.

### **Division 3 Granting of assessment leases**

#### **41 Power of Minister in relation to applications**

- (1) After considering an application for an assessment lease, the Minister:
  - (a) may grant an assessment lease to the applicant, or
  - (b) may refuse the application.
- (2) Without limiting the generality of subsection (1), an application may be refused on the ground that the applicant has been convicted of an offence against this Act or the regulations or any other offence relating to mining or minerals.
- (3) The Minister may not grant an assessment lease under this section otherwise than in accordance with Part 1 of Schedule 1.
- (4) Part 1 of Schedule 1 does not, however, apply to an application for an assessment lease made by the holder of a mining lease over the same land as that over which the assessment lease is sought.

#### **42 Land over which assessment lease may be granted**

- (1) An assessment lease may be granted over land of any title or tenure.
- (2) An assessment lease may be granted in respect of any mineral or minerals, regardless of whether the mineral or minerals are publicly owned, privately owned or partly publicly and partly privately owned.
- (3) An assessment lease may be granted over the surface of land, over the surface of land and the subsoil below the surface, over the surface of land and the subsoil down to a specified depth below the surface or over the subsoil below or between any specified depth or depths below the surface of land.



### **43 Shape and dimensions of land over which assessment lease may be granted**

The land over which an assessment lease is granted may differ in size or shape from, but may not include land other than, the land over which the lease was sought.

### **44 Conditions of assessment lease**

- (1) An assessment lease is subject to such conditions as the Minister may, when granting the lease, impose.
- (2) Without limiting the generality of subsection (1), conditions of the following kind may be imposed on an assessment lease:
  - (a) conditions requiring the holder of the lease to pay royalty to the Minister on any minerals recovered under the lease,
  - (b) conditions requiring the holder of the lease to give and maintain security (in such amount and form, and on or before such date, as the Minister may determine) for the fulfilment of the obligations arising under this Act in respect of the lease.
- (3) Part 14 applies to royalty payable under a condition referred to in subsection (2) (a) in the same way as it applies to royalty payable on a mineral recovered under a mining lease.
- (4) A condition requiring security to be given and maintained by the holder of an assessment lease (the **new assessment lease**) may be expressed so as to require the security given and maintained in relation to some other assessment lease or leases, whether under this section or under section 47A, to be extended to the new assessment lease.
- (5) If the Minister proposes to grant an assessment lease to a person on the condition that the person gives and maintains security, the Minister may cause a written notice to be served on the person requiring the person to lodge the security with the Minister on or before the date specified in the notice.

### **45 Term of assessment lease**

An assessment lease:

- (a) takes effect on the date on which it is granted or on such later date as the Minister may determine, and
- (b) ceases to have effect at the expiration of such period (not exceeding 5 years) as the Minister may determine.

### **46 Form of assessment lease**

An assessment lease is to be in the approved form and is to include the following particulars:

- (a) a description of the land over which it is granted,
- (b) a list of the mineral or minerals in respect of which it is granted,
- (c) the conditions to which it is subject,
- (d) the period for which it is to have effect.

## **Division 4 Rights and duties under an assessment lease**

### **47 Rights under assessment lease**

- (1) The holder of an assessment lease may, in accordance with the conditions of the lease, prospect on the land specified in the lease for the mineral or minerals so specified.
- (2) If an application for a mining lease or mineral claim made by the holder of an assessment lease is not finally dealt with before the date on which the assessment lease would otherwise cease to have effect, the lease continues to have effect, in relation only to the land to which the application relates, until the application is finally dealt with.

#### **Note—**

An assessment lease is designed to allow retention of rights over an area in which a significant mineral deposit has been identified, if mining the deposit is not commercially viable in the short term but there is a reasonable prospect that it will be in the longer term. The holder is allowed to continue prospecting operations and to recover minerals in the course of assessing the viability of commercial mining.

### **47A Amendment of assessment lease in respect of certain conditions**

- (1) The Minister may amend an assessment lease that does not contain a condition requiring the holder to give and maintain security for the fulfilment of the obligations of the holder arising under this Act so as to include such a condition.
- (2) The Minister may amend an assessment lease that contains such a condition so as to vary the amount and form of the security that is required to be given and maintained.
- (3) The Minister may amend any 2 or more assessment leases held by the same holder that contain such a condition so as to require a single security to be given and maintained.
- (4) The amendment of an assessment lease takes effect on the date on which written notice of the amendment is served on the holder of the assessment lease or on such later date as may be specified in the notice.

### **48 Exempted areas**

- (1) The holder of an assessment lease may not, except with the consent of the Minister, exercise any of the rights conferred by the lease on land in an exempted area.

- (2) Such consent may be given either unconditionally or subject to conditions.

#### **49 Dwelling-houses, gardens and improvements**

- (1) The holder of an assessment lease may not exercise any of the rights conferred by the lease over the surface of land:

- (a) on which, or within the prescribed distance of which, is situated a dwelling-house that is the principal place of residence of the person occupying it, or
- (b) on which, or within the prescribed distance of which, is situated any garden, or
- (c) on which is situated any improvement (being a substantial building, dam, reservoir, contour bank, graded bank, levee, water disposal area, soil conservation work or other valuable work or structure) other than an improvement constructed or used for mining purposes and for no other purposes,

except with the written consent of the owner of the dwelling-house, garden or improvement (and, in the case of the dwelling-house, the written consent of its occupant).

- (2) The prescribed distance is:

- (a) 200 metres (or, if a greater distance is prescribed by the regulations, the greater distance) for the purposes of subsection (1) (a), and
- (b) 50 metres (or, if a greater distance is prescribed by the regulations, the greater distance) for the purposes of subsection (1) (b).

- (3) A written consent given under this section is irrevocable.

- (4) Any dispute as to whether or not subsection (1) applies in any particular case is to be referred to a warden for inquiry and report and is to be decided by the Minister on the basis of the warden's report.

#### **50 Assessment areas over which authority is subsequently granted**

Land over which an assessment lease is granted and over which some other authority is subsequently granted ceases to be part of the assessment area when the other authority takes effect.

### **Part 5 Mining leases**

#### **Division 1 Applications and tenders**

##### **51 Applications**

- (1) Any person may apply for a mining lease.

- (2) An application for a mining lease:
  - (a) must specify the mineral or minerals, or the mining purpose or mining purposes, in respect of which it is made, and
  - (b) must be lodged with a mining registrar, and
  - (c) must be accompanied by the required particulars, and
  - (d) must be accompanied by the appropriate lodgment fee.
- (3) The required particulars, in the case of an application that specifies a mineral or minerals, are as follows:
  - (a) a description, prepared in the manner prescribed by the regulations, of the land over which the mining lease is sought,
  - (b) an assessment of the mineral bearing capacity of the land and of the extent of any mineral deposits in that land,
  - (c) particulars of the financial resources available to the applicant,
  - (d) particulars of the technical advice available to the applicant,
  - (e) particulars of the program of work proposed to be carried out by the applicant on the area of land over which the mining lease is sought.
- (4) An application that relates to land within a mineral allocation area may not be made in relation to an allocated mineral except:
  - (a) by the holder of an exploration licence or assessment lease over that land in respect of that mineral, or
  - (b) with the consent of the Minister.
- (5) The required particulars, in the case of an application that specifies a mining purpose or mining purposes, are as follows:
  - (a) a description, prepared in the manner prescribed by the regulations, of the land over which the mining lease is sought,
  - (b) a description of the nature and extent of the mining purpose or mining purposes to be carried out.

## **52 Invitations for tenders**

- (1) This section applies only to allocated minerals in land within a mineral allocation area.
- (2) The Minister may, by notice published:
  - (a) in a newspaper circulating generally throughout the State, and

(b) in one or more newspapers circulating in the locality in which the land concerned is situated,

invite tenders for a mining lease for an allocated mineral.

(3) An invitation:

(a) must describe the land to which it relates, and

(b) must identify the allocated mineral to which it relates, and

(c) must specify the place at which, and the date on or before which, tenders for the mining lease should be lodged.

(4) Tenders may not be invited under this section otherwise than in accordance with Part 2 of Schedule 1.

### **53 Tenders**

(1) A tender for a mining lease:

(a) must be lodged with the Director-General in accordance with the invitation for the tender, and

(b) must be accompanied by the required particulars, and

(c) must be accompanied by the appropriate lodgment fee.

(2) The required particulars are as follows:

(a) particulars of the financial resources available to the tenderer,

(b) particulars of the technical advice available to the tenderer,

(c) particulars of the program of work proposed to be carried out by the tenderer on the land over which the mining lease is sought.

(3) A tender may specify that, in the event that the tender is successful, the tenderer will pay:

(a) a specified amount, or

(b) royalty, at a specified rate, over and above the royalty payable under Part 14, or

(c) both such an amount and royalty at such a rate,

in addition to the cash reserve price (if any) specified in the invitation for the tender.

(4) A tender may also specify:

(a) whether or not an amount referred to in subsection (3) (a) will be paid by way of

instalments, and

(b) if such an amount is to be paid by way of instalments—the period (not exceeding 5 years) within which the amount will be paid.

(5) A tenderer is entitled to a refund of the fee referred to in subsection (1) (c) if a mining lease is not granted to the tenderer as a consequence of the tenderer being refused development consent to the use of the land concerned, or any part of the land, for the purpose of obtaining minerals.

#### **54 Minister may require further information**

The Minister may require the applicant or tenderer to furnish further information in connection with the application or tender, including (if the applicant or tenderer is a corporation) information as to the extent to which the controlling power in the corporation's affairs is held by:

- (a) a foreign company within the meaning of the *Corporations Act 2001* of the Commonwealth, or
- (b) a company registered under that Act that is taken for the purposes of that Act to be registered in a State or Territory other than New South Wales, or
- (c) an individual who is a resident of a foreign country.

#### **55 Minister may exclude land from application or tender**

- (1) The Minister may, by order in writing, direct that any part of the land to which an application or tender relates be excluded from the application or tender.
- (2) A direction takes effect on the date on which written notice of the direction is served on the applicant or tenderer.
- (3) A tenderer affected by any such direction may amend the tender by written notice lodged with the Director-General on or before such date as may be specified in the direction.

#### **56 Application for mining lease may be dealt with as application for exploration licence or assessment lease**

The Minister may, at the request of the applicant, deal with an application as if it were an application for an exploration licence or assessment lease.

## **Division 2 Restrictions on the grant of mining leases**

#### **57 Land in reserve**

A mining lease may not be granted over any land within:

- (a) (Repealed)
- (b) a reserve in respect of which an order prohibiting the granting of mining leases is in force under section 367.

### **58 Land subject to authority**

- (1) A mining lease may not be granted over any land:
  - (a) the subject of an exploration licence that includes any mineral or minerals in respect of which the mining lease is sought, or
  - (b) the subject of an assessment lease, mining lease or mineral claim, or
  - (c) the subject of an application for an exploration licence, assessment lease, mining lease or mineral claim that was lodged before the application for the firstmentioned mining lease was lodged,otherwise than to or with the written consent of the holder of, or the applicant for, that licence, lease or claim.
- (2) A written consent given under this section is irrevocable.
- (3) If, as a result of such a consent, a mining lease is granted over any such land, that land:
  - (a) ceases to be subject to the exploration licence, assessment lease, mining lease or mineral claim concerned, or
  - (b) is excluded from the application for the exploration licence, assessment lease, mining lease or mineral claim concerned,as the case requires.

### **59 Land subject to exploration licence**

- (1) If an application for a mining lease is lodged in respect of land that is subject wholly or partly to one or more exploration licences (other than exploration licences that include any mineral or minerals in respect of which the mining lease is sought), the Minister must cause notice of the application to be served on the holder of every such exploration licence.
- (2) The holder of an exploration licence served with such a notice may object to the granting of the mining lease by lodging with the Director-General, on or before the date specified in the notice, a written notice stating the grounds of the objection.
- (3) If such an objection is made, the Director-General must refer the application and objection to an inspector for investigation and report and must determine the objection on the basis of the inspector's report.

(4) This section does not apply to an application that is made with the written consent of the holder of every exploration licence over the land concerned.

(5) A written consent given under this section is irrevocable.

#### **60 Land on which private mining operations being carried on**

(1) A mining lease may not be granted over any land:

(a) if mining operations for a privately owned mineral are being carried out on the land by or with the consent of the owner of the mineral, and

(b) if the notice referred to in section 8 (1) (a) and the security referred to in section 8 (1) (b) have each been duly lodged with the Director-General,

except with the written consent of the owner of the mineral.

(2) A written consent given under this section is irrevocable.

(3) Any dispute as to whether or not this section applies in any particular case is to be referred to a warden for inquiry and report and is to be decided by the Minister on the basis of the warden's report.

#### **61 Colliery holdings**

A mining lease may not be granted over land within a colliery holding unless the chief inspector of coal mines is satisfied that prospecting or mining operations may be carried out under the lease without any adverse effect on, and without any risk to the safety of the persons engaged in, the carrying out of coal mining operations in the mining area.

#### **62 Dwelling-houses, gardens and improvements**

(1) A mining lease may not be granted over the surface of any land:

(a) on which, or within the prescribed distance of which, is situated a dwelling-house that is the principal place of residence of the person occupying it, or

(b) on which, or within the prescribed distance of which, is situated any garden, or

(c) on which is situated any improvement (being a substantial building, dam, reservoir, contour bank, graded bank, levee, water disposal area, soil conservation work or other valuable work or structure) other than an improvement constructed or used for mining purposes and for no other purposes,

except with the written consent of the owner of the dwelling-house, garden or improvement (and, in the case of the dwelling-house, the written consent of its occupant).

(2) The prescribed distance is:



- (a) 200 metres (or, if a greater distance is prescribed by the regulations, the greater distance) for the purposes of subsection (1) (a), and
  - (b) 50 metres (or, if a greater distance is prescribed by the regulations, the greater distance) for the purposes of subsection (1) (b).
- (3) A written consent given under this section is irrevocable.
- (4) Subsection (1) does not apply in respect of a dwelling-house, garden or improvement that was not in existence at the relevant date.
- (5) The relevant date is:
- (a) in the case of a mining lease the subject of a tender under section 53, the date on which notice of the invitation for tenders for the mining lease was published in the Gazette under section 136, or
  - (b) in the case of a mining lease the subject of an application made by the holder of an exploration licence granted as a result of a tender under section 15 in respect of the same land, or of an assessment lease granted over the same land to the holder of such an exploration licence, the date on which notice of the invitation for tenders for the exploration licence was published in the Gazette under section 136, or
  - (c) in the case of a mining lease for coal the subject of an application made by the holder of an exploration licence for coal in respect of the same land, or of an assessment lease for coal granted over the same land to the holder of such an exploration licence, the date on which the application for the exploration licence was lodged, or
  - (d) in the case of a mining lease the subject of an application made by the holder of an assessment lease or mineral claim over the same land, the date on which the lease or claim was granted, or
  - (e) in the case of a mining lease the subject of an application made otherwise than by a person referred to in paragraph (a), (b), (c) or (d), the date on which the application for the mining lease was lodged.
- (6) Any dispute as to whether or not subsection (1) applies in any particular case is to be referred to a warden for inquiry and report and is to be decided by the Minister on the basis of the warden's report.
- (7) A mining lease must not be granted over land below the surface of land referred to in subsection (1) except at such depths, and subject to such conditions, as the Minister considers sufficient to minimise damage to that surface.
- (8) In this section, **valuable work or structure** includes anything taken to be a valuable

work or structure for the purposes of this section by clause 23A of Schedule 1, but does not include anything declared not to be a valuable work or structure by clause 23B of that Schedule.

### **Division 3 Granting of mining leases**

#### **63 Power of Minister in relation to applications**

- (1) After considering an application for a mining lease, the Minister:
  - (a) may grant a mining lease to the applicant, or
  - (b) may refuse the application.
- (2) Without limiting the generality of subsection (1), an application may be refused on the ground that the applicant has been convicted of an offence against this Act or the regulations or any other offence relating to mining or minerals.
- (3) The Minister may grant a single mining lease in respect of more than one application.
- (3A) A mining lease may not be granted until the appropriate mining lease fee (as determined under section 382A) has been paid for the grant of the lease.
- (4) A mining lease may not be granted under this section otherwise than in accordance with Part 2 of Schedule 1.
- (5) A mining lease may not be granted, in respect of a mining purpose or mining purposes only, unless the Minister is satisfied that the mining purpose or mining purposes is or are to be carried out in connection with and in the immediate vicinity of:
  - (a) a mining lease in respect of a mineral or minerals, or
  - (b) a mineral claim,being a mining lease or mineral claim that has been or is proposed to be granted.

#### **64 Power of Minister in relation to tenders**

- (1) After considering a tender in respect of which one tender only is lodged, the Minister:
  - (a) may grant a mining lease to the tenderer, or
  - (b) may refuse the tender.
- (2) After considering all tenders in respect of land in respect of which more than one tender is lodged, the Minister:
  - (a) may grant a mining lease to any one of the tenderers, or

- (b) may refuse all of the tenders.
- (3) Without limiting the generality of subsections (1) and (2), a tender may be refused on the ground that the tenderer has been convicted of an offence against this Act or the regulations or any other offence relating to mining or minerals.
- (4) For the purposes of this section, only one tender is lodged in respect of land if no other tender is lodged in respect of the land or any part of the land.
- (5) A mining lease may not be granted under this section otherwise than in accordance with Part 2 of Schedule 1.

**65 Development consents under the [Environmental Planning and Assessment Act 1979](#)**

- (1) This section applies:
  - (a) in relation to a mining lease for a mineral or minerals, to land for which development consent is required before the land may be used for the purpose of obtaining minerals, and
  - (b) in relation to a mining lease for a mining purpose or mining purposes only, to land for which development consent is required before the land may be used for that purpose or those purposes.
- (2) The Minister must not grant a mining lease over land to which this section applies unless an appropriate development consent is in force in respect of the land.
- (3) If a mining lease is granted over land for which an appropriate development consent has been given:
  - (a) any condition (being a special purpose condition within the meaning of Division 2 of Part 2 of Schedule 1) imposed on the development consent by a consent authority, or by a body hearing an appeal from a consent authority, is void, and
  - (b) the development consent (to the extent only to which it relates to the use of the land concerned for the purpose of obtaining minerals) is taken to have been given free of the condition.

**66 Survey of land to be carried out**

- (1) Before a mining lease is granted, the Director-General must ensure that the land over which the mining lease is to be granted has been properly surveyed.
- (2) For the purpose of doing so, the Director-General may direct the applicant for the mining lease to cause a survey to be prepared in accordance with such requirements as may be specified in the direction.

## **67 Recovery of public money expended on testing for minerals or research**

(1) If public money has been expended:

- (a) in the course of testing any land (by way of drilling or otherwise) for the mineral bearing capacity of the land, or
- (b) in the course of conducting an environmental impact study or other research program in connection with the proper assessment of any application for a mining lease that has been or may be made in respect of any land,

the Minister may, by notice in writing, require any applicant for a mining lease over the land or any part of the land to reimburse the Government, within the time specified in the notice, for the money, or any part of the money, so expended.

(2) The applicant may elect to pay:

- (a) a lump sum of the amount specified in the notice as being the proportion of the cost (at current market rates) of carrying out the testing, impact study or research program that the Minister determines should be paid by the applicant, or
- (b) instalments (of such amounts and paid at such times as may be specified in the notice) totalling the amount referred to in paragraph (a).

(3) It is a condition of any mining lease granted to an applicant who has been required to reimburse the Government under this section that any amount that remains unpaid as at the time the lease takes effect is to be paid to the Minister in accordance with the election made by the applicant.

(4) If public money has been expended in connection with several parcels of land, the amount so expended is to be apportioned among them in such manner as the Minister thinks fit.

## **68 Land over which mining lease may be granted**

- (1) A mining lease may be granted over land of any title or tenure.
- (2) A mining lease may be granted in respect of any mineral or minerals, regardless of whether the mineral or minerals are publicly owned, privately owned or partly publicly and partly privately owned.
- (3) A mining lease may be granted over the surface of land, over the surface of land and the subsoil below the surface, over the surface of land and the subsoil down to a specified depth below the surface or over the subsoil between or below any specified depth or depths below the surface of land.

## **69 Shape and dimensions of land over which mining lease may be granted**

The land over which a mining lease is granted may differ in size or shape from, but may

not include land other than, the land over which the lease was sought.

## **70 Conditions of mining lease**

(1) A mining lease is subject to:

- (a) a condition that the holder of the lease will not suspend mining operations in the mining area otherwise than in accordance with the written consent of the Minister, and
- (b) such other conditions as the Minister may, when granting the lease, impose.

(1A) Subsection (1) (a) does not apply to a mining lease that is granted in relation to a mining purpose or mining purposes only.

(2) Without limiting the generality of subsection (1), conditions of the following kind may be imposed on a mining lease:

- (a) conditions requiring the holder of the mining lease to give and maintain security, in such amount and form as the Minister may determine, for the fulfilment of the obligations arising under this Act in respect of the lease,
- (b) conditions relating to mining or mining operations,
- (c) conditions relating to the transporting of any mineral or other thing for the purpose of mining,
- (d) conditions relating to the treatment or preparation for sale of any mineral,
- (e) conditions relating to the disposal or retention of material discarded from mining operations or from the treatment or preparation for sale of any mineral,
- (f) conditions relating to the use to which any mineral may be put,

whether or not the condition relates to a matter to be carried out on, or in the vicinity of, the mining area.

(2A) A condition requiring security to be given and maintained by the holder of a mining lease (the **new mining lease**) may be expressed so as to require the security given and maintained in relation to some other mining lease or leases, whether under this section or under section 79, to be extended to the new mining lease.

(3) If the Minister proposes to grant a mining lease to a person on the condition that the person gives and maintains security, the Minister may cause a written notice to be served on the person requiring the person to lodge the security with the Minister on or before the date specified in the notice.

(4) A mining lease granted on the basis of a tender lodged under section 53 is taken to include a condition in the terms specified in the tender for the purposes of subsection

(3) of that section.

### **71 Term of mining lease**

A mining lease:

- (a) takes effect on the date on which it is granted or on such later date as the Minister may determine, and
- (b) ceases to have effect at the expiration of such period (not exceeding 21 years or such longer period as the Minister, with the concurrence of the Premier, may determine) as the Minister may determine.

### **72 Form of mining lease**

A mining lease is to be in the approved form and is to include the following particulars:

- (a) a description of the land over which it is granted,
- (b) a list of the mineral or minerals, or the mining purpose or mining purposes, in respect of which it is granted,
- (c) the conditions to which it is subject,
- (d) the period for which it is to have effect.

## **Division 4 Rights and duties under a mining lease**

### **73 Rights under mining lease**

- (1) The holder of a mining lease granted in respect of a mineral or minerals may, in accordance with the conditions of the lease:
  - (a) prospect on the land specified in the lease for, and mine on that land, the mineral or minerals so specified, and
  - (b) carry out on that land such primary treatment operations (such as crushing, sizing, grading, washing and leaching) as are necessary to separate the mineral or minerals from the material from which they are recovered, and
  - (c) carry out on that land any mining purpose.
- (1A) The holder of a mining lease granted in respect of a mining purpose or mining purposes only may, in accordance with the conditions of the lease, carry out the mining purpose or mining purposes specified in the lease.
- (2) If an application for an assessment lease made by the holder of a mining lease is not finally dealt with before the date on which the mining lease would otherwise cease to have effect, the lease continues to have effect, in relation only to the land to which the application relates, until the application is finally dealt with.

#### **74 Mining unaffected by [Environmental Planning and Assessment Act 1979](#)**

- (1) While a mining lease has effect:
  - (a) nothing in, or done under, the [Environmental Planning and Assessment Act 1979](#) or an environmental planning instrument operates so as to prevent the holder of the mining lease from carrying on mining operations in the mining area, and
  - (b) to the extent to which anything in, or done under, that Act or any such instrument would so operate, it is of no effect in relation to the holder of the mining lease.
- (2) Subsection (1) ceases to apply to a mining lease over land for which development consent to the use of land for the purpose of obtaining minerals is required if mining operations under the lease have not begun within 5 years after the date on which the development consent is given.
- (3) This section does not exempt the holder of a mining lease from obtaining any consent under the [Environmental Planning and Assessment Act 1979](#) that the person is required to obtain in connection with the erection of buildings, the opening of roads or the subdivision of land.

#### **75 Mining purposes**

- (1) The Minister may, by order in writing, direct that:
  - (a) a specified mining purpose be carried out in accordance with any condition specified in the order, or
  - (b) the carrying out of a specified mining purpose be discontinued for such period as is specified in the order.
- (1A) Subsection (1) (b) does not apply to a mining purpose specified in a mining lease granted in respect of a mining purpose or mining purposes only.
- (2) An order takes effect on the date on which written notice of the order is served on the holder of the mining lease concerned or on such later date as may be specified in the notice.
- (3) A person on whom an order is served must not contravene the order.  
Maximum penalty: 100 penalty units.

#### **76 Fencing of land subject to mining lease**

- (1) The holder of a mining lease may fence the whole or any part of the mining area.
- (2) The holder of the mining lease must erect and maintain a fence around any unfenced shaft, machinery or other works on the surface of the mining area if required to do so by notice in writing:

- (a) given by the landholder of the land concerned, or
- (b) in the case of Crown land (within the meaning of the *Crown Lands Act 1989*) for which there is no landholder other than the Crown—given by the Minister.

### **77 Addition of mineral to mining lease**

- (1) The holder of a mining lease granted in respect of a mineral or minerals may apply for the inclusion in the lease of a mineral additional to the mineral or minerals to which the lease relates.
- (2) The application must be lodged with the Director-General.
- (3) The holder of a mining lease over any land must, within 21 days after lodging the application, serve a copy of the application on each landholder.
- (4) After considering the application, the Minister:
  - (a) may, by order in writing served on the applicant, direct that the mining lease apply to the additional mineral specified in the direction, or
  - (b) may refuse the application.
- (5) A direction may be given unconditionally or subject to such conditions as are specified in the direction.
- (6) While a direction is in force, the mining lease concerned is taken to extend to the mineral the subject of the direction.

### **78 Inclusion of petroleum in mining lease**

- (1) The holder of a mining lease for coal may apply for the inclusion in the lease of petroleum.
- (2) The application must be lodged with the Director-General.
- (3) After considering the application, the Minister:
  - (a) may, by order in writing served on the applicant, direct that the mining lease apply to petroleum, or
  - (b) may refuse the application.
- (4) Without limiting the generality of subsection (3), the Minister must refuse an application if the land to which the application relates:
  - (a) is within the New South Wales adjacent area, within the meaning of the *Petroleum (Submerged Lands) Act 1982*, or
  - (b) is subject to a petroleum exploration licence or a petroleum mining lease granted



under the *Petroleum (Onshore) Act 1991*.

- (5) A direction may be given unconditionally or subject to such conditions as are specified in the direction.
- (6) Without limiting the generality of subsection (5), the Minister may direct that a mining lease is to apply to petroleum subject to a condition relating to any one or more of the following matters:
  - (a) the limitation of the right to prospect or drill for petroleum to part only of the mining area,
  - (b) the limitation of that right to prospecting or drilling for some specified type or form of petroleum only,
  - (c) the working practices and methods of extraction to be used when prospecting or drilling for petroleum,
  - (d) the use to which any petroleum recovered may be put,
  - (e) the joint mining and development of petroleum with the holder of a mining lease, or with the holder of a petroleum mining lease under the *Petroleum (Onshore) Act 1991*, over land adjoining the mining area.

#### **79 Amendment of mining lease in respect of certain conditions**

- (1) The Minister may amend a mining lease so as to allow the holder of the lease to comply with a condition relating to expenditure instead of a condition relating to labour.
- (2) The Minister may amend a mining lease that does not contain a condition requiring the holder of the lease to give and maintain security for the fulfilment of the obligations of the holder arising under this Act so as to include such a condition.
- (3) The Minister may amend a mining lease that contains such a condition so as to vary the amount and form of the security that is required to be given and maintained.
- (4) The Minister may amend any 2 or more mining leases held by the same holder that contain such a condition so as to require a single security to be given and maintained.
- (5) The amendment of a mining lease takes effect on the date on which written notice of the amendment is served on the holder of the mining lease or on such later date as may be specified in the notice.

#### **80 Prevention of damage to prescribed dams**

- (1) The Dams Safety Committee may recommend to the Minister that a mining lease (being a mining lease granted over land within a notification area) be amended, by the variation of the conditions of the lease or by the inclusion of additional conditions

in the lease, so as to prevent or mitigate any damage to a prescribed dam.

- (2) If the Minister does not accept the recommendations of the Dams Safety Committee, the matter must be dealt with in consultation with the Minister administering the [Dams Safety Act 1978](#).
- (3) The Minister may cause to be taken such steps as the Minister considers appropriate in connection with the matter to which such a recommendation relates and if, as a result of the steps so taken, agreement is not reached as to the acceptance, modification or withdrawal of the recommendation, the matter is to be referred to the Premier.
- (4) If any matter is so referred, the Premier may give such decision as the Premier considers appropriate.
- (5) The amendment of a mining lease takes effect on the date on which written notice of the amendment is served on the holder of the mining lease or on such later date as may be specified in the notice.

#### **81 Surface prospecting in relation to subsurface leases**

- (1) The holder of a mining lease over any land (being a lease that does not include the surface of the land) may, with the consent of:
  - (a) the landholder, and
  - (b) the holder of any authority or mineral claim in force over the surface of the land, carry out prospecting operations on the surface of the land.
- (2) Before carrying out prospecting operations of the kind referred to in subsection (1), the holder of the mining lease:
  - (a) must cause notice of intention to do so to be given to the Director-General, and
  - (b) must cause security (in such amount and form, and on or before such date, as the Minister may determine) to be lodged with the Director-General for the fulfilment of the obligations arising under this Act in respect of the lease, including any obligations arising under Part 11 as applied by subsection (3).
- (3) Part 11 applies to the land over which the holder of a mining lease carries out such prospecting operations as if that land were land the subject of the mining lease.

#### **82 Certain resumptions, conveyances and transfers not to affect mining lease**

The conveyance, transfer or compulsory acquisition of land by or under any other Act or law (including the conveyance or transfer of the land under section 722 of the [Local Government Act 1993](#)) does not affect a mining lease, or any rights under a mining lease, and the mining lease and those rights continue to have effect as if the land had not been

conveyed, transferred or acquired.

### **83 Mining areas over which an authority is subsequently granted**

Land over which a mining lease is granted and over which some other authority is subsequently granted ceases to be part of the mining area when the subsequent authority takes effect.

## **Part 6 Consolidation of mining leases**

### **Division 1 Preliminary**

#### **84 Definitions**

(1) In this Part:

**existing lease** means a mining lease that is in force, including a mining lease that is in force by virtue of section 117 (1).

**holder**, in relation to a proposed lease, means the holder of the existing leases specified in the proposed lease as the existing leases to be consolidated.

**proposed lease** means a proposed consolidated mining lease prepared under this Part or, if the lease is amended under this Part, the lease as so amended.

(2) A reference in this Part to the grant of a proposed lease is a reference to the grant of a consolidated mining lease in the same terms as those of the proposed lease.

#### **85 Existing leases that may be consolidated**

Any 2 or more existing leases may be consolidated if the leases are held by the same person and relate to contiguous parcels of land or to parcels of land that are separated only by a road, stream or railway.

### **Division 2 Preparation and amendment of consolidated mining leases**

#### **86 Preparation of proposed lease**

(1) The Minister may (on the application of the holder of the leases concerned or otherwise) cause a proposed lease to be prepared for the purpose of consolidating 2 or more existing leases.

(2) A proposed lease must specify:

(a) the existing leases to be consolidated, and

(b) the mineral or minerals in respect of which the proposed lease is to be granted, and

(c) the period for which the proposed lease is to be granted, and

(d) the conditions on which the proposed lease is to be granted,

and must have attached to it a description, prepared in the manner prescribed by the regulations, of the land over which the lease is to be granted.

### **87 Amendment of proposed lease**

- (1) The Minister may, at any time after the preparation of a proposed lease, make such amendments to the lease as the Minister thinks fit.
- (2) The Minister may, by such an amendment, specify existing leases to be added to, or excluded from, those to be consolidated by the proposed lease.
- (3) The Minister may, at any time after the preparation of a proposed lease, determine that the consolidation should not proceed.
- (4) Such a determination does not prevent the Minister:
  - (a) from proceeding with the consolidation at a later time, or
  - (b) from causing a further proposed lease to be prepared for the purpose of consolidating all or any of the existing leases concerned.

## **Division 3 Notification of Government agencies**

### **88 Notification of Director of Planning**

- (1) Before granting a proposed lease, the Minister must cause notice of the proposal to be served on the Director of Planning.
- (2) Such a notice:
  - (a) must include a copy of the proposed lease, and
  - (b) must state that objections to the granting of the proposed lease, or proposals for the inclusion in the proposed lease of any condition, may be made to the Minister on or before the date specified in the notice.
- (3) The date specified in a notice under this section must be a date occurring not less than 28 days after the date of service of the notice.

### **89 Notification of Dams Safety Committee**

- (1) Before granting a proposed lease in respect of land within a notification area, the Minister must cause notice of the proposal to be served on the Dams Safety Committee.
- (2) Such a notice:
  - (a) must include a copy of the proposed lease, and

(b) must state that objections to the granting of the proposed lease on grounds relating to the safety of a prescribed dam, or proposals for the inclusion in the proposed lease of any condition relating to the safety of a prescribed dam, may be made to the Minister on or before the date specified in the notice.

(3) The date specified in a notice under this section must be a date occurring not less than 28 days after the date of service of the notice.

## **90 Subsequent amendment of proposed lease**

(1) If:

(a) the Minister amends a proposed lease (otherwise than as a consequence of an objection or proposal made by the agency) after a copy has been served on a Government agency, and

(b) the Minister is of the opinion that the agency's attitude to the proposed lease might be materially affected were the agency given a copy of the proposed lease as amended,

the Minister must cause to be served on the agency a notice setting out details of the amendment and stating that objections to the amendment may be made to the Minister on or before the date specified in the notice.

(2) The date specified in a notice under this section must be a date occurring not less than 28 days after the date of service of the notice.

## **91 Objections to granting of proposed lease**

(1) The Director of Planning:

(a) may object to the granting of a mining lease, or

(b) may propose that specified conditions be included in a mining lease.

(2) The Dams Safety Committee, in respect of land within a notification area:

(a) may object (on grounds relating to the safety of a prescribed dam) to the granting of a mining lease, or

(b) may propose that specified conditions relating to the safety of a prescribed dam be included in a mining lease.

(3) An objection must be in writing and must be lodged with the Director-General on or before the date specified in the notice in that regard.

(4) If the Minister does not accept the objections or proposals of the Dams Safety Committee, or if the Dams Safety Committee fails to make any proposals or to inform the Minister that it does not propose to make any proposals, the matter must be dealt

with in consultation with the Minister administering the *Dams Safety Act 1978*.

## **92 Resolution of objections**

- (1) The Minister may cause to be taken such steps as the Minister considers appropriate in connection with any objection or proposal made under this Division and, if agreement is not reached concerning the acceptance, modification or withdrawal of the objection or proposal, the matter is to be referred to the Premier.
- (2) The Premier may give such decision as the Premier considers appropriate in relation to any matter that is so referred.
- (3) If required by the Premier to do so, the Minister must refer such a matter to a warden for inquiry and report.

## **93 Granting of proposed lease if objection or proposal made**

- (1) If an objection to the granting of a proposed lease is duly made, the lease must not be granted unless the objection is withdrawn or otherwise resolved or is rejected by the Premier.
- (2) A proposed lease must include:
  - (a) any condition proposed under this Division (unless the proposal for the inclusion of the condition is withdrawn or is rejected by the Premier) or, if such a condition is modified, the condition as so modified, and
  - (b) any condition directed by the Premier to be included in the lease.
- (3) The failure to include a condition in a proposed lease does not affect the validity of the lease, but the Minister may, by instrument in writing, amend the lease so as to include the condition omitted.
- (4) An amendment takes effect on the date on which written notice of the amendment is served on the holder of the consolidated mining lease or on such later date as may be specified in the notice.

## **Division 4 Notification of holder of existing leases**

### **94 Notification of holder of existing leases**

- (1) Before granting a proposed lease, the Minister must cause notice of the proposal to be served on the holder of the existing leases.
- (2) Such a notice:
  - (a) must include a copy of the proposed lease, and
  - (b) must state that representations with respect to the granting of the proposed

lease, or the conditions on which the proposed lease is to be granted, may be made to the Minister on or before the date specified in the notice.

- (3) The date specified in a notice under this section must be a date occurring not less than 28 days after the date of service of the notice.

#### **95 Subsequent amendment of proposed lease**

If:

- (a) the Minister amends a proposed lease (otherwise than as a consequence of representations made by the holder of the existing leases) after a copy of the lease has been served on the holder, and
- (b) the Minister is of the opinion that the holder's attitude to the proposed lease might be materially affected were the holder given a copy of the proposed lease as amended,

the Minister must cause to be served on the holder a notice setting out details of the amendment and stating that representations concerning the amendment may be made to the Minister on or before the date specified in the notice.

#### **96 Objections to granting of proposed lease**

The holder of the existing leases may, on or before the date specified in the relevant notice or within such further period as the Minister may allow, make such representations with respect to the matters referred to in the notice as the holder thinks fit.

#### **97 Consideration of objections**

The Minister is to take such steps (including the amendment of the proposed lease) as the Minister considers appropriate in connection with any representations made under this Division.

### **Division 5 Granting of consolidated mining leases**

#### **98 Minister may grant consolidated mining lease**

- (1) After having complied with the requirements of this Part in respect of a proposed lease, the Minister may grant to the holder of the existing leases a consolidated mining lease in the same terms as those of the proposed lease.
- (2) When a consolidated mining lease takes effect, each existing lease is taken to have been cancelled.
- (3) The granting of a consolidated mining lease over land the subject of a mining lease in force by virtue of section 117 (1) does not constitute a renewal of that lease.

### **99 Land over which consolidated mining lease may be granted**

The land over which a consolidated mining lease may be granted is the aggregate of all of the land the subject of the existing leases.

### **100 Conditions of consolidated mining lease**

A consolidated mining lease is subject to such conditions (being conditions of a kind that may be imposed on a mining lease under Part 5 or Part 11) as the Minister may, when granting the lease, impose.

### **101 Term of consolidated mining lease**

A consolidated mining lease:

- (a) takes effect on the date on which it is granted or on such later date as the Minister may determine, and
- (b) ceases to have effect at the expiration of such period (not extending beyond the first day by which all the existing leases that have been consolidated would, but for the consolidation, have expired) as the Minister may determine.

### **102 Form of consolidated mining lease**

A consolidated mining lease is to be in the approved form and is to include the following particulars:

- (a) a description of the land over which it is granted,
- (b) a list of the mineral or minerals in respect of which it is granted,
- (c) the conditions to which it is subject,
- (d) the period for which it is to have effect.

### **103 Validity of consolidated mining lease not affected by certain defects**

- (1) The validity of a consolidated mining lease is not affected:
  - (a) by the failure of any person to comply with this Act or the regulations in relation to the grant, renewal or transfer of an existing lease that has been consolidated, or
  - (b) by the inclusion in the area of land over which the consolidated mining lease has been granted of any land not subject to an existing lease.
- (2) The Minister may amend a consolidated mining lease so as to exclude from the area of land the subject of the lease:
  - (a) any area of land the subject of an existing lease that appears to the Minister not to have been validly granted, renewed or transferred, and



(b) any area of land that appears to the Minister not to have been subject to an existing lease.

- (3) An amendment takes effect on the date on which written notice of the amendment is served on the holder of the consolidated mining lease or on such later date as may be specified in the notice.

#### **104 Application of this Act and other Acts to grant of consolidated mining leases**

- (1) Part 5 does not apply to or in respect of the grant of a consolidated mining lease.
- (2) The provisions of any other Act prohibiting, regulating or restricting, or having the effect of prohibiting, regulating or restricting, the grant of a mining lease do not apply to the grant of a consolidated mining lease.

### **Division 6 Securities for performance of obligations**

#### **105 Requirement of security**

- (1) If the Minister proposes to grant a consolidated mining lease on the condition that the holder gives security for the fulfilment of the obligations arising under this Act in respect of the lease, the Minister may cause written notice to be served on the holder requiring the holder to lodge the security with the Minister on or before such date as may be specified in the notice.
- (2) The security required by such a condition may be in addition to, or in substitution for, any security required by the conditions of any of the existing leases.

#### **106 Credit for existing securities**

Any security given in respect of an existing lease that has not been forfeited and that is not to be applied to a consolidated mining lease is to be refunded or otherwise returned to the holder of the consolidated mining lease.

#### **107 Appropriation of existing securities**

- (1) If any security required to be lodged with the Minister in relation to a consolidated mining lease is not lodged, the Minister may, by notice in writing, direct that any security given in respect of the existing leases is to be regarded as having been given, in accordance with the terms of the direction, for the fulfilment of the obligations arising under this Act in respect of the consolidated mining lease.
- (2) The direction, on being served on the holder and any other person liable to make any payment under the security, has effect according to its terms.

### **Division 7 Preservation of certain rights, liabilities etc on**

## **consolidation**

### **108 Liability generally preserved**

Except as otherwise provided by this Act, the cancellation of an existing lease as a result of the granting of a consolidated mining lease does not affect any liability of the person who was the holder of the lease immediately before the consolidated mining lease was granted.

### **109 Saving of interest in existing leases**

- (1) Any interest (whether legal or equitable) in, or affecting, an existing lease continues to have the same effect in respect of the consolidated mining lease as it had in respect of the existing lease immediately before the existing lease was consolidated.
- (2) This section is subject to any determination made by a Warden's Court.

### **110 Councils and development consents**

- (1) Any development consent granted with respect to development authorised by an existing lease is taken to have been granted with respect to development authorised by the consolidated mining lease, but in relation only to that part of the land that was subject to the existing lease.
- (2) Section 74 continues to have effect in respect of a consolidated mining lease in the same way as it had effect in respect of any existing lease, but in relation only to that part of the land that was subject to the existing lease.

### **111 (Repealed)**

### **112 Rights of way**

Any right of way marked out under section 164 in respect of an existing lease continues to have effect in respect of a consolidated mining lease in the same way as it had effect in respect of the existing lease.

## **Part 7 Renewal, transfer and cancellation of authorities**

### **Division 1 Renewal of authorities**

#### **113 Applications**

- (1) The holder of an authority may, from time to time, apply for the renewal of the authority.
- (2) An application for the renewal of an exploration licence or assessment lease must be lodged with the Director-General not earlier than 2 months and not later than 1 month before the licence or lease ceases to have effect.

- (3) An application for the renewal of a mining lease must be lodged with the Director-General not earlier than 5 years and not later than 1 year (or, if the term of the mining lease is for 1 year or less, not earlier than 2 months and not later than 1 month) before the mining lease ceases to have effect.
- (4) An application for the renewal of an authority must be accompanied by the appropriate lodgment fee.
- (5) If an application for the renewal of an authority is in respect of part only of the land subject to the authority, the application must be accompanied by a description, prepared in the manner prescribed by the regulations, of the land over which renewal of the authority is sought.
- (6) An application for the renewal of an exploration licence may be made in respect of one or more parts (but not more than such number of parts as may be prescribed by the regulations) of the exploration area.
- (7) An application for the renewal of an assessment lease or a mining lease may be made in respect of the whole, or of any single part, of the assessment area or mining area.

#### **114 Power of Minister in relation to applications**

- (1) After considering an application for the renewal of an authority, the Minister:
  - (a) may renew the authority, or
  - (b) may refuse the application.
- (2) Without limiting the generality of subsection (1), an application may be refused if the applicant has been convicted of an offence against this Act or the regulations or any other offence relating to mining or minerals.
- (3) The period for which an authority is renewed may not on any one occasion exceed:
  - (a) 5 years in the case of an exploration licence or assessment lease, or
  - (b) 21 years (or such longer period as the Minister may, with the concurrence of the Premier, determine) in the case of a mining lease.
- (4) On renewing an authority, the Minister may amend any of the conditions of the authority and may include further conditions in the authority.
- (5) The area of land over which an authority is renewed may differ from the area of land over which the renewal of the authority is sought, but not so as to include any land that was not subject to the authority immediately before the renewal.
- (6) The number of units over which an exploration licence may be renewed is not to exceed half the number of units over which the licence was in force when the application for the renewal was made unless the Minister is satisfied that special

circumstances exist that justify the renewal of the licence over a larger number of units.

- (7) The Minister may defer dealing with an application for the renewal of a mining lease over any land if the mining lease is the subject of action being taken under Part 6 in connection with the granting of a consolidated mining lease over that land.

#### **115 Notice of renewal to be served on holder of authority**

- (1) The Minister must cause notice of renewal of an authority to be served on the holder of the authority.
- (2) Such a notice:
  - (a) must set out any amendments to the conditions of the authority, and
  - (b) must state the period for which the authority is renewed, and
  - (c) if the area of land over which the authority is renewed differs from the area subject to the authority immediately before the renewal, must contain a description of the land over which the authority is renewed.

#### **116 Application by some only of holders of authority**

- (1) The Minister may not renew an authority otherwise than in the names of each of the holders of the authority unless satisfied that any holder of the authority not applying for its renewal does not wish the authority to be renewed in that person's name.
- (2) The Minister may cause to be served on any holder of an authority not applying for its renewal a written notice:
  - (a) stating that an application for renewal of the authority has been lodged, and
  - (b) requiring the person, in such manner and on or before such date as is specified in the notice, to state whether or not that person wishes the authority to be renewed in that person's name.
- (3) If a person on whom such a notice is served fails to state whether or not the person wishes the authority to be renewed in that person's name, the failure to do so is conclusive evidence that the person does not wish the authority to be renewed in that person's name.

#### **117 Authority to have effect until application dealt with**

- (1) If an application for the renewal of an authority is not finally dealt with before the date on which the authority would otherwise cease to have effect, the authority continues to have effect, in relation only to the land to which the application relates, until the application is finally disposed of.

- (2) While an authority has effect under this section, the Minister may amend any of the conditions of the authority (other than a condition relating to royalty).
- (3) An amendment takes effect on the date on which written notice of the amendment is served on the holder of the authority or on such later date as may be specified in the notice.

#### **118 Date from which renewal of authority has effect etc**

- (1) The renewal of an authority takes effect on the date on which it is renewed or on such later date as may be specified in the renewal.
- (2) Any amendment of the conditions of an authority takes effect on the date on which the renewal of the authority takes effect.

#### **119 Partial renewals**

If an authority is renewed as to part only of the land to which the application for renewal relates, the authority ceases to have effect in relation to the remainder of the land on the date on which the renewal takes effect.

### **Division 2 Transfer of authorities**

#### **120 Applications**

- (1) The holder of an authority may apply for approval of the transfer of the authority to some other person.
- (2) An application for approval of the transfer of an authority:
  - (a) must be accompanied by the appropriate lodgment fee, and
  - (b) must be accompanied by the consent of the proposed transferee, and
  - (c) must be accompanied by the particulars prescribed by the regulations, and
  - (d) must be lodged with the Director-General.

#### **121 Power of Minister in relation to applications**

- (1) After considering an application for approval of the transfer of an authority, the Minister:
  - (a) may approve the transfer in accordance with the application, or
  - (b) may refuse the application.
- (2) Without limiting the generality of subsection (1), an application may be refused if the proposed transferee has been convicted of an offence against this Act or the regulations or any other offence relating to mining or minerals.

- (3) In approving the transfer of an authority, the Minister may, subject to this Act, direct that any of the conditions of the authority be amended or that further conditions be included in the authority.

## **122 Registration of transfers**

- (1) The transferor or transferee of an authority for the transfer of which the Minister has given approval may apply for registration of the transfer.
- (2) An application for registration of a transfer:
  - (a) must be lodged with the Director-General, and
  - (b) must be accompanied by the appropriate lodgment fee.
- (3) On receipt of such an application, the Director-General must register the transferee as the holder of the authority, unless registration of the transfer is prohibited by section 124.
- (4) On registration of a transfer, the transferee becomes the holder of the authority and the authority becomes subject to the amended conditions or further conditions referred to in any relevant direction under section 121.

## **123 Partial transfers**

- (1) If part of an authority is transferred under this Division:
  - (a) the authority (in this section referred to as **the original authority**) is taken to have been cancelled as to the area of the part transferred, and
  - (b) an authority over the part transferred (in this section referred to as **the new authority**) is taken to have been granted to the transferee for the period ending on the date of expiry of the original authority and to include the conditions determined by the Minister in granting approval of the transfer, and
  - (c) if the Minister considers that it is necessary to do so as a result of the transfer, the conditions to which the original authority is subject may be amended in the manner determined by the Minister in granting approval of the transfer.
- (2) Before part of an authority is transferred:
  - (a) the Minister and the proposed transferor must sign a document setting out the terms of any proposed amendments of the original authority, and
  - (b) the Minister and the proposed transferee must sign a document setting out the terms of the proposed new authority.

## **124 Caveats**

- (1) A person claiming a legal or equitable interest in an authority may lodge with the

Director-General a caveat, accompanied by the appropriate lodgment fee, directing the Director-General not to register any transfer of the authority otherwise than in accordance with the provisions of the caveat.

- (2) Unless sooner withdrawn, a caveat remains in force for the period of 3 months from the date on which it is lodged.
- (3) While a caveat remains in force, a transfer of the authority to which it relates may not be registered in contravention of the provisions of the caveat otherwise than pursuant to an order of the Supreme Court directing the Director-General to register the transfer.
- (4) At the expiration of the period for which a caveat is in force, a transfer of the authority to which it relates is to be registered unless, before the expiration of that period, the Director-General is served with an order of the Supreme Court prohibiting the Director-General from registering the transfer.

### **Division 3 Cancellation or operational suspension of authorities**

#### **125 Grounds of cancellation or operational suspension**

- (1) The Minister may cancel an authority as to the whole or any part of the land to which it relates:
  - (a) if the holder of the authority requests the Minister to cancel the authority, or
  - (b) if the holder of the authority contravenes any condition of the authority or any provision of this Act or the regulations, whether or not the holder is prosecuted or convicted of any offence arising from the contravention, or
  - (c) if the holder of the authority fails to comply with the requirements of any agreement or assessment under Part 13 in relation to the payment of compensation, or
  - (d) if the holder of the authority is convicted of any offence relating to mining or minerals, or
  - (e) if the land is required for a public purpose, or
  - (f) if the holder of the authority fails to use the land comprised in the authority in good faith for the purposes for which the authority has been granted, or uses the land for a purpose other than that for which the authority has been granted.
- (2) A request referred to in subsection (1) (a):
  - (a) must be lodged with the Director-General, and
  - (b) if the application is for the cancellation of the authority as to part only of the land

to which it relates—must be accompanied by a description, prepared in the manner prescribed by the regulations, of the land in respect of which the authority is to be cancelled.

- (3) The Minister may suspend all or any specified operations under an authority until further notice if the holder of the authority contravenes:
  - (a) a requirement under this Act to pay royalty, or to give or maintain security for the performance of the holder's obligations under the authority, or
  - (b) any condition of the authority that is identified in the authority as a condition related to environmental management.

### **126 Cancellations and operational suspensions**

- (1) Before cancelling an authority on a ground referred to in section 125 (1) (b), (c), (d) or (f), or suspending operations under an authority, the Minister:
  - (a) must cause written notice of the proposed cancellation or suspension, and of the grounds of the proposed cancellation or suspension, to be served on the holder of the authority, and
  - (b) must give the holder of the authority a reasonable opportunity to make representations with respect to the proposed cancellation or suspension, and
  - (c) must take any such representations into consideration.
- (2) Cancellation of or suspension of operations under an authority takes effect on the date on which written notice of the cancellation or suspension is served on the holder of the authority or on such later date as is specified in the notice.
- (3) Cancellation of or suspension of operations under an authority does not affect any liability incurred by the holder of the authority before the cancellation or suspension took effect.
- (4) A suspension of operations under an authority is revoked on the date on which written notice from the Minister is served on the holder of the authority or on such later date as is specified in the notice.
- (5) While any operations under an authority are suspended, the authority confers no right on its holder to carry out the operations concerned.

### **127 Compensation for cancellation or suspension of operations**

- (1) The holder of an authority is not entitled to compensation merely because the authority is cancelled or operations under it are suspended.
- (2) However, if an authority is cancelled on the ground that the whole or any part of the land concerned is required for a public purpose, the holder of the authority is entitled



to compensation, of an amount to be determined by the Minister, for any mining improvements made to the land.

### **128 Appeals against decisions concerning cancellation or suspension of operations**

- (1) Any person who is aggrieved by the decision of the Minister to cancel, or suspend operations under, an authority held by the person, or of the decision of the Minister as to the amount of compensation payable as a consequence of its cancellation, may appeal to the District Court against the decision.
  - (1A) Such an appeal is to be made:
    - (a) within 14 days after written notice of the cancellation or suspension, or of the Minister's decision with respect to compensation, is served on the holder of the authority, or
    - (b) within such further period as the District Court may allow.
  - (1B) In deciding whether or not to allow a further period for appeal, the District Court is to have regard to:
    - (a) the circumstances that have prevented the appellant from making the appeal within the 14 days referred to in subsection (1A) (a), and
    - (b) the consequences to the appellant, and to persons other than the appellant, of a decision allowing a further period for appeal, and
    - (c) the consequences to the appellant, and to persons other than the appellant, of a decision refusing a further period for appeal, and
    - (d) the public interest.
- (2) An appeal is to be heard by way of a new hearing, and fresh evidence, or evidence additional to the evidence available to the Minister when the decision was made, may be admitted in the hearing.
- (3) Subject to any order made by the District Court, the lodging of an appeal does not operate to stay the decision appealed against.
- (4) The decision of the District Court on an appeal is final and is to be given effect to as if it were the decision of the Minister.

## **Part 8 Authorities generally**

### **Division 1 General procedures**

#### **129 Holder of authority must be at least 18**

An authority may not be granted to an individual who has not attained the age of 18

years.

### **130 Withdrawal of application**

- (1) An application or objection in relation to the grant, renewal, transfer or cancellation of an authority may be withdrawn by means of a notice of withdrawal signed by the applicant or objector and lodged with the Director-General and ceases to have effect when the notice is lodged.
- (2) The withdrawal of an application or objection under this section is irrevocable.

### **131 Pending applications**

For the purposes of this Act, an application for an authority is pending from the time it is lodged until the time it is finally disposed of.

### **132 Disputes as to priority of applications**

Any dispute as to the priority of competing applications for authorities over the same land is to be determined by the Minister.

### **133 Nomination by applicant or tenderer**

- (1) An applicant or tenderer for an authority may, by notice in writing lodged with the Director-General, nominate a person to whom the authority is to be granted.
- (2) The person nominated in an application or tender as the person to whom an authority is to be granted is, for the purposes of this Act, taken to be the applicant or tenderer for the authority.
- (3) In the case of an application or tender for an authority over land in respect of which some other authority held by the applicant or tenderer is in force by operation of section 29 (2), 47 (2), 73 (2) or 195 (2), the person nominated as the person to whom the firstmentioned authority is to be granted is, for the purposes of this Act, taken to be the holder of that other authority also.

### **134 Death etc of applicant**

An application for an authority made by a person who subsequently dies, becomes bankrupt or becomes a mentally incapacitated person:

- (a) subsists for the benefit of the applicant's estate, and
- (b) may continue to be dealt with,

if the applicant's legal representative or the manager of the applicant's estate so requests.

### **135 Waiver of minor procedural matters**

- (1) The Minister may grant or renew an authority even though the applicant has failed to comply with a requirement of this Act or the regulations:
  - (a) as to the time within which anything is required to be done, or
  - (b) as to the details to be contained in any notice served, lodged or caused to be published by the applicant, or
  - (c) as to the particulars to accompany any application, or
  - (d) as to the furnishing of declarations and other information by the applicant.
- (2) This section does not authorise the Minister to grant or renew an authority in the case of an applicant who has failed to comply with such a requirement unless the Minister is satisfied that the failure is unlikely:
  - (a) to adversely affect any person's rights under this Act or the regulations, or
  - (b) to result in any person being deprived of information necessary for the effective exercise of those rights.

### **136 Gazettal of certain matters**

As soon as practicable after:

- (a) an invitation for tenders for an authority is made or withdrawn, or
- (b) an application for an authority or for the renewal of an authority is made, withdrawn or refused, or
- (c) an authority is granted, renewed, transferred or cancelled,

the Director-General is to cause notice of that fact to be published in the Gazette.

### **137 Limitation of right to challenge technical defects in authorities**

- (1) The grant, renewal or transfer of an authority may not be challenged in any legal proceedings commenced later than 3 months after the date on which notice of the grant, renewal or transfer of the authority is published in the Gazette.
- (2) This section has effect regardless of the provisions of any other Act, but does not apply so as to affect any appeal from proceedings commenced within the 3 months referred to in subsection (1).

## **Division 2 Access arrangements for prospecting titles**

### **138 Application of Division**

- (1) This Division applies to the carrying out of prospecting operations under exploration licences and assessment leases (referred to in this Division as **prospecting titles**) on any land.
- (2) However, this Division does not apply so as to require an access arrangement in respect of a landholder who is a native title holder if the prospecting title concerned was granted or renewed after compliance with Subdivision P of Division 3 of Part 2 of the Commonwealth Native Title Act and the grant or renewal of the title was not an act that attracted the expedited procedure under and within the meaning of that Subdivision. In addition, this Division does not apply if the prospecting title concerned was granted or renewed after compliance with a registered indigenous land use agreement under that Act and the agreement provides that an access arrangement is not required under this Division in respect of such a landholder.
- (3) This Division applies, in the case of a prospecting title that is a low-impact exploration licence, as though a reference in this Division to a landholder included a reference to:
  - (a) any registered native title body corporate, and
  - (b) any registered native title claimant,in relation to the land over which the licence is granted.

#### **Note—**

Section 32F imposes a condition on low-impact exploration licences that requires an access arrangement to be entered into under this Division between the holder of the licence and each registered native title body corporate and registered native title claimant.

### **139 Arbitration Panel**

- (1) There is to be an Arbitration Panel.
- (2) The Arbitration Panel is to consist of one or more members appointed by the Minister after consultation with the Minister for Aboriginal Affairs and the Minister for Agriculture.
- (3) The conditions on which a member of the Arbitration Panel holds office (including conditions relating to remuneration and travelling and subsistence allowances) are to be as determined by the Minister.

### **140 Prospecting to be carried out in accordance with access arrangement**

The holder of a prospecting title may not carry out prospecting operations on any land otherwise than in accordance with an access arrangement:

- (a) agreed (whether orally or in writing and whether before or after the prospecting title was granted) between the holder of the title and each landholder, or
- (b) determined by an arbitrator in accordance with this Division.

**141 Matters for which access arrangement to provide**

- (1) An access arrangement may make provision for or with respect to the following matters:
  - (a) the periods during which the holder of the prospecting title is to be permitted access to the land,
  - (b) the parts of the land in or on which the holder of the prospecting title may prospect and the means by which the holder may gain access to those parts of the land,
  - (c) the kinds of prospecting operations that may be carried out in or on the land,
  - (d) the conditions to be observed by the holder of the prospecting title when prospecting in or on the land,
  - (e) the things which the holder of the prospecting title needs to do in order to protect the environment while having access to the land and carrying out prospecting operations in or on the land,
  - (f) the compensation to be paid to any landholder of the land as a consequence of the holder of the prospecting title carrying out prospecting operations in or on the land,
  - (g) the manner of resolving any dispute arising in connection with the arrangement,
  - (h) the manner of varying the arrangement,
  - (i) such other matters as the parties to the arrangement may agree to include in the arrangement.
- (2) An access arrangement that is determined by an arbitrator must specify the compensation, as assessed by the arbitrator, to which each landholder of the land concerned is entitled under Division 1 of Part 13.
- (3) In the event of an inconsistency between:
  - (a) a provision of an access arrangement, and
  - (b) a provision of this Act, of the regulations or of a condition of a prospecting title,the provision referred to in paragraph (b) prevails.
- (4) If the holder of a prospecting title contravenes an access arrangement, a landholder

of the land concerned may deny the holder access to the land until:

- (a) the holder ceases the contravention, or
- (b) the contravention is remedied to the reasonable satisfaction of the landholder.

(5) Subsection (4) does not affect any proceedings that may be brought against the holder of the prospecting title in respect of the contravention of the access arrangement.

#### **142 Holder of prospecting title to seek access arrangement**

- (1) The holder of a prospecting title may, by written notice served on each landholder of the land concerned, give notice of the holder's intention to obtain an access arrangement in respect of the land.
- (2) The notice of the holder's intention to obtain an access arrangement must, in addition to stating the holder's intention, contain:
  - (a) a plan and description of the area of land over which the access is sought sufficient to enable the ready identification of that area, and
  - (b) a description of the prospecting methods intended to be used in that area.
- (3) The holder of a prospecting title and each landholder of the land concerned may agree (either orally or in writing and either before or after the prospecting title is granted) on an access arrangement.

#### **143 Appointment of arbitrator by agreement**

- (1) If, by the end of 28 days after the holder of a prospecting title serves notice in writing on each landholder of the holder's intention to obtain an access arrangement, the holder and each landholder have been unable to agree on such an arrangement, the holder may, by further notice in writing served on each landholder, request them to agree to the appointment of an arbitrator.
- (2) The holder of a prospecting title and each landholder of the land concerned may agree to the appointment of any person as an arbitrator.

#### **144 Appointment of arbitrator in default of agreement**

- (1) If, by the end of 28 days after the holder of a prospecting title serves notice in accordance with section 143, the holder and each landholder of the land concerned have been unable to agree on the appointment of an arbitrator, then any one of them may apply to the Director-General for the appointment of a member of the Arbitration Panel as an arbitrator.
- (2) An application must be accompanied by the appropriate lodgment fee.

- (3) The Director-General, after consultation with the Heads of the Departments of Aboriginal Affairs and Agriculture, is to appoint a member of the Arbitration Panel as an arbitrator.

#### **145 Arbitration**

- (1) As soon as practicable after having been appointed, an arbitrator:
  - (a) must fix a time and place for conducting a hearing into the question of access to the land concerned, and
  - (b) must cause notice of his or her appointment, and of the time and place fixed for conducting the hearing, to be given to the holder of the prospecting title and to each landholder.
- (2) The arbitrator may, by a further notice served on the holder of the prospecting title and on each landholder, vary the time or place fixed for conducting the hearing.
- (3) The arbitrator must, at the time and place fixed under this section, conduct a hearing into the question of access to the land concerned.

#### **146 Right of appearance**

- (1) At any hearing into the question of access to any land by the holder of a prospecting title, the holder and each landholder are entitled to appear and be heard.
- (2) A party to a hearing may be represented:
  - (a) by an agent who is not a barrister or a solicitor, or
  - (b) with the agreement of the parties and the leave of the arbitrator, by a barrister or a solicitor.

#### **147 Conciliation**

- (1) An arbitrator is not to make a determination until the arbitrator has used his or her best endeavours to bring the parties to a settlement acceptable to all of them.
- (2) If the parties come to such a settlement, the arbitrator must make a determination that gives effect to the terms of the settlement.

#### **148 Procedure**

- (1) Except as otherwise provided by this Act or the regulations, the procedure at a hearing is to be as determined by the arbitrator.
- (2) An arbitrator must act according to equity, good conscience and the substantial merits of the case without regard to technicalities or legal forms.
- (3) An arbitrator may conduct a hearing even though one or more of the parties to the

hearing fails to attend the hearing.

#### **149 Interim determination by arbitrator**

- (1) As soon as practicable after concluding a hearing, an arbitrator:
  - (a) must make an interim determination as to whether or not the holder of the prospecting title should have a right of access to the land concerned, and
  - (b) if the arbitrator determines that the holder of the prospecting title should have such a right of access, must prepare a draft access arrangement in respect of that land.
- (2) As soon as practicable after making an interim determination, the arbitrator:
  - (a) must reduce the determination to writing, and
  - (b) must cause a copy of the determination, together with a copy of any draft access arrangement, to be served on each of the parties to the hearing.

#### **150 Further arbitration**

- (1) A party to a hearing may, within 14 days after being served with a copy of the arbitrator's interim determination, apply to the arbitrator:
  - (a) for reconsideration of the question of access to the land concerned, or
  - (b) for variation of any draft access arrangement prepared by the arbitrator in respect of that land.
- (2) As soon as practicable after receiving such an application, the arbitrator:
  - (a) must fix a time and place for continuing the hearing into the question of access to the land concerned, and
  - (b) must cause notice of the time and place fixed for continuing the hearing to be given to the holder of the prospecting title and to each landholder.
- (3) The arbitrator may, by a further notice served on the holder of the prospecting title and on each landholder of the land concerned, vary the time or place fixed for continuing the hearing.
- (4) The arbitrator must, at the time and place fixed under this section, continue the hearing into the question of access to the land concerned.

#### **151 Final determination by arbitrator**

- (1) If an application is not made to the arbitrator within the period of 14 days referred to in section 150 (1):



- (a) the interim determination is taken to be the arbitrator's final determination, and
  - (b) any draft access arrangement is taken to be a final access arrangement.
- (2) If an application is made to the arbitrator within the period of 14 days referred to in section 150 (1), the arbitrator, as soon as practicable after concluding the continued hearing:
- (a) must make a final determination as to whether or not the holder of the prospecting title should have a right of access to the land concerned, and
  - (b) if the arbitrator determines that the holder of the prospecting title should have such a right of access, must determine a final access arrangement in respect of that land.
- (3) As soon as practicable after making a final determination, the arbitrator:
- (a) must reduce the determination to writing, and
  - (b) must cause a copy of the determination, together with a copy of any final access arrangement forming part of the determination, to be served on each of the parties to the hearing.

#### **152 Costs**

- (1) Each party to the hearing is to bear his or her own costs in relation to the hearing.
- (2) The arbitrator's costs in relation to the hearing are to be borne by the holder of the prospecting title.
- (3) Payment of the arbitrator's costs in relation to a hearing is, for the purpose of any security given by the holder of a prospecting title, taken to be an obligation under the title.

#### **153 Withdrawal from arbitration**

- (1) The parties to a hearing may, at any time before the conclusion of the hearing, terminate the hearing by notice in writing, signed by all of the parties, served on the arbitrator.
- (2) This section does not limit the liability of the holder of a prospecting title to bear the arbitrator's costs in relation to the hearing.

#### **154 Liability**

No proceedings lie against an arbitrator for or with respect to:

- (a) any determination made by the arbitrator, or
- (b) any publication made by the arbitrator, or

(c) any other act, matter or thing done by the arbitrator,

for the purposes of a hearing, as long as the determination, publication, act, matter or thing was made or done in good faith.

### **155 Review of determination**

- (1) A party to a hearing who is aggrieved by an arbitrator's final determination (other than a determination referred to in section 147 (2)) may apply to a Warden's Court for a review of the determination.
- (2) An application:
  - (a) must be accompanied by a copy of the determination to which it relates, together with a copy of any access arrangement forming part of the determination, and
  - (b) must be filed in a Warden's Court:
    - (i) in the case of an interim determination that has become a final determination—within 28 days after a copy of the interim determination was served on the applicant, or
    - (ii) in the case of a final determination—within 14 days after a copy of the final determination was served on the applicant.
- (3) An application for review may not be made:
  - (a) during the period of 14 days within which an application may be made to an arbitrator, or
  - (b) if such an application is made, until the arbitrator has made a final determination with respect to the application.
- (4) The applicant must cause a copy of the application to be served on each of the other parties to the determination to which the application relates.
- (5) Subject to any order of a Warden's Court to the contrary, an application for review of a determination operates to stay the effect of any related access arrangement in relation to a party to the arrangement from the time when a copy of the arrangement has been served on the party until the decision of a Warden's Court on the review.
- (6) In reviewing a determination under this section, a Warden's Court has the functions of an arbitrator under this Division in addition to its other functions.
- (7) The decision of a Warden's Court on a review of a determination is final and is to be given effect to as if it were the determination of an arbitrator.

### **156 Effect of access arrangement etc**

An access arrangement determined by an arbitrator:

(a) takes effect:

(i) in the case of a draft access arrangement that is taken to be a final access arrangement—at the end of the period of 14 days after a copy of the draft access arrangement has been served on each of the parties, or

(ii) in the case of a final access arrangement prepared under section 151—when a copy of the arrangement has been served on each of the parties,

or on such later date as may be specified in the arrangement, and

(b) subject to section 141 (3), has effect as if its terms were embodied in a deed that had been duly executed by each of the parties.

### **157 Variation of access arrangements**

An access arrangement determined by an arbitrator may, subject to the terms of the arrangement, be varied by the arbitrator with the consent of all of the parties to the arrangement.

### **158 Duration of access arrangements**

An access arrangement does not run with the land and, unless sooner terminated, terminates:

(a) if a landholder with whom the arrangement is made ceases to be a landholder of the land, or

(b) on the death of a landholder with whom the arrangement is made.

## **Division 3 Records and registration**

### **159 Records**

(1) The Director-General is to cause a record to be kept of:

(a) every application for an authority that is duly made under this Act, and

(b) every authority that is granted, renewed, transferred or cancelled under this Act.

(2) Such a record must be kept in the form, and must contain the particulars, prescribed by the regulations.

(3) The record must be kept available at the head office of the Department for inspection, free of charge, by members of the public.

**160 Interest in authority to be created by instrument in writing**

- (1) A legal or equitable interest in an authority may not be created or disposed of except by instrument in writing.
- (2) The creation of a legal or equitable interest in an authority does not affect the liability of the holder of the authority for any breach of the conditions of the authority or of any of the provisions of this Act or the regulations.

**161 Registration of certain interests**

- (1) The Director-General is to keep a register of legal and equitable interests in authorities.
- (2) Any person claiming a legal or equitable interest in an authority may apply for registration of the interest.
- (3) An application must be lodged with the Director-General and must be accompanied by the appropriate lodgment fee and by documentary evidence of the legal or equitable interest concerned.
- (4) The Director-General may, if satisfied that the applicant holds the interest concerned, register the document by which the legal or equitable interest is evidenced.
- (5) The Director-General may, on application by the holder of an interest or otherwise, make such amendments to the register kept under this section as are appropriate to reflect dealings in the interest.
- (6) Without limiting the generality of subsection (5), the Director-General may cancel the registration of an interest if of the opinion that the interest has ceased to exist.
- (7) The registration of an interest under this section is not to be taken to be evidence of the existence of the interest.
- (8) For the purposes of any legal proceedings concerning an authority:
  - (a) a registered interest has priority over an interest that is not registered, and
  - (b) an earlier registered interest has priority over a later registered interest.
- (9) The register must be kept available at the head office of the Department for inspection, free of charge, by members of the public.
- (10) Section 130 applies to an application under this section in the same way as it applies to an application referred to in section 130 (1).

**162 Devolution of rights of holder of authority**

A person on whom the rights of the holder of an authority have devolved by operation of

law may apply to the Director-General to have that person's name recorded as the holder of the authority and, if the Minister is satisfied that those rights have so devolved, the Director-General must so record the name of the applicant.

### **163 Colliery holdings**

- (1) The Director-General is to cause to be kept a register of colliery holdings (referred to in this section as **the register**) in such form as may be prescribed by the regulations.
- (2) The Director-General is to cause to be recorded in the register:
  - (a) such particulars as are necessary to give effect to a direction given under this section, and
  - (b) such other particulars as may be prescribed by the regulations.
- (3) A person who has a right (whether under a mining lease or otherwise) to mine for coal or to carry out coal mining purposes on any land may apply to have the land registered as a colliery holding or recorded on the register as part of an existing colliery holding.
- (4) A person who has an interest in a colliery holding may apply to have the registration of the colliery holding cancelled or amended so as to exclude land from the colliery holding.
- (5) An application under this section:
  - (a) must be lodged with the Director-General, and
  - (b) must be accompanied by the particulars prescribed by the regulations.
- (6) The Minister may, by order in writing, direct that specified land (being land in which a person has, in the Minister's opinion, a right to mine for coal or to carry out mining purposes in connection with mining for coal) be registered as a colliery holding or recorded on the register as part of an existing colliery holding.
- (7) The Minister may, by order in writing, direct that the registration of a colliery holding be cancelled or amended so as to exclude specified land from the colliery holding.
- (8) A direction may be given under subsection (6) or (7) whether or not an application has been made under subsection (3) or (4) in respect of the same land.
- (9) The Director-General is to cause copies of any direction under subsection (6) or (7) to be served on such persons as, in the Director-General's opinion, have a right to mine coal or to carry out mining purposes in connection with mining for coal in the land or colliery holding to which the instrument relates.

## **Division 4 Miscellaneous**

### **164 Rights of way**

- (1) The holder of an authority is entitled to a right of way (to be marked out in the manner prescribed by the regulations) between the land subject to the authority and the nearest practicable point of a public road.
- (2) The holder of the authority:
  - (a) must place substantial gates or grids (or, if the landholder of the land so requires, gates and grids) at all fences intersected by the right of way, or
  - (b) if those fences are rabbit-proof, marsupial-proof or dog-proof fences—must place rabbit-proof, marsupial-proof or dog-proof gates at all such fences, as the case requires.
- (3) Any such gate or grid must be of a design and construction that is adequate to prevent stock from straying.
- (4) The costs of marking out a right of way and of installing and maintaining any gates or grids required by this section are to be borne by the holder of the authority.
- (5) A right of way is subject to such conditions as to its exercise, and to such exceptions as to the land over which it may be exercised, as may be prescribed by the regulations or as may be imposed by a warden in any particular case.
- (6) A warden may hold an inquiry into any matter arising under, or in connection with, a right of way conferred by this section.
- (7) Such an inquiry may be held on the application of the landholder of any land affected by the right of way, on the application of the holder of any authority entitled to the right of way or on the warden's own motion.

### **165 Right of access to water**

- (1) If land subject to an authority includes the surface of any land, a landholder who is entitled to use the land for stock watering or water drainage purposes is entitled to free and uninterrupted access, for those purposes, to the water in any stream (whether perennial or intermittent) or any lagoon or swamp (whether permanent or temporary) on or adjacent to the land.
- (2) If any dispute arises between the holder of an authority and any such landholder concerning the right of access, either the holder or the landholder may, by written notice lodged with the Director-General, request the Minister to determine the dispute.
- (3) Any such dispute is to be referred to a warden for inquiry and report and is to be determined by the Minister on the basis of the warden's report.

(4) A determination of the Minister under subsection (3) is final.

#### **166 Use of water, timber and pasturage etc**

(1) If land subject to an authority includes the surface of the land, the holder of the authority must not:

- (a) use water artificially conserved on that land, or
- (b) fell trees, strip bark or cut timber on that land,

otherwise than in accordance with the consent of any landholder of the surface of the land or, if such a landholder refuses consent or attaches unreasonable conditions to the consent, with the approval of a warden.

(2) If land subject to a mining lease includes the surface of the land, the holder of the lease must not:

- (a) depasture horses on the land, or keep on the land any dog that is not kept under effective control, unless the land is securely fenced, or
- (b) remove rock or earth from the land, except in connection with mining operations, otherwise than with the consent of the landholder of the surface of the land.

#### **167 Joint holders of authorities**

If there is more than one holder of an authority, each of the holders is jointly and severally liable for the fulfilment of the obligations arising under this Act in relation to the authority.

#### **168 Suspension of conditions**

(1) The Minister may (whether on the application of the holder of the authority or otherwise) suspend any of the conditions of an authority for such period, or until the happening of such event, as the Minister may determine.

(2) The suspension of conditions of an authority may be granted unconditionally or subject to such alternative conditions as the Minister may consider appropriate.

(3) The suspension of the conditions of an authority takes effect on the date on which written notice of the suspension is served on the holder of the authority or on such later date as may be specified in the notice.

(4) Section 130 applies to an application under this section in the same way as it applies to an application referred to in section 130 (1).

#### **169 Retention and forfeiture of security deposit**

(1) A security in relation to an authority may be retained by the Minister until the Minister is satisfied that the holder of the authority has fulfilled the obligations arising under

this Act in relation to the authority, whether the obligations concerned are required to be fulfilled during or after the period for which the authority remains in force.

- (2) Obligations required to be fulfilled after the period for which the authority remains in force do not cease merely because the authority has ceased to be in force, and the relevant security may be retained under subsection (1) even though the authority is no longer in force.
- (3) Such part of any security in relation to an authority as the Minister may determine is to be forfeited to the Crown if the holder of the authority fails to fulfil the obligations arising under this Act in relation to the authority.
- (4) Money realised from the forfeiture of any such security is to be applied for the purpose of fulfilling the obligations arising under this Act in relation to the authority.
- (5) The functions of the Minister under this section may be exercised with or without the benefit of a finding by a court or tribunal that the holder of the authority concerned has failed to fulfil any obligations arising under this Act in relation to the authority.

#### **170 Settlement of certain disputes**

- (1) If any dispute arises between the holders of 2 or more authorities concerning their respective rights in relation to any land or minerals, any one or more of them may refer the dispute to the Minister, who must in turn refer the dispute to a warden for inquiry and report.
- (2) On receipt of the warden's report, the Minister may, by order, give such directions to all or any of the persons in dispute as (having regard to the public interest and the circumstances of the case) seem to the Minister to be just and equitable, and may, by the same or a subsequent order, direct the payment by all or any of the persons in dispute of any costs and expenses incidental to the conduct of the inquiry.
- (3) A person to whom such a direction relates must not contravene the direction.

Maximum penalty: 100 penalty units.

#### **171 Minister and certain other persons indemnified in certain circumstances**

The holder of an authority holds the Crown, the Minister and any person employed in the administration of this Act indemnified against all claims against the Crown, the Minister or any such person arising out of:

- (a) anything done or omitted to be done pursuant to, or as a consequence of, the authority, or
- (b) anything done or omitted to be done by the holder of the authority, or by any agent or employee of the holder, on or in respect of any land subject to the authority.



### **172 Evidentiary provision**

A certificate that is signed by the Director-General and that states that on a date, or during a period, specified in the certificate:

- (a) an authority so specified was or was not granted, renewed, transferred or cancelled, or
- (b) a condition so specified was or was not a condition of an authority so specified, or
- (c) a person so specified was or was not the holder of an authority so specified, or
- (d) land so specified was or was not subject to an authority or to an authority so specified, or
- (e) an authority so specified was or was not transferred or was or was not transferred to a person so specified, or
- (f) a legal or equitable interest so specified (being a legal or equitable interest of a kind referred to in section 161) was or was not registered under that section,

is admissible in evidence in all courts and is evidence of the fact or facts so stated.

### **172A Effect of change of inner limit of coastal waters**

(1) If:

- (a) an area is covered by an authority, and
- (b) there is a change to the inner limit of the coastal waters of the State as defined in the *Offshore Minerals Act 1999*, and
- (c) as a result of the change, the area covered by the authority comes within those coastal waters,

this Act continues to apply to the area, while the authority or any successor authority remains in force, as if the change had not been made.

(2) If:

- (a) a mining lease takes effect immediately after an exploration licence expires, and
- (b) the holder of the mining lease immediately after it takes effect was the holder of the exploration licence immediately before it expired,

the mining lease is a successor authority to the exploration permit for the purposes of subsection (1).

(3) If:

- (a) an assessment lease takes effect immediately after an exploration licence expires,

and

- (b) the holder of the assessment lease immediately after it takes effect was the holder of the exploration licence immediately before it expired,

the assessment lease is a successor authority to the exploration licence for the purposes of subsection (1).

(4) If:

- (a) a mining lease takes effect immediately after an assessment lease expires, and
- (b) the assessment lease took effect immediately after an exploration licence expired, and
- (c) the holder of the mining lease immediately after it takes effect was the holder of the assessment lease immediately before it expired, and
- (d) the holder of the assessment lease immediately after it took effect was the holder of the exploration licence immediately before it expired,

the mining lease is a successor authority to the exploration licence and the assessment lease for the purposes of subsection (1).

## **Part 9 Mineral claims**

### **Division 1 Mineral claims districts**

#### **173 Constitution of mineral claims districts**

- (1) The Governor may, by order published in the Gazette, constitute any land within a single mining division as a mineral claims district and may, by the same or a subsequent order so published, name the district and fix its boundaries.

**Editorial note—**

For orders under this subsection see Gazette No 101 of 20.8.1992, pp 5948, 5949.

- (2) Such an order:
  - (a) may not be made except on the recommendation of the Minister, and
  - (b) may not be made over land within a reserve if an order under section 367 directs that mineral claims are not to be granted over land in the reserve, and
  - (c) may not be made over land within an exempted area except in accordance with the consent of the controlling body for that area.

#### **174 Notice of proposal to constitute mineral claims district**

- (1) The Minister must cause notice of any proposed recommendation to be served on:

- (a) each Government agency that, in the opinion of the Minister, would be materially affected by the recommendation, and
  - (b) each council within whose area is situated the land to which the proposed recommendation relates.
- (2) Such a notice:
- (a) must identify the proposed boundaries of the mineral claims district, and
  - (b) must specify proposed conditions for inclusion in the order to be made under section 175 with respect to the mineral claims district.

### **175 Special conditions**

- (1) The Minister may, by order published in the Gazette, specify the conditions that are to apply to mineral claims granted over land within any specified mineral claims district.

**Editorial note—**

For orders under this subsection see Gazettes No 101 of 20.8.1992, pp 5950, 5954; No 97 of 23.8.1996, p 4889 and No 28 of 21.3.1997, p 1601.

- (2) Without limiting the generality of subsection (1), the conditions that may be specified in an order under this section include conditions as to the following matters:
- (a) the shape and size of mineral claims that may be granted,
  - (b) the minerals in respect of which mineral claims may be granted,
  - (c) the maximum number of mineral claims that may be held by any one person,
  - (d) the nature and extent of prospecting and mining operations that may be carried out in respect of mineral claims,
  - (e) the period for which a mineral claim is to have effect,
  - (f) the security deposits to be lodged in respect of the granting of mineral claims,
  - (g) the compensation payable in respect of the carrying out of prospecting and mining operations,
  - (h) the royalties payable in respect of minerals recovered under mineral claims,
  - (i) the depth below the surface of the land to which prospecting or mining operations may be carried out,
  - (j) the obligations of the holders of mineral claims as to the rehabilitation of land on which prospecting or mining operations have been carried out.
- (3) The Minister must have regard to, but (except as provided by subsection (4)) is not

bound by, any representations made by a person or body to whom notice has been given under section 174.

- (4) To the extent to which an order under this section applies to land within an exempted area, the order must include any conditions required by the controlling body for that area to be included in the order.
- (5) This section does not authorise the making of conditions that permit a mineral claim to be granted over land having an area of more than 2 hectares or that permit a mineral claim to have a term of more than 5 years.
- (6) A condition limiting the maximum number of mineral claims that may be held by any one person does not prevent a person from becoming the holder of further mineral claims that devolve on the person by operation of law.

#### **175A Unlawful entry to site of mineral claim**

- (1) Any person who, while in a mineral claims district, is found in or on any land the subject of a mineral claim held by some other person is guilty of an offence.

Maximum penalty:

- (a) except as provided by paragraph (b), 50 penalty units or imprisonment for 6 months, or both, or
  - (b) if, when found on the land, the person is in possession of tools or equipment of a kind generally used for the purposes of prospecting or mining, 100 penalty units or imprisonment for 2 years, or both.
- (2) It is a sufficient defence to a prosecution under this section if the defendant establishes that he or she had a reasonable excuse for being in or on the land concerned.

#### **175B Court may make exclusion order against convicted persons**

- (1) This section applies to:
  - (a) an offence referred to in section 12B, 12C or 12D, or
  - (b) an offence referred to in section 175A in connection with which the accused was found in possession of tools or equipment of a kind generally used for the purposes of prospecting or mining,being an offence occurring within a mineral claims district.
- (2) A court that convicts a person of an offence to which this section applies may make an order (an **exclusion order**) prohibiting the person from entering the whole or any part of the mineral claims district concerned, or any other mineral claims district, for such period (not exceeding 2 years) as may be specified in the order.

- (3) An exclusion order may be made:
  - (a) at any time within 6 months after the person's conviction, and
  - (b) whether or not the person has a legal or equitable interest in, or is the holder of an authority, mineral claim or opal prospecting licence over, any of the land to which the order relates.
- (4) Before making an exclusion order against a person, a court:
  - (a) must cause written notice of the fact that it proposes to make such an order, and of the terms of the proposed order, to be served on the person, and
  - (b) must give the person a reasonable opportunity to make representations to the court with respect to the proposed order, and
  - (c) must take any such representations into consideration.
- (5) An exclusion order takes effect:
  - (a) if the person to whom it relates is present in court when it is made, at the time it is made, or
  - (b) in any other case, when it is served on the person to whom it relates.
- (6) A copy of an exclusion order must be sent to the Commissioner of Police as soon as practicable after the order is made.

**175C Appeals against, and suspensions and annulments of, exclusion orders**

- (1) An appeal may be made under Part 5A of the *Justices Act 1902* against an exclusion order made by a Warden's Court or a Local Court.
- (2) For the purposes of the *Criminal Appeal Act 1912*, an exclusion order made by a court other than a Warden's Court or a Local Court is taken to be a sentence within the meaning of that Act.
- (3) If an appeal (or an application for leave to appeal) is made against the conviction from which an exclusion order arises, the operation of the exclusion order is suspended until the appeal or application is finally determined.
- (4) Unless the appeal court orders otherwise, the exclusion order is annulled if the conviction is quashed.
- (5) The appeal court may, by order, annul or vary the exclusion order even if the conviction is not quashed.
- (6) In this section, **appeal court** means the court to which an appeal (or an application for leave to appeal) is made as referred to in subsection (3).

**175D Offence of contravening exclusion order**

- (1) A person must not knowingly contravene an exclusion order that is in force in respect of the person.

Maximum penalty: 200 penalty units or imprisonment for 2 years, or both.

- (2) It is a sufficient defence to a prosecution under this section if the defendant establishes that he or she had a reasonable excuse for contravening the order.

**Division 2 Applications**

**176 Marking out of proposed claim area**

- (1) Before applying for a mineral claim, a person must, in the manner prescribed by the regulations, mark out the area of land over which the person wishes the mineral claim to be granted.
- (2) The area marked out must be situated wholly within a single mining division and must comply with the regulations in relation to shape and size.

**177 Notice of intention to apply for mineral claim**

- (1) A person may not apply for a mineral claim over any land until after the person has caused notice of the proposed application to be served on the landholder.
- (2) Such a notice must identify, in the manner prescribed by the regulations, the land to which the application relates.

**178 Application for granting of mineral claim**

- (1) Any person may apply for a mineral claim.
- (2) An application:
  - (a) must identify, in the manner prescribed by the regulations, the land to which it relates, and
  - (b) must specify the mineral or minerals, or the mining purpose or mining purposes, in respect of which the mineral claim is sought, and
  - (c) must be accompanied by the appropriate lodgment fee, and
  - (d) must be lodged with the mining registrar for the mining division within which the land to which it relates is situated, and
  - (e) (Repealed)
  - (f) must be accompanied by a copy of the notice served on the landholder of the land concerned under section 177 and a statutory declaration to the effect that the

notice was so served.

### **179 Objection as to agricultural land**

- (1) A landholder who is entitled to use land for agricultural purposes and who is served with a notice under section 177 may object to the granting of a mineral claim over the land on the basis that the land is agricultural land.
- (2) Such an objection must be in writing and must be lodged with the mining registrar for the mining division within which the land is situated within 28 days after the notice is served.
- (3) On receipt of an objection, the mining registrar is to refer the objection to the Director-General of the Department of Agriculture who is to determine the objection in accordance with Schedule 2.

## **Division 3 Restrictions on the grant of mineral claims**

### **180 General restrictions**

- (1) A mineral claim may not be granted over land having an area of more than 2 hectares.
- (2) A mineral claim over land that is not situated within a mineral claims district may not be granted in the name of a person who holds more than one other mineral claim over any such land within the same mining division.
- (3) Subsection (2) does not prevent a person from becoming the holder of a mineral claim that has devolved on the person by operation of law.
- (4) A mineral claim may not be granted in respect of coal.
- (5) (Repealed)

### **181 Exempted areas**

- (1) A mineral claim may not be granted over land within an exempted area (other than land within a mineral claims district) except with the written consent of the controlling body of that area.
- (2) A written consent given under this section is irrevocable.

### **182 Opal prospecting blocks, reserves and mineral allocation areas**

- (1) A mineral claim may not be granted over any land within:
  - (a) an opal prospecting block that is the subject of an opal prospecting licence held by a person other than the applicant for the mineral claim, or
  - (b) a reserve in respect of which an order prohibiting the granting of mineral claims is

in force under section 367.

(c) (Repealed)

- (2) Except with the approval of the Minister, a mineral claim may not be granted over any land within a mineral allocation area that is constituted in respect of any mineral or minerals to which the application for the mineral claim relates.

### **183 Land subject to authority**

- (1) A mineral claim may not be granted over any land:

- (a) the subject of an exploration licence that includes any mineral or minerals in respect of which the claim is sought, or
- (b) the subject of an assessment lease, a mining lease or a mineral claim, or
- (c) the subject of an application for an exploration licence, assessment lease, mining lease or mineral claim that was lodged before the application for the firstmentioned mineral claim was lodged,

otherwise than to or with the written consent of the holder of, or the applicant for, that licence, lease or claim.

- (2) A written consent given under this section is irrevocable.

- (3) If, as a result of such a consent, a mineral claim is granted in respect of land referred to in subsection (1), that land:

- (a) ceases to be subject to the exploration licence, assessment lease, mining lease or mineral claim referred to in that subsection, or
- (b) is excluded from the application for the exploration licence, assessment lease, mining lease or mineral claim so referred to,

as the case requires.

### **184 Land subject to exploration licence over different minerals etc**

- (1) If an application for a mineral claim is lodged in respect of land that is subject wholly or partly to one or more exploration licences (other than exploration licences that include any mineral or minerals in respect of which the claim is sought), the mining registrar must cause notice of the application to be served on the holder of every such exploration licence.
- (2) A person served with such a notice may object to the granting of the mineral claim by lodging with the mining registrar, on or before the date specified in the notice, a written notice stating the grounds of the objection.



- (3) If such an objection is made, the mining registrar must refer the objection to an inspector for investigation and report and must determine the objection on the basis of the inspector's report.
- (4) This section does not apply to an application that is made with the written consent of the holder of every exploration licence over the land concerned.
- (5) A written consent given under this section is irrevocable.
- (6) If a mineral claim is granted over land that is subject to an exploration licence, that land ceases to be subject to the exploration licence when the mineral claim is granted.

### **185 Land on which private mining operations being carried on**

- (1) A mineral claim may not be granted over any land:
  - (a) if mining operations for a privately owned mineral are being carried out on the land by or with the consent of the owner of the mineral, and
  - (b) if the notice referred to in section 8 (1) (a) and the security referred to in section 8 (1) (b) have each been duly lodged with the Director-General,except with the written consent of the owner of the mineral.
- (2) A written consent given under this section is irrevocable.
- (3) Any dispute as to whether or not this section applies in any particular case is to be referred to a warden for inquiry and report and is to be decided by the Director-General on the basis of the warden's report.

### **186 Colliery holdings**

A mineral claim may not be granted over land within a colliery holding unless the chief inspector of coal mines is satisfied that prospecting or mining operations may be carried out under the claim without any adverse effect on, and without any risk to the safety of the persons engaged in, the carrying out of coal mining operations in the claim area.

### **187 Agricultural land**

- (1) A mineral claim may not be granted over any land that, as a consequence of an objection to the granting of the claim, has been determined to be agricultural land in accordance with Schedule 2.
- (2) This section does not prevent a mineral claim from being granted over land that is within a mineral claims district merely because an objection to the granting of the claim has been made on the basis that the land is agricultural land.

### **188 Dwelling-houses, gardens and improvements**

- (1) A mineral claim may not be granted over the surface of any land:
  - (a) on which, or within the prescribed distance of which, is situated a dwelling-house that is the principal place of residence of the person occupying it or a woolshed or shearing shed which is in use as such, or
  - (b) on which, or within the prescribed distance of which, is situated any garden, or
  - (c) on which is situated any improvement (being a substantial building, dam, reservoir, contour bank, graded bank, levee, water disposal area, soil conservation work or other valuable work or structure) other than an improvement constructed or used for mining purposes and for no other purposes,except with the written consent of the owner of the dwelling-house, woolshed, shearing shed, garden or improvement (and, in the case of the dwelling-house, the written consent of its occupant).
- (2) The prescribed distance is:
  - (a) 200 metres (or, if a greater distance is prescribed by the regulations, the greater distance) for the purposes of subsection (1) (a), and
  - (b) 50 metres (or, if a greater distance is prescribed by the regulations, the greater distance) for the purposes of subsection (1) (b).
- (3) A written consent given under this section is irrevocable.
- (4) Subsection (1) does not apply in respect of a dwelling-house, woolshed, shearing shed, garden or improvement that was not in existence when the application for the mineral claim was lodged.
- (5) Any dispute as to whether or not subsection (1) applies in any particular case is to be referred to a warden for inquiry and report and is to be decided by the Director-General on the basis of the warden's report.
- (6) A mineral claim may not be granted over land below the surface of land referred to in subsection (1) except at such depths, and subject to such conditions, as the mining registrar considers sufficient to minimise damage to that surface.

### **189 Mineral claim not to be re-granted to former holder**

- (1) A person who has been the holder of a mineral claim that has been cancelled pursuant to an order of a Warden's Court may not be granted a further mineral claim over any part of the land over which the earlier mineral claim was held until the expiration of the period of 12 months following the making of the order.
- (2) This section is subject to any further order made by the Warden's Court by which the

original order was made.

## **Division 4 Granting of mineral claims**

### **190 Power of mining registrar in relation to applications**

- (1) After considering an application for a mineral claim, the mining registrar:
  - (a) may grant a mineral claim to the applicant, or
  - (b) may refuse the application.
- (2) Without limiting the generality of subsection (1), an application may be refused if the applicant has been convicted of an offence against this Act or the regulations or any other offence relating to mining or minerals.
- (3) If an objection to the granting of the mineral claim on the basis that the land concerned is agricultural land has been lodged with the mining registrar before the application is determined, the mining registrar may (in the case of land that is situated within a mineral claims district) and must (in any other case) defer consideration of the application until the objection has been determined.
- (4) Before granting a mineral claim, the mining registrar may require the applicant to give and maintain security for the fulfilment of the obligations arising under this Act in relation to the mineral claim:
  - (a) in the case of a mineral claim over land that is situated within a mineral claims district—in such amount and form as the mining registrar may (in accordance with the special conditions) require, or
  - (b) in any other case—in such amount and form as the mining registrar may (in accordance with the regulations) require.
- (4A) A condition requiring security to be given and maintained by the holder of a mineral claim (the ***new mineral claim***) may be expressed so as to require the security given and maintained in relation to some other mineral claim or mineral claims, whether under this section or under section 195A, to be extended to the new mineral claim.
- (4B) If the mining registrar proposes to grant a mineral claim to a person on the condition that the person gives and maintains security, the mining registrar may cause a written notice to be served on the person requiring the person to lodge the security with the mining registrar on or before the date specified in the notice.
- (5) If the mining registrar refuses to grant a mineral claim, the mining registrar is to cause notice of the decision, and of the reasons for the decision, to be served on the applicant.
- (6) If more than one application is made for a mineral claim over the same area of land,

the applications are to be dealt with in the order in which they are lodged or, if they are lodged simultaneously, in such order as may be prescribed by the regulations.

- (7) A mineral claim may not be granted in respect of a mining purpose or mining purposes only unless the applicant for the mineral claim is the holder of, or an applicant for, a mining lease or mineral claim for a mineral or minerals with respect to land in the same mining division.

### **191 Land over which mineral claim may be granted**

- (1) A mineral claim may be granted in respect of any mineral or minerals, regardless of whether the mineral or minerals are publicly owned, privately owned or partly publicly and partly privately owned.
- (2) A mineral claim may be granted over the surface of land, over the surface of land and the subsoil below the surface, over the surface of land and the subsoil down to a specified depth below the surface or over the subsoil between or below any specified depth or depths below the surface of land.

### **192 Conditions of mineral claim**

- (1) A mineral claim is subject to:
  - (a) in the case of a claim that is granted over land within a mineral claims district—such conditions as the mining registrar may (in accordance with the special conditions) impose, and
  - (b) in any other case—such conditions as the mining registrar may (in accordance with the regulations) impose.
- (2) Without limiting the generality of subsection (1), a condition may be imposed on a mineral claim requiring the holder of the claim to pay royalty to the Minister on any minerals recovered under the claim.
- (3) Part 14 applies to royalty payable under such a condition in the same way as it applies to royalty payable on a mineral recovered under a mining lease.

### **193 Term of mineral claim**

A mineral claim:

- (a) takes effect on the date on which it is granted or on such later date as the mining registrar may determine, and
- (b) ceases to have effect at the expiration of such period (not exceeding 5 years or, in the case of a mineral claim over land that is situated within a mineral claims district, not exceeding such shorter period as the special conditions may specify) as the mining registrar may determine.

#### **194 Certificate of mineral claim**

- (1) On granting a mineral claim, the mining registrar is to cause a certificate to be given to the holder of the claim of the fact that the claim has been granted.
- (2) A certificate is to be in the approved form and is to include the following particulars:
  - (a) a description of the land over which the mineral claim is granted,
  - (b) a list of the mineral or minerals, or the mining purpose or mining purposes, in respect of which the mineral claim is granted,
  - (c) the conditions to which the mineral claim is subject,
  - (d) the period for which the mineral claim is to have effect.

### **Division 5 Rights and duties under a mineral claim**

#### **195 Rights under mineral claim**

- (1) The holder of a mineral claim granted in respect of a mineral or minerals may, in accordance with the conditions of the claim, prospect for and mine the mineral or minerals in respect of which the claim is granted and may, in connection with any such prospecting or mining:
  - (a) erect buildings and structures, and
  - (b) exercise any rights in the nature of easements, and
  - (c) carry out mining purposes, and
  - (d) remove from the claim area any timber, stone or gravel.
- (1A) The holder of a mineral claim granted in respect of a mining purpose or mining purposes only may, in accordance with the conditions of the claim, carry out the mining purpose or mining purposes specified in the certificate relating to the claim.
- (2) If an application for an assessment lease or mining lease is made by the holder of a mineral claim, the claim continues in force until the application is finally disposed of.

#### **195A Amendment of mineral claim in respect of certain conditions**

- (1) A mining registrar may amend a mineral claim that does not contain a condition requiring the holder to give and maintain security for the fulfilment of the obligations of the holder arising under this Act so as to include such a condition.
- (2) A mining registrar may amend a mineral claim that contains such a condition so as to vary the amount and form of the security that is required to be given and maintained.
- (3) A mining registrar may amend any 2 or more mineral claims held by the same holder

that contain such a condition so as to require a single security to be given and maintained.

- (4) The amendment of a mineral claim takes effect on the date on which written notice of the amendment is served on the holder of the mineral claim or on such later date as may be specified in the notice.

#### **196 Claim areas over which authority is subsequently granted**

Land over which a mineral claim is granted and over which an authority or further mineral claim is subsequently granted ceases to be part of the claim area when the authority or further claim takes effect.

### **Division 6 Renewal, transfer and cancellation or operational suspension of mineral claims**

#### **197 Application for renewal**

- (1) The holder of a mineral claim may, from time to time, apply for renewal of the claim.
- (2) An application for renewal of a mineral claim:
  - (a) must be accompanied by the appropriate lodgment fee, and
  - (b) must be lodged, on or within 2 months before the day on which the claim would otherwise expire, with the mining registrar for the mining division within which the claim area is situated.
- (3) A mineral claim the subject of such an application remains in force until the application is finally disposed of.

#### **198 Determination of application for renewal**

- (1) After considering an application for renewal of a mineral claim, the mining registrar:
  - (a) may renew the mineral claim, or
  - (b) may refuse the application.
- (2) Without limiting the generality of subsection (1), an application may be refused if the applicant has been convicted of an offence against this Act or the regulations or any other offence relating to mining or minerals.
- (3) The mining registrar may, on renewing a mineral claim, vary the conditions of the claim:
  - (a) in the case of a mineral claim that is granted over land within a mineral claims district—in such manner as the mining registrar may (in accordance with the special conditions) determine, and

- (b) in any other case—in such manner as the mining registrar may (in accordance with the regulations) determine.

### **199 Partial renewal**

A mineral claim may be renewed as to the whole or any part of the claim area and, if it is renewed as to part only of the claim area, the remainder ceases to be part of the claim area when the renewal takes effect.

#### **199A Term of renewal**

- (1) A mineral claim that is renewed:
  - (a) takes effect on the date on which it is renewed or on such later date as the mining registrar may determine, and
  - (b) ceases to have effect at the expiration of such period (not exceeding 5 years or, in the case of a mineral claim over land that is situated within a mineral claims district, not exceeding such shorter period as the special conditions may specify) as the mining registrar may determine.
- (2) Any amendment of the conditions of a mineral claim takes effect on the date on which the renewal of the mineral claim takes effect.

### **200 Application for transfer**

- (1) The holder of a mineral claim may apply for the transfer of the claim to some other person.
- (2) An application for the transfer of a mineral claim:
  - (a) must be accompanied by the appropriate lodgment fee, and
  - (b) must be lodged with the mining registrar for the mining division within which the claim area is situated, and
  - (c) must be accompanied by the written consent of the proposed transferee, and
  - (d) must be accompanied by a copy of the relevant notice served under subsection (2A).
- (2A) Notice of an intention to make an application under this section must be given by the applicant to the landholder of the land to which the mineral claim relates.
- (3) The mining registrar may defer consideration of an application that is the subject of legal proceedings, or of an inquiry under this Act, pending the outcome of those proceedings or that inquiry.

### **201 Determination of application for transfer**

- (1) After considering an application for transfer of a mineral claim, the mining registrar:
  - (a) may transfer the mineral claim, or
  - (b) may refuse the application.
- (2) Without limiting the generality of subsection (1), an application may be refused if the applicant has been convicted of an offence against this Act or the regulations or any other offence relating to mining or minerals.
- (3) The mining registrar may, on transferring a mineral claim, vary the conditions of the claim:
  - (a) in the case of a claim that is granted over land within a mineral claims district—in such manner as the mining registrar may (in accordance with the special conditions) determine, and
  - (b) in any other case—in such manner as the mining registrar may (in accordance with the regulations) determine.
- (4) A mineral claim may not be transferred to a person if the person would consequently become the holder of more mineral claims than the maximum number allowed by this Act.

### **202 Devolution by operation of law**

- (1) The mining registrar may, on the application of a person on whom a mineral claim has devolved by operation of law, transfer the claim to that person.
- (2) An application under this section:
  - (a) must be accompanied by the appropriate lodgment fee, and
  - (b) must be lodged with the mining registrar for the mining division within which the claim area is situated.
- (3) The mining registrar may defer consideration of an application that is the subject of legal proceedings, or of an inquiry under this Act, pending the outcome of those proceedings or that inquiry.

### **203 Grounds of cancellation or operational suspension**

- (1) A mining registrar may cancel a mineral claim, as to the whole or any part of the land to which it relates:
  - (a) if the holder of the claim requests the mining registrar to cancel the claim, or
  - (b) if, as a result of an objection made under section 179, it is determined in



accordance with Schedule 2 that the land is agricultural land, or

- (c) if the holder of the claim contravenes any condition of the claim or any provision of this Act or the regulations, whether or not the holder is prosecuted or convicted of any offence arising from the contravention, or
- (d) if the holder of the claim fails to comply with the requirements of any agreement or assessment under Part 13 in relation to the payment of compensation, or
- (e) if the holder of the claim is convicted of any offence relating to mining or minerals, or
- (f) if the land is required for a public purpose, or
- (g) if the mining registrar is ordered by a Warden's Court to cancel the claim, or
- (h) if the holder of the claim fails to use the land comprised in the claim in good faith for the purposes for which the claim has been granted, or uses the land for a purpose other than that for which the claim has been granted.

(2) A request referred to in subsection (1) (a):

- (a) must be lodged with the mining registrar for the mining division within which the claim area is situated, and
- (b) if the application is for the cancellation of the claim as to part only of the land to which it relates—must be accompanied by a description, prepared in the manner prescribed by the regulations, of the land in respect of which the claim is to be cancelled.

(3) The mining registrar may defer cancellation of a mineral claim that is the subject of legal proceedings, or of an inquiry under this Act, pending the outcome of those proceedings or that inquiry.

(4) A mining registrar may suspend all or any specified operations under a mineral claim until further notice if the holder of the claim contravenes:

- (a) a requirement under this Act to pay royalty, or to give or maintain security for the performance of the holder's obligations under the claim, or
- (b) any condition of the claim that is identified in the claim as a condition related to environmental management.

## **204 Cancellations and suspensions**

(1) Before cancelling a mineral claim on a ground referred to in section 203 (1) (c), (d), (e) or (h), or suspending operations under a claim, the mining registrar:

- (a) must cause written notice of the proposed cancellation or suspension, and of the

grounds of the proposed cancellation or suspension, to be served on the holder of the claim, and

(b) must give the holder of the claim a reasonable opportunity to make representations with respect to the proposed cancellation or suspension, and

(c) must take any such representations into consideration.

- (2) Cancellation of or suspension of operations under a mineral claim takes effect on the date on which written notice of the cancellation or suspension is served on the holder of the claim or on such later date as is specified in the notice.
- (3) Cancellation of or suspension of operations under a mineral claim does not affect any liability incurred by the holder of the claim before the cancellation or suspension took effect.
- (4) A suspension of operations under a mineral claim is revoked on the date on which written notice from the mining registrar is served on the holder of the claim or on such later date as is specified in the notice.
- (5) While any operations under a mineral claim are suspended, the claim confers no right on its holder to carry out the operations concerned.

#### **205 Compensation for cancellation or suspension of operations**

- (1) The holder of a mineral claim is not entitled to compensation merely because the claim is cancelled or operations under it are suspended.
- (2) However, if a mineral claim is cancelled on the ground that the whole or any part of the land concerned is required for a public purpose, the holder of the claim is entitled to compensation, of an amount to be determined by the mining registrar, for any mining improvements made to the land.

#### **206 Review of decisions concerning cancellation or suspension of operations**

- (1) Any person who is aggrieved by the decision of a mining registrar to cancel, or suspend operations under, a mineral claim held by the person, or as to the amount of compensation payable as a consequence of its cancellation, may apply to a Warden's Court for a review of the decision.
- (2) An application must be filed in a Warden's Court within 14 days after written notice of the decision is served on the person.
- (3) Subject to any order made by the Warden's Court, an application for a review does not operate to stay the decision to which the application relates.
- (4) The decision of the Warden's Court is to be given effect to as if it were the decision of the mining registrar.

## **Division 7 Miscellaneous**

### **207 Holder of mineral claim must be at least 18**

A mineral claim may not be granted to an individual who has not attained the age of 18 years.

### **208 Withdrawal of application**

- (1) An application or objection in relation to the grant, renewal, transfer or cancellation of a mineral claim may be withdrawn by means of a notice of withdrawal lodged by the applicant or objector with the mining registrar with whom the application or objection was lodged and ceases to have effect when the notice is lodged.
- (2) The withdrawal of an application or objection under this section is irrevocable.

### **209 Pending applications**

For the purposes of this Act, an application for a mineral claim is pending from the time it is lodged under this Act until the time it is finally disposed of.

### **210 Death etc of applicant for granting of mineral claim**

An application for a mineral claim made by a person who subsequently dies, becomes bankrupt or becomes a mentally incapacitated person:

- (a) subsists for the benefit of the applicant's estate, and
- (b) may continue to be dealt with,

if the applicant's legal representative or the manager of the applicant's estate so requests.

### **210A Waiver of minor procedural matters**

- (1) A mining registrar may grant or renew a mineral claim even though the applicant has failed to comply with a requirement of this Act or the regulations:
  - (a) as to the manner in which the mineral claim has been marked out, or
  - (b) as to the time within which anything is required to be done, or
  - (c) as to the details to be contained in any notice served, lodged or caused to be published by the applicant, or
  - (d) as to the particulars to accompany any application, or
  - (e) as to the furnishing of declarations and other information by the applicant.
- (2) This section does not authorise a mining registrar to grant or renew a mineral claim in

the case of an applicant who has failed to comply with such a requirement unless the mining registrar is satisfied that the failure is unlikely:

- (a) to adversely affect any person's rights under this Act or the regulations, or
- (b) to result in any person being deprived of information necessary for the effective exercise of those rights.

#### **210B Limitation of right to challenge technical defects in mineral claims**

- (1) The grant, renewal or transfer of a mineral claim may not be challenged in any legal proceedings commenced later than 3 months after the date on which the mineral claim was granted, renewed or transferred.
- (2) This section has effect regardless of the provisions of any other Act, but does not apply so as to affect any appeal from proceedings commenced within the 3 months referred to in subsection (1).

#### **211 Rights of way**

- (1) The holder of a mineral claim is entitled to a right of way (to be marked out in the manner prescribed by the regulations) between the claim area and the nearest practicable point of a public road.
- (2) The holder of the mineral claim:
  - (a) must place substantial gates or grids (or, if the landholder of the land so requires, gates and grids) at all fences intersected by the right of way, or
  - (b) if those fences are rabbit-proof, marsupial-proof or dog-proof fences—must place rabbit-proof, marsupial-proof or dog-proof gates at all such fences, as the case requires.
- (3) Any such gate or grid must be of a design and construction that is adequate to prevent stock from straying.
- (4) The costs of marking out a right of way and of installing and maintaining any gates or grids required by this section are to be borne by the holder of the mineral claim.
- (5) A right of way is subject to such conditions as to its exercise, and to such exceptions as to the land over which it may be exercised, as may be prescribed by the regulations or as may be imposed by a warden in any particular case.
- (6) A warden may hold an inquiry into any matter arising under, or in connection with, a right of way conferred by this section.
- (7) Such an inquiry may be held on the application of the landholder of any land affected by the right of way, on the application of the holder of any mineral claim entitled to the right of way or on the warden's own motion.

## **212 Right of access to water**

- (1) If land subject to a mineral claim includes the surface of any land, a landholder who is entitled to use the land for stock watering or water drainage purposes is entitled to free and uninterrupted access, for those purposes, to the water in any stream (whether perennial or intermittent) or any lagoon or swamp (whether permanent or temporary) on or adjacent to the land.
- (2) If any dispute arises between the holder of a mineral claim and any such landholder concerning the right of access, either the holder or the landholder may, by written notice lodged with the Minister, request the Minister to determine the dispute.
- (3) Any such dispute is to be referred to a warden for inquiry and report and is to be determined by the Minister on the basis of the warden's report.
- (4) A determination by the Minister under subsection (3) is final.

## **213 Use of water, timber and pasturage etc**

- (1) If land subject to a mineral claim includes the surface of the land, the holder of the mineral claim must not:
  - (a) use water artificially conserved on that land, or
  - (b) fell trees, strip bark or cut timber on that land,otherwise than in accordance with the consent of any landholder of the surface of the land or, if such a landholder refuses consent or attaches unreasonable conditions to the consent, with the approval of a warden.
- (2) If land subject to a mineral claim includes the surface of the land, the holder of the claim must not:
  - (a) depasture horses on the land, or keep on the land any dog that is not under effective control, unless the land is securely fenced, or
  - (b) remove rock or earth from the land, except in connection with mining operations, otherwise than with the consent of the landholder of the surface of the land.

## **214 Joint holders of mineral claims**

If there is more than one holder of a mineral claim, each of the holders is jointly and severally liable for the fulfilment of the obligations arising under this Act in relation to the claim.

## **215 Suspension of conditions**

- (1) The mining registrar may (whether on the application of the holder of the claim or otherwise) suspend any of the conditions of a mineral claim (other than conditions of

the kind referred to in section 175 (4)) for such period, or until the happening of such event, as the mining registrar may determine.

- (2) The suspension of conditions of a mineral claim may be granted unconditionally or subject to such alternative conditions as the mining registrar may consider appropriate.
- (3) The suspension of conditions of a mineral claim takes effect on the date on which written notice of the suspension is served on the holder of the mineral claim or on such later date as may be specified in the notice.
- (4) A condition of a mineral claim that is suspended on the application of the holder of the claim may not be suspended for more than 3 months at a time.
- (5) Section 208 applies to an application under this section in the same way as it applies to an application referred to in section 208 (1).

#### **216 Retention and forfeiture of security deposit**

- (1) A security in relation to a mineral claim may be retained by the Director-General until the Director-General is satisfied that the holder of the claim has fulfilled the obligations arising under this Act in relation to the claim, whether the obligations concerned are required to be fulfilled during or after the period for which the claim remains in force.
- (2) Obligations required to be fulfilled after the period for which the mineral claim remains in force do not cease merely because the claim has ceased to be in force, and the relevant security may be retained under subsection (1) even though the claim is no longer in force.
- (3) Such part of any security in relation to a mineral claim as the Director-General may determine is to be forfeited to the Crown if the holder of the claim fails to fulfil the obligations arising under this Act in relation to the claim.
- (4) Money realised from the forfeiture of any such security may be applied for the purpose of rehabilitating any land in the State affected by prospecting or mining operations.
- (5) The functions of the Director-General under this section may be exercised with or without the benefit of a finding by a court or tribunal that the holder of the mineral claim concerned has failed to fulfil any obligations arising under this Act in relation to the claim.

#### **217 Settlement of certain disputes**

- (1) If any dispute arises between the holders of 2 or more mineral claims concerning their respective rights in relation to any land or minerals, any one or more of them may

refer the dispute to the Minister, who must in turn refer the dispute to a warden for inquiry and report.

- (2) On receipt of the warden's report, the Minister may, by order, give such directions to all or any of the persons in dispute as (having regard to the public interest and the circumstances of the case) seem to the Minister to be just and equitable, and may, by the same or a subsequent order, direct the payment by all or any of the persons in dispute of any costs and expenses incidental to the conduct of the inquiry.
- (3) A person to whom such a direction relates must not contravene the direction.

Maximum penalty: 100 penalty units.

### **218 Minister and certain other persons indemnified in certain circumstances**

The holder of a mineral claim holds the Crown, the Minister and any person employed in the administration of this Act indemnified against all claims against the Crown, the Minister or any such person arising out of:

- (a) anything done or omitted to be done pursuant to, or as a consequence of, the claim, or
- (b) anything done or omitted to be done by the holder of the claim, or by any agent or employee of the holder, on or in respect of any land subject to the claim.

### **218A Records**

- (1) A mining registrar is to cause to be kept a record of:
  - (a) every application for a mineral claim that is received by the mining registrar, and
  - (b) every mineral claim granted, renewed, transferred or cancelled by the mining registrar.
- (2) Such a record must be kept in the form, and must contain the particulars, required by the Director-General.
- (3) The record must be kept available at the mining registrar's office for inspection, free of charge, by members of the public.

### **219 Evidentiary provision**

A certificate that is signed by a mining registrar and that states that on a date, or during a period, specified in the certificate:

- (a) a mineral claim so specified was or was not granted, renewed, transferred or cancelled, or
- (b) a condition so specified was or was not a condition of a mineral claim so specified, or

- (c) a person so specified was or was not the holder of a mineral claim so specified, or
- (d) land so specified was or was not subject to a mineral claim or to a mineral claim so specified,

is admissible in evidence in all courts and is evidence of the fact or facts so stated.

## **Part 10 Opal prospecting licences**

### **Division 1 Opal prospecting areas**

#### **220 Opal prospecting areas**

- (1) The Minister may, by order published in the Gazette, constitute any prescribed land as an opal prospecting area and may, by the same or a subsequent order so published, name the area and fix its boundaries.
- (2) For the purposes of this section, **prescribed land** is:
  - (a) any land held under a lease or licence for grazing purposes under the [Crown Lands Act 1989](#), the [Crown Lands \(Continued Tenures\) Act 1989](#) or the [Western Lands Act 1901](#), or
  - (b) Crown land, or land within a reserve, other than:
    - (i) land that is held under a lease or licence (not being a lease or licence referred to in paragraph (a)) under the [Crown Lands Act 1989](#), the [Crown Lands \(Continued Tenures\) Act 1989](#) or the [Western Lands Act 1901](#), or
    - (ii) land that has been sold or lawfully contracted to be sold, or
    - (iii) land in respect of which a reserve trust has been established under Division 4 of Part 5 of the [Crown Lands Act 1989](#) or that is under the control of a council pursuant to section 48 of the [Local Government Act 1993](#), or
    - (iv) land that is subject to an easement, or
    - (v) any land of a class or description prescribed by the regulations.
- (3) In subsection (2):

**Crown land** has the same meaning as in the [Crown Lands Act 1989](#).

**licence** includes a permissive occupancy.

**reserve** has the same meaning as in Part 5 of the [Crown Lands Act 1989](#).

#### **221 Notification of landholders**

Before constituting any land as an opal prospecting area or adding any land to an existing



opal prospecting area, the Minister must cause written notice to be served on the landholder:

- (a) of the proposal to constitute the land as an opal prospecting area, and
- (b) of the grounds on which the landholder may make an objection to the constitution of the land as an opal prospecting area, and
- (c) of the manner and form in which the landholder may make such an objection.

## **222 Objections**

- (1) A landholder of any land who has been served with a notice of the Minister's proposal to constitute the land as an opal prospecting area, or to add the land to an existing opal prospecting area, may, within 28 days after being so served, make an objection to the proposal on any of the following grounds:
  - (a) on the ground that the land the subject of the proposal is agricultural land, if the landholder is a person who is entitled to use the land for agricultural purposes,
  - (b) on one or more grounds of the kind prescribed by the regulations.
- (2) Such an objection:
  - (a) must be lodged with the Director-General, and
  - (b) must be in the approved form.
- (3) The Minister:
  - (a) must refer such part of an objection as has been made on the ground referred to in subsection (1) (a) to the Director-General of the Department of Agriculture for determination of the question of whether the land concerned is agricultural land, and
  - (b) must refer such part of an objection as has been made on a ground referred to in subsection (1) (b) to a warden for inquiry and report.
- (4) An objection referred to the Director-General of the Department of Agriculture is to be determined in accordance with Schedule 2.
- (5) An objection referred to a warden is to be determined by the Minister on the basis of the warden's report.

## **223 Certain land not to be included in opal prospecting area**

- (1) Land may not be constituted as an opal prospecting area or added to an existing opal prospecting area:
  - (a) if an application for an authority is pending in respect of the land, or

- (b) if an authority is in force in respect of the land, or
  - (c) if the land forms part of a reserve, an exempted area, a mineral allocation area for opal or a colliery holding, or
  - (d) if it has been determined in accordance with Schedule 2 that the land is agricultural land.
- (2) Land that is within a national park, state recreation area, regional park, historic site, nature reserve, state game reserve, Aboriginal area, protected archaeological area, wildlife district, wildlife refuge, wildlife assessment area or Aboriginal place within the meaning of the *National Parks and Wildlife Act 1974* may not be constituted as an opal prospecting area, or added to an existing opal prospecting area, except with the consent of the Minister administering that Act.

#### **224 Opal prospecting blocks**

- (1) The Minister may, by order published in the Gazette, constitute any land within an opal prospecting area as an opal prospecting block.
- (2) Such an order:
  - (a) may give the opal prospecting block a designation and fix its boundaries, and
  - (b) may specify any periods during which an opal prospecting licence may not be granted in respect of the opal prospecting block.
- (3) An opal prospecting block may not exceed:
  - (a) an area of 500 hectares, or
  - (b) such smaller area as is prescribed by the regulations.

#### **225 Map of opal prospecting area to be prepared**

- (1) As soon as practicable after land within an opal prospecting area has been constituted as an opal prospecting block, the Minister:
  - (a) must cause a map to be prepared, on which the following particulars are to be depicted:
    - (i) the boundary of the opal prospecting area,
    - (ii) the boundary of each opal prospecting block within the opal prospecting area,
    - (iii) the name of the opal prospecting area,
    - (iv) the designation of each opal prospecting block within the opal prospecting area,

- (v) the period (not exceeding 5 years) for which an opal prospecting licence over an opal prospecting block within the opal prospecting area may be granted,
  - (vi) any special conditions that are to apply to an opal prospecting licence in relation to the program of work to be carried out in an opal prospecting block, the amount of money to be expended on prospecting and any other matters that the Minister considers should be depicted on the map as special conditions, and
- (b) must cause a copy of the map to be furnished to the mining registrar for each mining division within which the opal prospecting area, or any part of the opal prospecting area, is situated.
- (2) The Minister may from time to time cause such a map to be amended:
- (a) by varying the boundary of the opal prospecting area, or
  - (b) by varying the boundary of one or more opal prospecting blocks within the opal prospecting area, or
  - (c) by varying the period for which an opal prospecting licence over an opal prospecting block within the opal prospecting area may be granted, or
  - (d) by varying the special conditions which are to apply to an opal prospecting licence.
- (3) As soon as practicable after a map is amended, the Minister must cause a copy of the amended map to be furnished to the mining registrar for each mining division within which the relevant opal prospecting area, or any part of the area, is situated.
- (4) A mining registrar to whom a copy of a map is furnished must, during ordinary office hours, keep the copy of the map available, free of charge, for public inspection.

## **Division 2 Opal prospecting licences**

### **226 Applications**

- (1) Any person may apply for an opal prospecting licence.
- (2) An application:
  - (a) must be accompanied by the appropriate lodgment fee, and
  - (b) must be lodged with the mining registrar for the mining division in which the opal prospecting block is situated.
- (3) If more than one application is lodged with a mining registrar in respect of the same opal prospecting block, the applications are to be dealt with in the order in which they are lodged or, if they are lodged simultaneously, in such order as may be prescribed

by the regulations.

### **227 Restrictions on grant of licence**

- (1) An opal prospecting licence may not be granted over an opal prospecting block:
  - (a) to an individual who has not attained the age of 18 years,
  - (b) over which any other opal prospecting licence is in force or has (at any time within the 14 days preceding the day on which the application for the licence was lodged) been in force, or
  - (c) over which a mineral claim is in force, or
  - (d) to a person who is the holder of an opal prospecting licence over any other opal prospecting block in the same mining division, or
  - (e) during a period specified in the order by which the opal prospecting block is constituted as a period during which such a licence may not be granted.
- (2) An opal prospecting licence may not be granted over any part of an opal prospecting block in respect of which an application for a mineral claim is pending.

### **228 Power of mining registrar in relation to applications**

- (1) After considering an application for an opal prospecting licence, the mining registrar:
  - (a) may grant an opal prospecting licence to the applicant, or
  - (b) may refuse the application.
- (2) Without limiting the generality of subsection (1), an application may be refused if the applicant has been convicted of an offence against this Act or the regulations or any other offence relating to mining or minerals.
- (3) If the mining registrar refuses to grant an opal prospecting licence, the mining registrar is to cause notice of the decision, and of the reasons for the decision, to be served on the applicant.
- (4) Before granting an opal prospecting licence, the mining registrar may require the applicant to give and maintain security, in such amount and form as the mining registrar may (in accordance with the regulations) require, for the fulfilment of the obligations arising under this Act in relation to the licence.
- (5) A condition requiring security to be given and maintained by the holder of an opal prospecting licence (**the new licence**) may be expressed so as to require the security given and maintained in relation to some other opal prospecting licence or licences, whether under this section or under section 232A, to be extended to the new licence.

- (6) If the mining registrar proposes to grant an opal prospecting licence to a person on the condition that the person gives and maintains security, the mining registrar may cause a written notice to be served on the person requiring the person to lodge the security with the mining registrar on or before the date specified in the notice.

### **229 Conditions of licence**

An opal prospecting licence is subject to:

- (a) any special conditions that apply to the opal prospecting block over which the licence is granted, and
- (b) any other conditions that the mining registrar considers appropriate to impose.

### **230 Term of licence**

An opal prospecting licence has effect for the period specified on the map in respect of the opal prospecting block concerned.

### **231 Form of licence**

An opal prospecting licence is to be in the approved form and is to include the following particulars:

- (a) the designation of the opal prospecting block over which the licence is granted,
- (b) the period for which the licence is to have effect.

### **232 Rights under licence**

- (1) The holder of an opal prospecting licence may, in accordance with the licence, prospect for opals in the opal prospecting block over which the licence is granted.
- (2) While an opal prospecting licence is in force, no person, other than the holder of the licence, may prospect for opals in any part of the opal prospecting block to which the licence relates.
- (3) Nothing in this section prevents the holder of a mineral claim from exercising, in relation to any land within an opal prospecting block, any right conferred by the claim.
- (4) An application for a mineral claim is a nullity to the extent to which it relates to any part of an opal prospecting block in respect of which any person other than the applicant holds an opal prospecting licence.

### **232A Amendment of opal prospecting licence in respect of certain conditions**

- (1) A mining registrar may amend an opal prospecting licence that does not contain a condition requiring the holder to give and maintain security for the fulfilment of the obligations of the holder arising under this Act so as to include such a condition.

- (2) A mining registrar may amend an opal prospecting licence that contains such a condition so as to vary the amount and form of the security that is required to be given and maintained.
- (3) A mining registrar may amend any 2 or more opal prospecting licences held by the same holder that contain such a condition so as to require a single security to be given and maintained.
- (4) The amendment of an opal prospecting licence takes effect on the date on which written notice of the amendment is served on the holder of the licence or on such later date as may be specified in the notice.

### **233 Grounds of cancellation**

- (1) A mining registrar may cancel an opal prospecting licence:
  - (a) if the holder of the licence requests the mining registrar to cancel the licence, or
  - (b) if the holder of the licence contravenes any condition of the licence or any provision of this Act or the regulations, whether or not the holder is prosecuted or convicted of any offence arising from the contravention, or
  - (c) if the holder of the licence fails to comply with the requirements of any agreement or assessment under Part 13 in relation to the payment of compensation, or
  - (d) if the holder of the licence is convicted of any offence relating to mining or minerals, or
  - (e) if the mining registrar is ordered by a Warden's Court to cancel the licence.
- (2) A request referred to in subsection (1) (a) must be lodged with the mining registrar for the mining division within which the opal prospecting block is situated.

### **234 Cancellations**

- (1) Before cancelling an opal prospecting licence on a ground referred to in section 233 (1) (b), (c) or (d), the mining registrar:
  - (a) must cause written notice of the proposed cancellation, and of the grounds of the proposed cancellation, to be served on the holder of the licence, and
  - (b) must give the holder of the licence a reasonable opportunity to make representations with respect to the proposed cancellation, and
  - (c) must take any such representations into consideration.
- (2) Cancellation of an opal prospecting licence takes effect on the date on which written notice of the cancellation is served on the holder of the licence or on such later date as is specified in the notice.

- (3) Cancellation of an opal prospecting licence does not affect any liability incurred by the holder of the licence before the cancellation took effect.

## **Division 3 Miscellaneous**

### **235 Certain claims for damages prohibited**

No action lies against the Crown, the Minister or any person administering this Act in respect of any injury or loss suffered or incurred in relation to the exercise of any right conferred by an opal prospecting licence.

#### **235A Records**

- (1) A mining registrar is to cause to be kept a record of:
  - (a) every application for an opal prospecting licence that is received by the registrar, and
  - (b) every opal prospecting licence granted or cancelled by the mining registrar.
- (2) Such a record must be kept in the form, and must contain the particulars, required by the Director-General.
- (3) The record must be kept available at the mining registrar's office for inspection, free of charge, by members of the public.

#### **235B Retention and forfeiture of security deposit**

- (1) A security in relation to an opal prospecting licence may be retained by the Director-General until the Director-General is satisfied that the holder of the licence has fulfilled the obligations arising under this Act in relation to the licence, whether the obligations concerned are required to be fulfilled during or after the period for which the licence remains in force.
- (2) Obligations required to be fulfilled after the period for which the opal prospecting licence remains in force do not cease merely because the licence has ceased to be in force, and the relevant security may be retained under subsection (1) even though the licence is no longer in force.
- (3) Such part of any security in relation to an opal prospecting licence as the Director-General may determine is to be forfeited to the Crown if the holder of the licence fails to fulfil the obligations arising under this Act in relation to the licence.
- (4) Money realised from the forfeiture of any such security may be applied for the purpose of rehabilitating any land in the State affected by prospecting or mining operations.
- (5) The functions of the Director-General under this section may be exercised with or

without the benefit of a finding by a court or tribunal that the holder of the opal prospecting licence concerned has failed to fulfil any obligations arising under this Act in relation to the licence.

### **236 Evidentiary provision**

A certificate that is signed by a mining registrar and that states that on a date, or during a period, specified in the certificate:

- (a) an opal prospecting licence so specified was or was not granted, or
- (b) a condition so specified was or was not a condition the subject of an opal prospecting licence so specified, or
- (c) a person so specified was or was not the holder of an opal prospecting licence so specified, or
- (d) an opal prospecting block was or was not subject to an opal prospecting licence or to an opal prospecting licence so specified,

is admissible in evidence in all courts and is evidence of the fact or facts so stated.

## **Part 11 Protection of the environment**

### **Division 1 Environment to be considered before grant of authorities or mineral claims**

#### **237 Need to protect natural resources etc to be taken into account**

- (1) In deciding whether or not to grant an authority or mineral claim, the Minister or mining registrar is to take into account the need to conserve and protect:
  - (a) the flora, fauna, fish, fisheries and scenic attractions, and
  - (b) the features of Aboriginal, architectural, archaeological, historical or geological interest,in or on the land over which the authority or claim is sought.
- (2) The Minister or mining registrar may cause such studies (including environmental impact studies) to be carried out as the Minister or mining registrar considers necessary to enable such a decision to be made.

### **Division 2 Conditions for protecting the environment**

#### **238 Inclusion of conditions for protecting the environment**

The conditions subject to which an authority or mineral claim is granted or renewed must, if the Minister or mining registrar considers it appropriate, include conditions relating to



the conservation and protection of:

- (a) the flora, fauna, fish, fisheries and scenic attractions, and
- (b) the features of Aboriginal, architectural, archaeological, historical or geological interest,

in or on the land subject to the authority or claim.

### **239 Rehabilitation etc of area damaged by mining**

- (1) The conditions subject to which an authority or mineral claim is granted or renewed may include such conditions relating to:
  - (a) the rehabilitation, levelling, regrassing, reforesting or contouring of such part of the land over which the authority or claim has effect as may have been damaged or adversely affected by prospecting operations or mining operations, and
  - (b) the filling in, sealing or fencing off of excavations, shafts and tunnels,as may be prescribed by the regulations or as the Minister or mining registrar may, in any particular case, determine.
- (1A) The Minister or mining registrar may, in any particular case, determine that an authority or mineral claim be granted or renewed subject to conditions relating to the afforestation (including for carbon sequestration within the meaning of section 87A of the [Conveyancing Act 1919](#) and related environmental purposes) of such part of the land over which the authority or claim has effect as may have been damaged or adversely affected by prospecting operations or mining operations.
- (1B) However, a condition referred to in subsection (1A) may only be imposed at the request of the applicant for, or holder of, the authority or claim.
- (2) The Minister or mining registrar may amend an authority or mineral claim:
  - (a) that does not contain conditions of the kind that may be imposed under this Division, or
  - (b) that does contain such conditions, being conditions that the Minister or mining registrar considers are inadequate,so as to include conditions or further conditions of that kind or so as to alter any such conditions.
- (3) Any conditions of the kind referred to in subsection (1) (a) or (1A) are to be in a form approved by the Commissioner of the Soil Conservation Service and after consultation with the Director of National Parks and Wildlife.
- (4) An amendment takes effect on the date on which notice of the amendment is served

on the holder of the authority or mineral claim or on such later date as may be specified in the notice.

### **Division 3 Directions to rehabilitate land**

#### **240 Direction to comply with conditions**

- (1) The Minister may cause to be served on a person who is or has been the holder of an authority, mineral claim or opal prospecting licence a written notice directing the person to take specified steps, within a specified time, to give effect to any conditions included in the authority, claim or licence under Division 2.
- (2) A person on whom such a direction has been served must not fail to comply with the direction.

Maximum penalty: 200 penalty units.

#### **241 Rehabilitation by Minister at holder's expense**

- (1) If a person on whom a direction is served under this Division does not comply with the direction, the Minister may cause to be taken any of the steps specified in the notice in which the direction was given.
- (2) Any costs or expenses incurred by the Crown under this section are a debt due to the Crown by the person on whom the direction was served and are recoverable in a court of competent jurisdiction.

#### **242 Recovery of costs of rehabilitation**

- (1) In any proceedings for the recovery of a debt due to the Crown under this Division, a certificate that is signed by the Minister and that states that a specified amount is the amount of the debt so due is admissible in evidence in all courts and is evidence of that fact.
- (2) A debt due to the Crown under this Division is recoverable whether or not the person by whom it is due is prosecuted or convicted of an offence under this Division.

### **Division 4 Directions to remove mining plant**

#### **243 Application of Division**

This Division applies to land that ceases to be subject to an authority or mineral claim.

#### **244 Definitions**

In this Division:

**mining plant** means any building, plant, machinery, equipment, tools or other property that has been used for mining or mining purposes, whether or not affixed to land, but

does not include any timber or other material used or applied in the construction or support of any shaft, drive, gallery, adit, terrace, race, dam or other mining work.

**prescribed period**, in relation to land that has ceased to be subject to an authority or mineral claim, means the period of 6 months from the date on which the land ceased to be subject to the authority or claim or such longer period as the Minister may, in any particular case, allow.

#### **245 Clearing away of mining plant**

- (1) The holder of an authority or mineral claim over land that ceases to be subject to the authority or claim:
  - (a) may, within the prescribed period, and
  - (b) must, if directed to do so by the Minister by notice in writing, within the period specified in the notice,  
  
cause to be removed from the land any mining plant brought onto, or erected on, that land in the course of mining operations carried out under the authority or claim.
- (2) The Minister may give a direction under this section even though the prescribed period has not expired.

#### **246 Sale of mining plant**

- (1) If mining plant is not duly removed under this Division, the Minister may direct that the mining plant be sold by public auction.
- (2) Any mining plant remaining unsold after the public auction held may be sold by private treaty.
- (3) The following amounts are to be deducted from the proceeds of any such sale:
  - (a) the costs of the sale and of any matter incidental to or connected with the sale,
  - (b) the costs of removing from the land concerned any mining plant remaining unsold after the public auction,
  - (c) any amount owing in respect of compensation for compensable loss within the meaning of Division 1 of Part 13,
  - (d) any other amount that the Director-General certifies to be a deductible amount.
- (4) Any balance remaining is to be paid to the Chief Commissioner of Unclaimed Money as unclaimed money, and section 10 (2) and Part 4 of the *Unclaimed Money Act 1995* apply to the balance so paid as they would have applied had the balance been paid to the Chief Commissioner under section 10 of that Act.

- (5) If the proceeds of sale are less than the amounts to be deducted, the proceeds are to be applied in meeting those amounts in such manner as the Minister directs.

## **Part 12 Powers of entry**

### **Division 1 Entry by inspectors**

#### **247 Powers of inspectors**

- (1) For the purposes of this Act, an inspector:
- (a) may enter any land the subject of an authority or a mineral claim, or an application for an authority or a mineral claim, and any land in an opal prospecting area, and
  - (b) may inspect that land and any mine, work, operation, building or structure on that land, and
  - (c) may remove samples of ore or other mineral deposits from that land.
- (2) An inspector may direct the person in charge of any mine, work, operation, building or structure on any such land to provide the inspector with all reasonable facilities and assistance.
- (3) A person to whom such a direction is given must not fail to comply with the direction.  
Maximum penalty: 100 penalty units.

#### **247A Powers of royalty officers**

- (1) For the purposes of this Act, a royalty officer:
- (a) may enter:
    - (i) any premises occupied by the holder of an authority or mineral claim, or
    - (ii) any premises where the royalty officer reasonably believes documents, of the kind referred to in paragraph (b), of or relating to the holder are kept, and
  - (b) may inspect, and take extracts or copies from, any documents that are found on those premises and that appear to the royalty officer to relate to minerals recovered under the authority or mineral claim.
- (2) A royalty officer may direct the person in charge of any such premises to provide the royalty officer with all reasonable facilities and assistance.
- (3) A person to whom such a direction is given must not fail to comply with the direction.  
Maximum penalty: 100 penalty units.

## **248 Certificates of authority**

- (1) For the purpose of enabling an inspector or royalty officer to exercise a power conferred by this Division, the Minister may issue the inspector or royalty officer with a certificate of authority.
- (2) A certificate of authority must be in the form prescribed by the regulations, must be signed by the person by whom it is issued and must include the following particulars:
  - (a) a statement to the effect that it has been issued under this Act,
  - (b) the name of the person to whom it has been granted,
  - (c) the nature of the powers it confers.

## **Division 2 Entry by other persons**

### **249 Entry on land for rehabilitation purposes etc**

- (1) The Minister may grant a permit to any person to enter any land so as to enable the person:
  - (a) to carry out any rehabilitation work in accordance with a direction in force under section 240, or
  - (b) to remove any mining plant from any land in accordance with a direction under section 245 or as a result of a sale conducted under section 246.
- (2) The holder of a permit under this section, and any employee or agent of the holder, may, in accordance with the permit:
  - (a) enter the land to which the permit relates, and
  - (b) do on that land all such things as are reasonably necessary to achieve the purpose for which the permit is granted.

### **250 Surveys and ore sampling**

- (1) The Minister may grant a permit to any mining surveyor, or any officer of the Department, to enter any land for any of the following purposes:
  - (a) the carrying out of any geological, geophysical, geochemical or other survey of the land,
  - (b) the removal of soil, rock, mineral or ore samples from the land.
- (2) The holder of a permit under this section, and any employee, agent or assistant of the holder, may, in accordance with the permit:
  - (a) enter the land to which the permit relates, and

- (b) do on that land all such things as are reasonably necessary to achieve the purpose for which the permit was granted.

## **251 (Repealed)**

## **252 Environmental assessment**

- (1) A warden may, on the application of a person who proposes to undertake an assessment (for the purposes of this Act or the *Environmental Planning and Assessment Act 1979*) of the likely effect on the environment of the activities to be carried out under an authority or a mineral claim, grant a permit to the applicant to enter any land so as to enable the person to undertake the assessment.
- (2) For the purpose of determining an application for a permit, a warden may hold an inquiry into any matter arising under, or in connection with, the application.
- (3) The holder of a permit under this section, and any employee or agent of the holder, may, in accordance with the permit:
  - (a) enter the land to which the permit relates, and
  - (b) do on that land all such things as are reasonably necessary to carry out the assessment to which the permit relates.
- (4) The rights conferred by the permit may not be exercised within land in an exempted area except with the consent of the Minister.
- (5) Such consent may be given unconditionally or subject to conditions.
- (6) In the case of land within a national park, state recreation area, regional park, historic site, nature reserve, state game reserve, Aboriginal area, protected archaeological area, wildlife district, wildlife refuge, wildlife management area or Aboriginal place within the meaning of the *National Parks and Wildlife Act 1974*, such consent may not be given except with the concurrence of the Minister administering that Act.
- (7) In the case of land within a marine park under the *Marine Parks Act 1997*, such a consent may not be given except with the concurrence of the relevant Ministers within the meaning of that Act.

## **253 Encroachments by mining works**

- (1) A warden may, on the application of a person having the care and management of a public road or railway, grant a permit to a surveyor or other person to enter and inspect any land the subject of an authority or a mineral claim so as to enable the person to ascertain whether any work carried out on that land:
  - (a) is encroaching on that road or railway, or
  - (b) is likely to cause injury or damage to that road or railway or to any building or

structure adjacent to that road or railway.

- (2) A warden may, on the application of a landholder of land adjoining land the subject of an authority or a mineral claim, grant a permit to a surveyor or other person to enter and inspect that land so as to enable the person to ascertain whether any work carried out on that land is encroaching on the adjoining land.
- (3) The holder of a permit under this section, and any employee or agent of the holder, may, in accordance with the permit:
  - (a) enter and inspect the land to which the permit relates, and
  - (b) survey that land or any part of that land, and
  - (c) make plans and sections of that land or any part of that land and of any buildings, structures or works situated on that land.

#### **254 Permit to enter land**

- (1) A mining registrar may grant a permit to any person to enter any land so as to enable the person to mark out a proposed mineral claim or to comply with the conditions of a mineral claim.
- (2) The holder of a permit under this section, and any employee or agent of the holder, may, in accordance with the permit:
  - (a) enter the land to which the permit relates, and
  - (b) do all such things as are reasonably necessary for the purpose of marking out a proposed mineral claim or of complying with the conditions of any mineral claim.
- (3) A permit under this section may not be granted over any land:
  - (a) on which, or within the prescribed distance of which, is situated a dwelling-house that is the principal place of residence of the person occupying it or a woolshed or shearing shed that is in use as such, or
  - (b) on which, or within the prescribed distance of which, is situated any garden, or
  - (c) on which is situated any improvement (being a substantial building, dam, reservoir, contour bank, graded bank, levee, water disposal area, soil conservation work or other valuable work or structure) other than an improvement constructed or used for mining purposes and for no other purposes.
- (4) The **prescribed distance** is:
  - (a) 200 metres (or, if a greater distance is prescribed by the regulations, the greater distance) for the purposes of subsection (3) (a), and

- (b) 50 metres (or, if a greater distance is prescribed by the regulations, the greater distance) for the purposes of subsection (3) (b).

### **Division 3 Exercise of power of entry**

#### **255 Restriction of power of entry**

- (1) A power conferred by this Act to enter any land, or to do anything on any land, may not be exercised unless the inspector, royalty officer or other person proposing to exercise the power:
  - (a) is in possession of the relevant certificate of authority or permit, and
  - (b) gives reasonable notice to the landholder of intention to exercise the power, unless the giving of notice would defeat the purpose for which it is intended to exercise the power, and
  - (c) exercises the power at a reasonable time, unless the power is being exercised in an emergency, and
  - (d) produces the certificate of authority or permit if required to do so by the landholder, and
  - (e) uses no more force than is reasonably necessary to effect the entry or to do the thing authorised by the certificate of authority or permit.
- (2) If damage is caused by an inspector, royalty officer or other person exercising a power of entry under this Part, the landholder of the land concerned is entitled to payment from the Crown of a reasonable amount of compensation unless the landholder obstructed, hindered or restricted the inspector, royalty officer or other person in the exercise of the power.

#### **256 Premises used for dwelling purposes**

Nothing in this Part enables an inspector, royalty officer or other person to enter any premises or part of premises that are being used as a dwelling otherwise than with the consent of the occupier of the premises or part.

#### **257 Obstruction**

A person must not, without reasonable excuse, obstruct, hinder or restrict an inspector, royalty officer or other person in the exercise of the powers conferred on the inspector, royalty officer or other person by this Part.

Maximum penalty: 100 penalty units.



## **Division 4 Miscellaneous**

### **258 Conditions of permit**

A permit is subject to such conditions as are specified in the permit.

### **259 Term of permit**

Unless sooner cancelled, a permit remains in force for such period not exceeding:

- (a) except as provided by paragraph (b), 12 months from the date it is granted, or
- (b) in the case of a permit to mark out a proposed mineral claim, 14 days from the date it is granted,

as is specified in the permit.

### **260 Form of permit**

A permit must be in the form prescribed by the regulations, must be signed by the person by whom it is granted and must include the following particulars:

- (a) a statement to the effect that it has been granted under this Act,
- (b) the name of the person to whom it has been granted,
- (c) the nature of the powers it confers,
- (d) a description of the land over which it is granted,
- (e) the conditions to which it is subject,
- (f) the period for which it is to have effect.

### **261 Cancellation of permit**

- (1) The Minister may, for such reason as the Minister thinks fit, cancel a permit that has been granted by the Minister.
- (2) A warden may, for such reason as the warden thinks fit, cancel a permit that has been granted by the warden.
- (3) A mining registrar may, for such reason as the mining registrar thinks fit, cancel a permit that has been granted by the mining registrar.

## Part 13 Compensation

### Division 1 Prospecting and mining

#### 262 Definition

In this Division:

**compensable loss** means loss caused, or likely to be caused, by:

- (a) damage to the surface of land, to crops, trees, grasses or other vegetation (including fruit and vegetables) or to buildings, structures or works, being damage which has been caused by or which may arise from prospecting or mining operations, or
- (b) deprivation of the possession or of the use of the surface of land or any part of the surface, or
- (c) severance of land from other land of the landholder, or
- (d) surface rights of way and easements, or
- (e) destruction or loss of, or injury to, disturbance of or interference with, stock, or
- (f) damage consequential on any matter referred to in paragraph (a)-(e),

but does not include loss that is compensable under the [Mine Subsidence Compensation Act 1961](#).

#### 263 Compensation arising under exploration licence

- (1) On the granting of an exploration licence, a landholder of any land (whether or not subject to the licence) becomes entitled to compensation for any compensable loss suffered, or likely to be suffered, by the landholder as a result of the exercise of the rights conferred by the licence or by an access arrangement in respect of the licence.
- (2) The holder of an exploration licence may agree with a landholder as to the amount of compensation payable, but an agreement reached is not valid unless it is in writing, signed by or on behalf of the parties to the agreement.
- (3) Such of the provisions of an access arrangement (whether or not in writing) as relate to compensation have effect as an agreement for the purposes of this section.
- (4) Payment of compensation under this section (other than compensation payable under an access arrangement agreed on as referred to in section 140 (a)) is taken, for the purposes of any security given by the licensee, to be an obligation under the licence.

#### 264 Compensation arising under assessment lease

- (1) On the granting of an assessment lease, a landholder of any land (whether or not

subject to the lease) becomes entitled to compensation for any compensable loss suffered, or likely to be suffered, by the landholder as a result of the exercise of the rights conferred by the lease or by an access arrangement in respect of the lease.

- (2) The holder of an assessment lease may agree with a landholder as to the amount of compensation payable, but an agreement reached is not valid unless it is in writing, signed by or on behalf of the parties to the agreement.
- (3) Such of the provisions of an access arrangement (whether or not in writing) as relate to compensation have effect as an agreement for the purposes of this section.
- (4) Payment of compensation under this section (other than compensation payable under an access arrangement agreed on as referred to in section 140 (a)) is taken, for the purposes of any security given by the lessee, to be an obligation under the lease.

### **265 Compensation arising under mining lease**

- (1) On the granting of a mining lease, a landholder of any land (whether or not subject to the lease) becomes entitled to compensation for any compensable loss suffered, or likely to be suffered, by the landholder as a result of the exercise of the rights conferred by the lease.
- (2) The holder of a mining lease may agree with a landholder as to the amount of compensation payable, but an agreement reached is not valid unless it is in writing, signed by or on behalf of the parties to the agreement.
- (3) If a valid agreement is not entered into under this section within such period as may be prescribed by the regulations, the holder of a mining lease, or a landholder of land, may apply to a warden to assess the amount of compensation payable, and a warden is to assess the compensation payable.
- (4) The holder of a mining lease is not authorised to exercise any rights under the lease on the surface of any part of the mining area unless the amount of any compensation payable to a landholder under subsection (1) in respect of that part of the mining area is the subject of a valid agreement or of an assessment made by a warden.

### **266 Compensation arising under mineral claim**

- (1) On the granting of a mineral claim, a landholder becomes entitled to compensation for any compensable loss suffered, or likely to be suffered, by the landholder as a result of the exercise of the rights conferred by the claim.
- (2) The compensation payable under this section consists of:
  - (a) such amounts as may be determined by agreement between the holder of the mineral claim and any landholder (other than a landholder referred to in subsection (5)), and

- (b) such amounts as, in default of such an agreement, may be assessed by a warden on application made by the holder of the mineral claim or any landholder (other than a landholder referred to in subsection (5)), and
  - (c) such amounts as may be payable according to an order referred to in subsection (5).
- (3) Instead of assessing compensation in relation to a particular mineral claim, a warden may assess compensation in relation to:
  - (a) all mineral claims within a mining division, or
  - (b) any particular group of mineral claims within a mining division,and, in that event, may assess compensation as a fixed amount per mineral claim or as an amount per mineral claim to be calculated at a fixed rate.
- (4) The holder of a mineral claim must not exercise any right conferred by the claim unless:
  - (a) the holder has served notice of the holder's intention to exercise such rights on any person entitled to compensation under this section, and
  - (b) in respect of every landholder (other than a landholder referred to in subsection (5)):
    - (i) there is in place an agreement referred to in subsection (2) (a), or
    - (ii) any amounts referred to in subsection (2) (a) and (b) have been paid into a Warden's Court or to the person entitled to them, and
  - (c) the holder has paid into a Warden's Court an amount prescribed by or determined in accordance with the regulations.
- (5) An amount paid into court as referred to in subsection (4) (c) is to be held by the court for payment of compensation, at the order of the court, to any landholder who (whether because he or she could not then be identified, or for any other reason) could not, at the time the holder of the mineral claim began to exercise any rights under the claim, establish an entitlement to compensation under this section, but who subsequently does so.
- (6) Section 274 applies to an amount paid as referred to in subsection (4) (c):
  - (a) as if it were an amount assessed by the warden, and
  - (b) as if the reference, in section 274 (2), to the expiration of 6 months were a reference to the expiration of 5 years, and
  - (c) as if a reference, in section 274 (2) or (3), to the expiration of 12 months were a

reference to the expiration of 5 years and 6 months.

### **267 Compensation arising under opal prospecting licence**

- (1) On the granting of an opal prospecting licence, a landholder becomes entitled to compensation for any compensable loss suffered, or likely to be suffered, by the landholder as a result of the exercise of the rights conferred by the licence.
- (2) The compensation payable under this section consists of:
  - (a) such amounts as may be determined by agreement between the holder of the opal prospecting licence and any landholder (other than a landholder referred to in subsection (5)), and
  - (b) such amounts as, in default of such an agreement, may be assessed by a warden on application made by the holder of the opal prospecting licence or any landholder (other than a landholder referred to in subsection (5)), and
  - (c) such amounts as may be payable according to an order referred to in subsection (5).
- (3) Instead of assessing compensation in relation to a particular opal prospecting licence, a warden may assess compensation in relation to:
  - (a) all opal prospecting licences within a mining division, or
  - (b) any particular group of opal prospecting licences within a mining division,and, in that event, may assess compensation as a fixed amount per licence or as an amount per licence to be calculated at a fixed rate.
- (4) The holder of an opal prospecting licence must not exercise any right conferred by the licence unless:
  - (a) the holder has served notice of the holder's intention to exercise such rights on any person entitled to compensation under this section, and
  - (b) in respect of every landholder (other than a landholder referred to in subsection (5)):
    - (i) there is in place an agreement referred to in subsection (2) (a), or
    - (ii) any amounts referred to in subsection (2) (a) and (b) have been paid into a Warden's Court or to the person entitled to them, and
  - (c) the holder has paid into a Warden's Court an amount prescribed by or determined in accordance with the regulations.
- (5) An amount paid into court as referred to in subsection (4) (c) is to be held by the court

for payment of compensation, at the order of the court, to any landholder who (whether because he or she could not then be identified, or for any other reason) could not, at the time the holder of the opal prospecting licence began to exercise any rights under the licence, establish an entitlement to compensation under this section, but who subsequently does so.

- (6) Section 274 applies to an amount paid as referred to in subsection (4) (c):
- (a) as if it were an amount assessed by the warden, and
  - (b) as if the reference, in section 274 (2), to the expiration of 6 months were a reference to the expiration of 5 years, and
  - (c) as if a reference, in section 274 (2) or (3), to the expiration of 12 months were a reference to the expiration of 5 years and 6 months.

**267A Effect of determination and payment of compensation under provisions of Commonwealth Native Title Act**

- (1) If, between the Government party, an applicant for an exploration licence, assessment lease, mining lease, mineral claim or opal prospecting licence as a grantee party and a native title party, compensation is agreed on or determined under Subdivision M or P of Division 3 of Part 2 of the Commonwealth Native Title Act, the compensation so agreed on or determined is taken:
- (a) to be validly agreed on or assessed for the purposes of whichever is relevant of section 263, 264, 265, 266 or 267 as if the applicant for the exploration licence, assessment lease, mining lease, mineral claim or opal prospecting licence as the grantee party was the holder under this Act of the licence, lease or claim concerned and the native title party was the landholder of the land concerned, and
  - (b) to be paid under and for the purposes of whichever is relevant of those sections when it is paid in accordance with section 52 of the Commonwealth Native Title Act.
- (2) In this section, **Government party**, **grantee party** and **native title party** have the same meanings as they have in the Commonwealth Native Title Act.

**268 Compensation payable on transfer of certain authorities etc**

If an authority or mineral claim over any land is transferred from a person who is a landholder of the land to a person who is not a landholder of the land, the provisions of this Act relating to compensation apply to the person to whom the authority or claim is transferred.

## Division 2 Environmental assessment

### 269 Definitions

In this Division:

**compensable loss** means loss caused, or likely to be caused, by:

- (a) interference with the use of land, or
- (b) damage to land, to any crops, trees, grasses or other vegetation on the land or to any buildings, structures and works on the land, or
- (c) damage consequential on any matter referred to in paragraph (a) or (b),

but does not include loss that is compensable under the [Mine Subsidence Compensation Act 1961](#).

**environmental assessment permit** means a permit granted under section 252.

### 270 Compensation arising under environmental assessment permit

- (1) If the holder of an environmental assessment permit enters any land under the authority of the permit, landholders become entitled to compensation from the holder of the permit for any compensable loss they suffer as a result of the exercise of the rights conferred by the permit.
- (2) The amount of compensation payable under this section is such amount as may be assessed by a warden on the application of the holder of the environmental assessment permit, the Crown or the landholder concerned.
- (3) Nothing in this section affects any remedy available to any person whose lands are entered pursuant to a power conferred by or under Part 12.

## Division 3 Procedure for assessing compensation

### 271 Definitions

In this Division:

**authorisation** means an exploration licence, assessment lease, mining lease, mineral claim, opal prospecting licence or environmental assessment permit.

**compensable loss**, in relation to the assessment of compensation payable under Division 1 or 2, has the same meaning as it has in that Division.

### 272 Assessment of compensation

- (1) The assessment of compensation payable under this Part:

- (a) must be made in the manner prescribed by the regulations, and
  - (b) must not be made until notice in the approved form:
    - (i) has been published in a newspaper circulating generally in the State and in one or more newspapers circulating in the locality in which the land concerned is situated, or
    - (ii) has been served on each person who appears to a warden to be interested in the assessment, and
  - (c) must not exceed in amount the market value (for other than mining purposes) of the land and the buildings, structures and works situated on the land.
- (2) Any compensation agreed on or determined under Subdivision M or P of Division 3 or Division 5 of Part 2 of the Commonwealth Native Title Act for essentially the same act as an act in respect of which compensation is to be assessed under this Part must be taken into account in the assessment of compensation for the act under this Part.

### **273 Payment into court**

The total amount of compensation assessed under this Division is to be paid into a Warden's Court at such times, and in respect of such periods, as is specified in the order of assessment.

### **274 Payment out of court**

- (1) As compensable loss occurs, money held in a Warden's Court by way of compensation is to be paid out of a Warden's Court, on the application of any person entitled to the compensation, in accordance with the agreement or order under which it is payable.
- (2) If, after the expiration of 6 months, and before the expiration of 12 months, from the date on which the authorisation concerned ceases to have effect, the whole or any part of an amount paid into court under this section has neither been paid out nor ordered to be paid out, the person who paid the amount into court may apply to a warden for payment out to that person of the whole or any part of that amount, and a warden may order the payment to be made.
- (3) If, after the expiration of 12 months from the date on which the authorisation concerned ceases to have effect, the whole or any part of an amount paid into court under this section has neither been paid out nor ordered to be paid out, a warden may cause the whole or any part of that amount to be paid into the Treasury for payment into the Consolidated Fund.

### **275 Procedure of court in making assessment**

In making an assessment of compensation under this Division, a warden:



- (a) may make the assessment at any time and at any place, and
- (b) may make the assessment in the absence of any person who appears to be interested in the assessment, if the warden is satisfied that the person has been served with a notice in accordance with this Part, and
- (c) may adjourn the hearing of the matter to any time and any place, subject to such terms as to costs or otherwise as the warden thinks fit, and
- (d) has and may exercise the powers of a Warden's Court.

**276 Additional assessment**

- (1) If, after an assessment of compensation has been made, it is proved to the satisfaction of a warden:

- (a) that the whole of the amount paid into court under this Part has been duly paid out, and
- (b) that further compensable loss has been caused, or is likely to be caused, in respect of the land to which the assessment relates, or to other land,

the warden must, on the application of any of the parties concerned, assess that loss and order that the amount so assessed be paid by the holder of the authorisation to which the assessment relates, within the time and to the persons specified in the order.

- (2) If it is proved to the satisfaction of a warden:

- (a) that an access arrangement does not make provision for or with respect to compensation, and
- (b) that compensable loss has been caused, or is likely to be caused, in respect of the land to which the arrangement relates,

the warden must, on the application of any of the parties concerned, assess that loss and order that the amount so assessed be paid by the holder of the authorisation to which the assessment relates, within the time and to the persons specified in the order.

- (3) If it is proved to the satisfaction of a warden:

- (a) that the whole of the amount assessed by or in accordance with an access arrangement determined by an arbitrator as referred to in section 140 (b) has been paid in accordance with the arrangement, and
- (b) that further compensable loss has been caused, or is likely to be caused, in respect of the land to which the assessment relates or to other land,

the warden must, on the application of any of the parties concerned, assess that loss and order that the amount so assessed be paid by the holder of the authorisation to which the assessment relates, within the time and to the persons specified in the order.

- (4) A warden's decision on such an application has effect as an assessment of compensation under this Division.
- (5) In making an assessment of compensation, a warden must have regard to any agreement between the parties concerned as to the compensation payable.

### **277 Directions to furnish names and addresses**

- (1) If a warden considers that a landholder of any land may be entitled to compensation under this Part, the warden may, by instrument in writing served on the holder of the authorisation concerned, direct the holder to notify the warden of the name and address of the landholder.
- (2) An instrument served under this section must specify a date on or before which compliance with the direction contained in the instrument is required.

### **278 Appeals**

- (1) The provisions of Divisions 3 and 4 of Part 15 apply to and in respect of an assessment made by a warden under this Part, and to and in respect of a person dissatisfied with such an assessment, as if the assessment were a decision of a Warden's Court and the person were a party to a complaint or proceeding dissatisfied with the decision.
- (2) No appeal lies against an assessment of compensation made in relation to a particular class of mineral claims or opal prospecting licences, as referred to in section 266 (3) or 267 (3).
- (3) Subsection (2) does not prevent an appeal being made against an assessment of further compensation under section 276 merely because the original compensation was payable under an assessment of compensation made in relation to a particular class of mineral claims or opal prospecting licences, as referred to in section 266 (3) or 267 (3).

## **Division 4 Consolidated mining leases**

### **279 Compensation not payable on consolidation**

- (1) Compensation is not payable under this Part in respect of the grant of a consolidated mining lease.
- (2) Any compensation to which a person is entitled under this Part in respect of the grant of an existing lease that is consolidated under Part 6 is to be assessed or agreed on

and paid as if the existing lease had not been consolidated.

### **280 Compensation already due not affected by consolidation**

- (1) Except as provided by this Division, any compensation assessed, agreed on or paid under this Part in respect of an existing lease that is consolidated under Part 6 is not affected by the consolidation of the existing lease and is to be dealt with as if the existing lease had not been consolidated.
- (2) If any compensation is paid into court under this Part in respect of an existing lease that is consolidated under Part 6, the date on which the existing lease ceases to have effect is taken, for the purposes of this Part, to be the date on which the consolidated mining lease ceases to have effect.

### **281 Compensation for further loss**

- (1) If:
  - (a) compensation has been assessed or agreed on under this Part in respect of an existing lease that is consolidated under Part 6, and
  - (b) the date of expiry of the consolidated mining lease is later than the date on which the existing lease would have expired if it had not been consolidated, and
  - (c) it is proved to the satisfaction of a warden that:
    - (i) further loss has been caused in respect of the land to which the assessment or agreement related, or in respect of other land, after the date on which the existing lease would have so expired, being compensable loss within the meaning of Division 1, and
    - (ii) in the case of an assessment, the whole of the amount paid into court pursuant to this Part has been duly paid out,

a warden is to assess the loss in accordance with Division 3 and order that the amount so assessed be paid by the holder of the consolidated mining lease to which the assessment relates, within the time and to the persons specified in the order.

- (2) The provisions of section 276 have effect with respect to a consolidated mining lease even though the assessment referred to in that section relates to an existing lease that has been consolidated under Part 6.

## **Division 5 Native title compensation payable by holders of authorities**

### **281A Application of Division**

This Division applies to the grant, renewal or variation of an authority under this Act after the commencement of this Division.

### **281B Compensation payable by holders of authority**

If compensation is payable under section 24MD or 24NA of the Commonwealth Native Title Act in respect of an act to which this Division applies that is attributable to the State, the holder of the authority concerned at the time of the grant, renewal or variation is declared, in accordance with section 24MD (4) (b) (i) or 24NA (as the case requires) of that Act, to be liable to pay the compensation.

## **Part 14 Royalty**

### **Division 1 Publicly owned minerals**

#### **282 Liability to pay royalty**

- (1) The holder of a mining lease is liable to pay royalty to the Minister on publicly owned minerals recovered under the lease.
- (2) Royalty that is payable to the Minister under a condition of a mining lease (being a condition of the kind referred to in section 70 (4)) is payable in addition to, and not instead of, royalty payable under this Division.

#### **283 Rate of royalty**

- (1) Royalty on a publicly owned mineral is payable under this Division:
  - (a) at the base rate prescribed by the regulations in respect of that mineral, and
  - (b) if the regulations so provide—at the additional rate prescribed by the regulations in respect of that mineral.
- (2) Royalty under this Division is payable on a publicly owned mineral at the rate or rates applicable as at the time the material from which it is recovered is extracted from the land.
- (3) A rate of royalty prescribed for the purposes of this Division may be prescribed:
  - (a) as a percentage of the value of minerals recovered from the land, or
  - (b) as an amount payable on the basis of any specified measurement of minerals recovered from the land, or
  - (c) by reference to such other matters as the Minister determines.
- (4) The quantity of minerals recovered is to be calculated (whether by volume or by weight) in the manner prescribed by the regulations.
- (5) The value of minerals recovered is to be calculated (whether by volume or by weight) in the manner determined by the Minister.

## **Division 2 Privately owned minerals**

### **284 Liability to pay royalty**

- (1) The holder of a mining lease is liable to pay royalty to the Minister on privately owned minerals recovered from the land as if those minerals were publicly owned minerals.
- (2) If royalty (including any interest on royalty) is paid to or recovered by the Minister in respect of a privately owned mineral, the Minister is to pay:
  - (a) seven-eighths of the amount so paid or recovered to the owner of the mineral, and
  - (b) one-eighth of the amount so paid or recovered to the Treasurer for payment into the Consolidated Fund.

### **285 Rate of royalty**

Royalty is payable under this Division:

- (a) except as provided by paragraph (b)—at the base rate prescribed under section 283 (1) (a) in respect of the mineral concerned, or
- (b) in the case of a mineral other than coal—at such other rate as may be agreed on between the holder of the mineral claim or authority concerned and the owner of the mineral.

## **Division 3 Petroleum**

### **286 Royalty payable on petroleum recovered under mining lease for coal**

- (1) The holder of a mining lease for coal who recovers petroleum from a mining area by virtue of the fact that, under section 78, petroleum is included in the lease is liable to pay royalty to the Minister on the petroleum recovered.
- (2) The amount payable as royalty under this Division in respect of petroleum is the rate prescribed for the purposes of this Division by or under the [Petroleum \(Onshore\) Act 1991](#).
- (3) Royalty under this Division is payable on petroleum at the rate or rates applicable as at the time the petroleum is recovered from the land.
- (4) This section does not apply to methane recovered in conjunction with coal mining operations.

## **Division 3A Coal reject**

### **286A Definition of coal reject**

In this Division:

**coal reject** means the by-product of the mining or processing of coal that contains a mixture of coal and other substances (such as shale) and has either an energy value (the maximum energy capable of being produced by it on combustion) of less than 16 gigajoules per tonne (dry weight) or contains more than 35 per cent ash (by dry weight).

**286B Royalty on coal in coal reject**

- (1) Royalty is not payable on the coal in coal reject recovered under a mining lease until the coal reject is used or disposed of.
- (2) The holder of a mining lease is liable to pay royalty under this Division to the Minister on the coal in coal reject recovered under the lease if the holder uses the coal reject in producing energy or disposes of it for use in producing energy.
- (3) If royalty is payable under this Division on the coal in coal reject, Division 1 does not apply to that coal.

**286C Rate of royalty**

- (1) Royalty on the coal in coal reject recovered under a mining lease is payable under this Division at the rate determined from time to time by the Minister, with the concurrence of the Treasurer, in respect of the lease or the class of leases concerned.
- (2) The rate of royalty on the coal in coal reject may be a zero rate or may be any other rate up to, but not exceeding, half the base rate of royalty prescribed from time to time in respect of coal under section 283 (1) (a).
- (3) In determining the rate of royalty the Minister is to have regard to:
  - (a) the energy value of the coal reject, and
  - (b) the costs associated with extracting, transporting or processing the coal reject for the purposes of use or disposal, and
  - (c) such other matters as the Minister considers appropriate.
- (4) Royalty under this Division is payable on the coal in coal reject at the rate applicable:
  - (a) at the time the coal reject is used by the holder of the relevant mining lease in producing energy, or
  - (b) at the time the coal reject is disposed of by that holder for use in producing energy.
- (5) Royalty required to be calculated on the basis of the weight of coal is to be calculated by reference to dry weight.

### **286D Evidentiary matters**

- (1) The energy value and ash content of the by-product of the mining or processing of coal recovered under a particular mining lease is to be determined, in the manner directed by the Minister, on the basis of the average energy value and average ash content of that by-product.
- (2) The Minister may by determination in writing determine any of the following:
  - (a) that the by-product, or any identifiable quantity of the by-product, of the mining or processing of coal recovered under a particular mining lease is coal reject,
  - (b) the amount of coal in the coal reject recovered under a particular mining lease or the amount of coal in any identifiable quantity of that coal reject,
  - (c) that the coal reject, or any identifiable quantity of the coal reject, recovered under a particular mining lease and used or disposed of by the holder of the lease has been used by the holder in producing energy or disposed of by the holder for use in producing energy.
- (3) The Minister's determination is evidence of the matter determined.
- (4) A determination under subsection (2) (a) or (b) is not open to dispute or challenge on the basis that the determination is not correct or accurate for any particular sample or quantity of the material concerned.

## **Division 4 Miscellaneous**

### **287 Exemption from royalty**

- (1) If the Minister, on application by the holder of a mining lease, is satisfied that the value of publicly owned minerals recovered as a result of mining operations carried on during a royalty period was less than the appropriate amount, no royalty is payable to the Minister under this Act in respect of those minerals.

- (2) In this section:

**appropriate amount**, in relation to a royalty period, means:

- (a) if the royalty period is 12 months—\$2,000, and
- (b) if the royalty period is less than 12 months—such amount as bears to \$2,000 the same proportion as the number of days in the royalty period bears to 365.

**mining operations** means mining operations carried on:

- (a) on a parcel of land subject to a mining lease held by a person who is not the holder of any other mining lease, or

- (b) on 2 or more parcels of land subject to 2 or more mining leases, if the holder of each parcel is the same person and if each parcel adjoins the other or another of those parcels.

**royalty period**, in relation to a mineral recovered by a person under a mining lease, means:

- (a) the period commencing on the day on which the person first became entitled, under the mining lease, to mine the mineral, and ending on the last day of the first period in respect of which the person is required by this Act to pay royalty in respect of the mineral, or
- (b) the period commencing on the day after the last day of any period in respect of which the person is required by this Act to pay royalty in respect of the mineral and ending on the last day of the next such period, or
- (c) if, during a period referred to in paragraph (b), the person ceases to be entitled to mine the mineral on the land the subject of the mining lease—the period commencing on the day after the last day of the previous royalty period and ending on the day on which the person ceases to be so entitled.

#### **287A Waiver of payment of additional royalty for coal**

- (1) The Minister may, by order in writing made with the concurrence of the Treasurer, waive all or part of the payment by the holder of a mining lease of royalty at the additional rate prescribed in respect of coal under section 283 (1) (b).
- (2) The order may be made only if the Minister is satisfied that it is necessary for the financial viability of the mine, or mines, to which the mining lease relates, having regard to such matters as the Minister considers appropriate.
- (3) The power of the Minister to make an order under this section cannot be delegated, despite section 363.

#### **288 Trust fund etc**

The Minister may, by written notice served on the holder of a mining lease, require that person:

- (a) to establish a trust fund, in the manner specified in the notice, and to pay into the trust fund (at the time or times so specified) a specified proportion of the money accruing from the sale of minerals (being a proportion that will, in the opinion of the Minister, be sufficient to meet the royalty payable to the Minister under this Act in respect of those minerals), or
- (b) to lodge with the Director-General (within such time as is specified in the notice) security, in such amount and in such form as is so specified, for the performance of that person's obligations in respect of the payment of royalty,



and the holder of the mining lease must comply with any such requirement.

### **289 Returns**

- (1) The holder of a mining lease is to furnish to the Minister returns in such form, at such intervals, in respect of such periods and containing such information, as may be prescribed by the regulations.
- (2) The Minister may authorise the holder of a mining lease to furnish to the Minister returns in a different form, at different intervals or in respect of different periods from the form, intervals or periods so prescribed.
- (3) A person must not:
  - (a) refuse or fail to comply with a requirement under this section to the extent to which the person is capable of complying with it, or
  - (b) in purported compliance with such a requirement, furnish information that the person knows to be false or misleading in a material particular.

Maximum penalty: 100 penalty units.

### **290 Minister may require information to be furnished etc**

- (1) The Minister may cause to be served on any person (being a person whom the Minister has reason to believe is capable of giving information or producing or making available books or documents relating to minerals recovered or the value of minerals recovered) written notice requiring the person:
  - (a) to furnish to the Minister in writing, within the period and in the manner specified in the notice, any such information, or
  - (b) to attend before the Minister, or before a person specified in the notice, at a time and place so specified, in order to answer questions relating to minerals recovered or the value of minerals recovered, or
  - (c) to produce to a person specified in the notice, at a time and place so specified, books or documents in that person's custody or control relating to minerals recovered or the value of minerals recovered.
- (2) A person is not excused from furnishing information, answering a question or producing books or documents when required to do so merely because the information so furnished, the answer to the question or the production of the books or documents, might tend to incriminate the person.
- (3) However, the information, answer, books or documents are not admissible in evidence against the person in proceedings other than proceedings for an offence against this section.

- (4) A person to whom books or documents are produced pursuant to a requirement under this section may make copies of, or take extracts from, the books or documents.
- (5) A person must not:
  - (a) refuse or fail to comply with a requirement under this section to the extent to which the person is capable of complying with it, or
  - (b) in purported compliance with such a requirement, furnish information that the person knows to be false or misleading in a material particular.

Maximum penalty: 100 penalty units.

### **291 Payment of royalty**

- (1) Royalty payable to the Minister under this Act is payable:
  - (a) except in so far as a determination under paragraph (b) has effect—at such times, and in respect of such periods, as may be specified in or determined in accordance with the regulations, or
  - (b) on demand by the Minister in respect of such periods as the Minister determines.
- (2) If an amount of royalty payable to the Minister is not paid:
  - (a) by the time that it becomes payable in accordance with the regulations, or
  - (b) within 28 days of the demand for its payment,interest is, if the Minister so directs, to be added to the amount due at such rate as the Minister determines.
- (3) The regulations may make provision for or with respect to the manner in which royalty payable to the Minister under this Act is to be paid and, in particular, may require that payment of any royalty referred to in the regulations is to accompany a return made under this Part.

### **292 Recovery of royalty**

- (1) Royalty, and any interest on the royalty, payable to the Minister under this Act are debts due to the Crown and are recoverable in a court of competent jurisdiction.
- (2) A certificate that is signed by the Minister and that states that on a date, or during a period, specified in the certificate, an amount of royalty or interest so specified was payable to the Minister under this Act by a person so specified is admissible in evidence in all courts and is evidence of the fact or facts so certified.

## **Part 15 Wardens and Wardens' Courts**

### **Division 1 Appointment of wardens and establishment of Wardens' Courts**

#### **293 Appointment of chief warden and wardens**

- (1) The Governor may appoint a chief warden and such other wardens as may be necessary for the administration of this Act.
- (2) A person may not be appointed as chief warden or warden unless the person is a Magistrate.
- (3) Each warden is a warden for the whole State.
- (4) A person holding office as warden is taken to hold the office on either a full-time or part-time basis, according to whether the person holds the office of Magistrate on a full-time or part-time basis under the [Local Courts Act 1982](#).

#### **294 Establishment of Wardens' Courts**

- (1) The Governor may, by order published in the Gazette, establish Wardens' Courts which may be held at such places as the Governor may from time to time appoint.
- (2) A Warden's Court is a court of record.
- (3) A Warden's Court is constituted by a warden sitting alone.

#### **295 Mining registrars to be registrars of Wardens' Courts**

The mining registrar for a mining division is to be the registrar of any Warden's Court established within the division.

#### **296 Jurisdiction of Wardens' Courts**

A Warden's Court has jurisdiction to hear and determine proceedings relating to any of the following matters:

- (a) the area, dimensions or boundaries of land subject to an authority or mineral claim,
- (b) the right to the possession or occupation of any land by virtue of an authority or mineral claim,
- (c) the right to the use and enjoyment of water for prospecting or mining and any dispute or question relating to such a right,
- (d) trespass or encroachment on, or injury to, land subject to an authority or mineral claim, or interference with, or injury to, any mining improvement,

- (e) any demand for debt or damages arising out of prospecting or mining, or
- (f) any demand for specific performance of any contract relating to any authority or mineral claim,
- (g) the right to any mineral in, or to be recovered from, any land subject to an authority or mineral claim, and the rights under, or arising out of, any contract relating to any such mineral,
- (h) any transfer or disposition of, or charge on, land subject to an authority or mineral claim,
- (i) matters concerning:
  - (i) any partnership relating to an authority or mineral claim, or to prospecting or mining, or
  - (ii) the existence, formation and dissolution of any such partnership, or
  - (iii) the taking of accounts in connection with any such partnership, or
  - (iv) the contributions of the partners as between themselves, or
  - (v) the determination of questions arising between the partners,
- (j) contributions by or between persons holding joint or several interests in an authority or mineral claim towards rent or other expenses in relation to the authority or claim,
- (k) trespass or encroachment on, or injury to, land as a result of prospecting or mining,
- (l) trespass or encroachment on, injury to or any matter affecting, roads, railways or other property of whatever kind constructed, held or occupied under this Act,
- (m) the partition, sale, disposal or division of any mining improvements, or the proceeds of the sale of any mining improvements, held by 2 or more persons,
- (n) any question or dispute arising as to the working or management of land subject to an authority or mineral claim,
- (o) all rights claimed in, under or in relation to an authority or mineral claim or purported authority or mineral claim,
- (p) any question or dispute as to the validity of the granting of an authority or mineral claim,
- (q) any question or dispute in connection with a consolidated mining lease arising under section 109, including any question or dispute concerning the rights and obligations conferred or imposed by an interest referred to in that section or the priority of any such interest,

- (r) any question or dispute in connection with an interest (whether legal or equitable) in, or affecting, an authority or mineral claim,
- (s) any question or dispute in connection with an assessment or agreement in respect of compensation under Part 13, arising because of the transfer of an authority or mineral claim or of part of such an authority or claim,
- (t) the review of an arbitrator's determination under Division 2 of Part 8 or of a mining registrar's decision referred to in section 206,
- (u) any question or dispute as to the provisions of an access arrangement or as to any matter arising as a consequence of such an arrangement,
- (v) an offence under section 374A.

### **297 Decisions etc of Wardens' Courts bind parties**

A decision or order of a Warden's Court is, subject to this Act, binding on the parties.

## **Division 2 Practice and procedure in Wardens' Courts**

### **298 Signing of process etc**

- (1) Any summons, subpoena, order, warrant or other process issued out of a Warden's Court must be signed by a warden or by the registrar of the Warden's Court.
- (2) A warden or registrar may issue a summons, subpoena, order, warrant or other process returnable before any Warden's Court.
- (3) Any such summons, subpoena, order, warrant or other process has effect throughout the State.

### **299 Time for holding Warden's Court**

A Warden's Court may be held before a warden at such times as the warden may, from time to time, appoint.

### **300 Register to be kept**

- (1) The registrar of a Warden's Court must cause to be kept in respect of the court a register, in the form prescribed by the rules:
  - (a) of the particulars of each complaint and application made to the court under this Act, and
  - (b) of each decision and order made by the court in relation to each such complaint and application, and
  - (c) of such further particulars as may be prescribed by the rules.

- (2) A copy of an entry in the register of a Warden's Court of any decision or order of the court must, on demand, be furnished to any party to the complaint or application to which the entry relates.
- (3) A document purporting to be a copy of an entry in the register of a Warden's Court, and certified by a warden or registrar to be a true copy of that entry, is admissible in all courts and is conclusive evidence that the decision or order to which the document relates was made.

### **301 Commencement of proceedings by summons**

- (1) Proceedings on the hearing of a complaint must be commenced by a summons which, on payment of the fee prescribed by the rules, is to be issued by a warden or by the registrar of a Warden's Court to the complainant on the complainant's application.
- (2) A summons:
  - (a) must state concisely the facts constituting the complaint to which it relates and, if money is claimed, the amount of the claim, and
  - (b) must state a day for the appearance of the defendant before the Warden's Court, and
  - (c) must be in the form and contain the particulars prescribed by the rules.
- (3) A summons must be served on the defendant either personally or by leaving the summons at that person's place of residence with any person apparently of or above the age of 16 years.
- (4) If it appears to a warden sitting in chambers that any defendant cannot after diligent inquiry be found, or cannot for any cause after reasonable effort be served with the summons in accordance with subsection (3), the warden:
  - (a) may order that service of the summons, in such manner as the warden may direct, be taken to be good service on the defendant, and
  - (b) may, if necessary, postpone the hearing to allow service to be effected in the manner specified in the order.
- (5) Service of the summons in the manner specified in such an order is taken to be good service for all purposes.

### **302 Complaint may be heard without summons**

- (1) If all of the parties to a complaint consent in writing, a warden may hear and determine the complaint summarily in the presence of the parties and without requiring formal proceedings to be taken in a Warden's Court.
- (2) A determination made by a warden under subsection (1) is final.

- (3) If one or more, but not all, of the parties to a complaint consent in writing and the warden is satisfied that the other parties to the complaint are aware:
  - (a) of the nature of the complaint, and
  - (b) of the time and place at which the complaint is to be heard,the warden may hear and determine the complaint summarily in the presence of the consenting parties and without requiring formal proceedings to be taken in a Warden's Court.
- (4) A determination made by a warden under subsection (3) is taken to be a determination of a Warden's Court.
- (5) A written consent referred to in subsection (1) or (3) must be signed by the party or parties consenting.
- (6) For the purpose of hearing and determining a complaint under this section, a warden has and may exercise all the functions of a Warden's Court.

### **303 Warden to hear and determine complaint**

- (1) On the day stated in the summons, or on the day to which hearing of the complaint may have been adjourned, the Warden's Court hearing the complaint may require proof of the service of the summons on such of the parties to the complaint as have not appeared.
- (2) In the absence of any of the parties to the complaint who, having been duly served with a summons, do not appear, but in the presence of all of the other parties (or of such of them as appear to the court sufficiently to represent all of the other parties) the Warden's Court hearing the complaint is to hear and determine the complaint in a summary manner.

### **304 Right of appearance**

A party to proceedings before a Warden's Court is entitled to appear and be heard personally, or by a solicitor or barrister, or, if the court permits, by an agent.

### **305 Complaint not to be dismissed for informality**

- (1) A complaint may not be dismissed:
  - (a) for informality in the summons or in the entry of the summons, or
  - (b) for a defect or misnomer or inaccurate description of a person or place, or
  - (c) on the ground that the complainant appears to be entitled to relief differing from that claimed in the summons, or

(d) on the ground that there is any variance between the summons and the evidence adduced at the hearing on the part of the complainant.

(2) If it appears to a Warden's Court that, because of any circumstances referred to in subsection (1), a complaint should be amended, the court may make the amendment subject to such terms as to costs, adjournment or otherwise as to the court seems just.

### **306 Amendment of proceedings**

(1) A Warden's Court may adjourn the hearing of a complaint to any other time or place, and may make any amendments to the proceedings necessary to determine the real issues between the parties, even though the summons to which the complaint relates does not show the substance of the facts constituting the complaint.

(2) If it appears that a person who should have been joined as a defendant has not been so joined, a Warden's Court may, on the application of the complainant, amend the proceedings so as to include that person as a defendant, and may adjourn the hearing of the complaint so as to enable that person to be served with the summons.

(3) If it appears that a person who should have been joined as a complainant has not been so joined, a Warden's Court may, with the consent of that person and on the application of any party to the proceedings, amend the proceedings so as to include that person as a complainant.

(4) An amendment under this section may be made subject to such terms as to costs, adjournment or otherwise as to the Warden's Court seems just.

### **307 Registrar of Warden's Court may adjourn court in absence of warden**

If, on a day appointed for the holding of a Warden's Court, or on a day to which the holding of a Warden's Court has been adjourned, the warden by whom the court is constituted does not attend the court, the registrar of the court may adjourn the court for such time or until such day as the registrar may determine.

### **308 Defendant may pay money into court**

(1) A defendant in proceedings before a Warden's Court in which money is claimed may, at any time not later than 2 days before the hearing, pay into the court:

(a) the amount claimed, together with the complainant's costs up to the time of the payment, or

(b) such lesser amount as the defendant considers a full satisfaction in respect of the matter complained of.

(2) If such an amount is paid into court, the registrar of the court must give notice to the complainant of the payment and must, on demand, pay the amount so paid to the



complainant or to the complainant's legal representative.

(3) In the event that:

- (a) the full amount claimed by the complainant, together with costs, is paid into court, or
- (b) the lesser amount is accepted by the complainant in full satisfaction of the complainant's claim,

no proceedings may subsequently be brought in any court in respect of that claim.

(4) In the event that:

- (a) a lesser amount is paid into court, and
- (b) the complainant elects to proceed and not to accept the lesser amount, and
- (c) the complainant fails to recover any amount in respect of the complainant's claim additional to the lesser amount,

the warden may order the complainant to pay such of the defendant's costs as are incurred after the date of the payment into court.

### **309 Instalments may be ordered**

If a Warden's Court makes an order for the payment of money, the court may order that the amount be paid at such times and in such instalments as the court may specify in the order.

### **310 Complaints for injury to property etc**

- (1) On the hearing of a complaint for the recovery of possession of, or for an encroachment or trespass on, or for an unlawful interference with or injury to, any land, mining improvement or water, or any share or interest in any land, mining improvement or water, a Warden's Court may determine the boundaries of that land or the quantity of water to be taken by any party to the complaint.
- (2) If the decision of the Warden's Court is in favour of the complainant, the court must determine whether any sum in the nature of mesne profits or damages should be paid to the complainant by the defendant (and, if so, what sum) and may also order that:
  - (a) possession of anything sued for be delivered to the complainant, or
  - (b) the complainant be put into possession of the land or mining improvement, or
  - (c) any defendant or servant of the defendant, or any building, fixture, implement, matter or thing, be removed from the land or mining improvement, or
  - (d) any defendant be restrained from using the water.

- (3) If the Warden's Court finds that the complainant has wrongfully encroached or trespassed on, or interfered with, any land, mining improvement or water in respect of which the proceedings were brought, the court may grant to the defendant against the complainant the same relief as the court is empowered to grant to a successful complainant.
- (4) If, in any proceedings before a Warden's Court in respect of the right to divert any water or to remove a mining improvement, the decision of the court is in favour of the complainant, the court:
  - (a) may declare the complainant to be entitled to divert the water or remove the mining improvement, and
  - (b) may make an order restraining the defendant from interfering with or preventing the diversion or removal.

### **311 Warden may order deposit of mineral etc**

- (1) On application by summons by any party to proceedings in a Warden's Court, the court may order any other party to the proceedings to deposit, pending its decision, any earth, mineral, money or chattels:
  - (a) the right to which will, in the opinion of the court, be put in issue in the course of those proceedings, and
  - (b) which may then be in, or at any time before the termination of the proceedings may come into, the possession or control of that other party.
- (2) Such an order must specify the thing to be so deposited and must direct the deposit to be made, at or before a time specified in the order, with a person or at a place so specified, either in the name of the warden or in the name of some other person so specified.
- (3) Except where such an order is claimed in the summons referred to in subsection (1), an order under this section must not be made except after 12 hours' notice served by the applicant for the order on the other parties to the proceedings, or on such of them as appear to the warden sufficiently to represent those other parties.
- (4) A person against whom an order under this section has been made must not fail to comply with the order.

Maximum penalty:

- (a) 100 penalty units, in the case of an offence committed by a corporation, or
- (b) 50 penalty units, in the case of an offence committed by an individual.

### **312 Warden may grant injunction**

- (1) If an application is made to a Warden's Court by a person claiming to hold a legal or equitable interest in any land subject to an authority or mineral claim, or in any property, the court may, on such terms as to costs or otherwise as it may consider just, grant an injunction restraining any specified person:
  - (a) from encroaching on, occupying, using or working the land or property, or
  - (b) from seeking, washing out, extracting or removing any earth or minerals from the land, or
  - (c) from selling or disposing of or otherwise interfering with the property, or
  - (d) from doing any act that may affect the interest concerned in the whole, or any part, of the land or property.
- (2) An injunction remains in force for the period specified in the injunction, unless it is sooner discharged.
- (3) An injunction may be applied for:
  - (a) on summons claiming an injunction, with or without other relief, or
  - (b) on application for an injunction.
- (4) Notice of an application for an injunction must be served on the persons, and within the period, prescribed by the rules.
- (5) The rules of procedure governing the hearing of a summons also govern the hearing of an application for an injunction.

### **313 Granting of injunctions in cases of urgency**

- (1) If an applicant for an injunction satisfies a Warden's Court that there are urgent reasons for granting the injunction, the warden may, in any case in which the warden might otherwise grant an injunction, grant an injunction to have effect for a period of not more than 2 months (including the day on which the injunction is made) without the requirement of a summons or service of notice of the application.
- (2) The warden may not grant a continuance of an injunction granted under this section, and may not grant a further injunction under this section, but application for a further injunction may be made under section 312, either during or after the period of the injunction granted under this section.
- (3) An application for an injunction under this section may be heard by a warden at any Warden's Court.

### **314 Orders protecting adjacent authorities and mineral claims**

- (1) The holder of an authority or mineral claim over land which is adjacent to:
  - (a) land that is the subject of an injunction, or
  - (b) land on which is located property that is the subject of an injunction,may apply to the warden by whom the injunction was granted for an order permitting the land or property under injunction to be worked so as to prevent or minimise damage to or depreciation of the land over which the authority or mineral claim is held.
- (2) A warden to whom such an application is made:
  - (a) may order, on such terms as the warden thinks fit, such working of that land or property as in the warden's opinion will be sufficient to prevent that damage or depreciation, and
  - (b) may make such further order as to the cost of that working as the warden considers just.
- (3) An order may not be made under this section unless the applicant shows to the satisfaction of the warden that the authority or mineral claim concerned will sustain damage or be materially depreciated in value by reason of the non-working of the land or property under injunction.

### **315 Contravention of injunction**

A person against whom an injunction has been granted must not contravene the injunction.

Maximum penalty:

- (a) 200 penalty units, in the case of an offence committed by a corporation, or
- (b) 100 penalty units, in the case of an offence committed by an individual.

### **316 Court may order payment of money or delivery of mineral**

- (1) If any money or mineral is claimed in a Warden's Court, the court may order the payment of such money or the delivery of such mineral as it may find to be due or deliverable by one party to another.
- (2) If such a claim arises out of a mining partnership, adventure or interest, the Warden's Court may take accounts in respect of that partnership, adventure or interest, to the extent to which it may be necessary to ascertain what money or mineral (if any) is so due by one party to the other, and may make such further order as it considers just.
- (3) If a Warden's Court orders payment of money in respect of any debt, damages, costs

or otherwise, the court may make a further order:

- (a) that any mineral in the possession, and being the property, of the party directed to make the payment must (to the extent in value of the payment as estimated by the court) be delivered up to the party entitled to the payment, and
  - (b) that the mineral to that extent be seized and delivered accordingly.
- (4) If such a further order is made, the order for payment of money may only be enforced in respect of any balance remaining due after deducting the value of the mineral so delivered to the party entitled to payment.

### **317 Costs may be allowed**

- (1) The costs of all proceedings under this Act before a warden (whether in a Warden's Court or otherwise) are in the discretion of the warden and the amount of such costs may be determined by the warden or taxed, as the warden may direct.
- (2) The reference in subsection (1) to costs includes a reference to an arbitrator's costs in relation to a hearing under Division 2 of Part 8.

### **318 Form and service of orders**

- (1) An order made by a Warden's Court must be in the form prescribed by the rules.
- (2) An order must, unless the Warden's Court otherwise directs, be served by delivering a copy to the person to be bound by the order, and by showing to that person at the same time the original order if that person requires to see it.
- (3) If a Warden's Court so directs, it is sufficient service of any order if a copy of the order is published in such newspaper, and within such time, as the court may direct and a copy of the order is affixed in such conspicuous place at or near the property to which the order relates as the court appoints.

### **319 Certain orders may be entered as judgments**

An order for the payment of money made by a Warden's Court may be entered as a judgment in any court of competent jurisdiction, in accordance with the rules of the court in which the judgment is to be entered.

### **320 Warden may authorise person or officer to perform any prescribed act**

If a Warden's Court is empowered or required by this Act to cause any act to be performed, and the mode of performing that act is not expressly provided for, it is lawful for:

- (a) any person verbally authorised by the warden constituting the court and in the presence of the warden, or

(b) any police officer or special constable authorised in writing under the hand of the warden,

to perform that act, and all police officers must, if required by the warden, assist the warden, or a person so authorised, to perform that act.

### **Division 3 Appeals to the District Court**

#### **321 Right to appeal from Warden's Court to District Court**

- (1) Any person who is aggrieved by a decision of a Warden's Court may, in accordance with the rules of the District Court, appeal to the District Court against the decision.
- (2) An appeal is to be heard by way of a new hearing and fresh evidence, or evidence in addition to or in substitution for the evidence available to the Warden's Court when the original decision was made, may be admitted in proceedings on the appeal.
- (3) In hearing an appeal under this section, the District Court has, in addition to its other functions, the functions of a Warden's Court.
- (4) The District Court may, pending its determination of an appeal, make such interlocutory orders (including orders as to costs) as it considers appropriate.
- (5) On hearing an appeal the District Court:
  - (a) may make an order reversing or varying the decision appealed from, or
  - (b) may make an order dismissing the appeal, or
  - (c) may make such other order as it considers just,and may make such further order with respect to the costs of the appeal, and of the proceedings appealed from, as it may think fit.

#### **322 Appeal stays decision appealed against**

The making of an appeal operates to stay the effect of the decision against which the appeal is made except to the extent to which the District Court may otherwise order.

#### **323 Mode of enforcing decision after appeal**

The decision of the District Court on an appeal is taken to be the decision of the Warden's Court and may be enforced accordingly.

#### **324 Right of appeal under Division 4 abandoned**

A person who appeals to the District Court under this Division in relation to any proceedings is taken to have abandoned the person's right of appeal to the Supreme Court under Division 4 in relation to those proceedings.

## **Division 4 Appeals to the Supreme Court**

### **325 Case stated for opinion of Supreme Court**

- (1) A party to any proceedings in a Warden's Court who is dissatisfied with the decision of the court in point of law may, in accordance with the rules of the Supreme Court, apply in writing to the warden constituting the Warden's Court to state and sign a case, setting out the facts and grounds of the decision, for the opinion of the Supreme Court.
- (2) Before the warden states a case in accordance with subsection (1), the appellant must lodge with the registrar of the Warden's Court the fees prescribed by the rules, and must give security to the satisfaction of the warden for the due performance of any order which the Supreme Court may make.
- (3) If the warden is of the opinion that an application made under this section is merely frivolous, the warden may then, but not otherwise, refuse to state a case.
- (4) If the warden refuses to state a case, the warden must, on the request of the appellant, sign and deliver to the appellant a certificate of refusal.
- (5) If the warden refuses to state a case, the Supreme Court may, on application by the appellant, order the warden to state the case subject to the appellant's lodging the fees and giving the security referred to in subsection (2).
- (6) Within 7 days after receiving the stated case, the appellant:
  - (a) must serve notice in writing of the application, and a copy of the case (signed by the warden), on the other parties to the proceedings to which the case relates, and
  - (b) must transmit the case to the Prothonotary of the Supreme Court or to such other officer of the Supreme Court as may be designated by rules of the Supreme Court.
- (7) In this section, a reference to an appellant is a reference to a party who makes an application under subsection (1).

### **326 Powers of Supreme Court on hearing a stated case**

- (1) On hearing proceedings on a stated case, the Supreme Court:
  - (a) may reverse, affirm or amend the decision in respect of which the case was stated, or
  - (b) may remit the matter to the warden with its opinion on the case, or
  - (c) may make such other order in relation to the matter as it considers just.
- (2) The Supreme Court may cause the case to be sent back to the warden for amendment

and, in that event, the order of the Court may be made after the case has been so amended.

- (3) The Supreme Court may make such order as to costs as it thinks fit.
- (4) A warden who has stated a case under this Division is not liable to any costs in respect of the proceedings on the case.
- (5) An order made by the Supreme Court under this section is final and binding on the parties.
- (6) The practice and procedure in relation to the stating of cases is to be as prescribed by rules of the Supreme Court.

### **327 Mode of enforcing decision after appeal**

The decision of the Supreme Court on a stated case is taken to be the decision of the Warden's Court and may be enforced accordingly.

### **328 Right of appeal under Division 3 abandoned**

A person who appeals to the Supreme Court under this Division in relation to any proceedings is taken to have abandoned the person's right of appeal to the District Court under Division 3 in relation to those proceedings.

## **Division 5 Administrative matters**

### **329 Documents and affidavits may be in writing or print**

- (1) Documents used in proceedings under this Act, or in relation to those proceedings, may be in writing or in print or partly in writing and partly in print.
- (2) An affidavit to be used in proceedings under this Act may be sworn before a Judge of the Supreme Court or a commissioner for that Court for taking affidavits, before a Judge of the District Court, before a warden or before a justice.

### **330 Contempt of court and penalties**

- (1) If any person:
  - (a) is guilty of contempt in the face of a Warden's Court or of a warden exercising the functions of a Warden's Court, or
  - (b) on being summoned, or examined as a witness, in a suit or proceeding in a Warden's Court, refuses to be sworn or to answer any lawful question or is guilty of wilful prevarication,

the Warden's Court or warden may, by order, commit that person to prison for any time not exceeding 10 days or impose on that person a penalty not exceeding the



maximum penalty prescribed by subsection (1A).

(1A) The maximum monetary penalty that may be imposed under subsection (1) is:

- (a) 100 penalty units, in the case of a corporation, or
- (b) 50 penalty units, in the case of an individual.

(2) If the person is in default of payment of the fine, the Warden's Court or warden may commit the person to prison for any time not exceeding 10 days unless the fine is sooner paid.

(3) For the purpose of enforcing any such order of commitment, the Warden's Court or warden may issue a warrant in the form prescribed by the rules.

(4) Such a warrant is good and valid in law without any other order, summons or adjudication whatever, and the person to whom the warrant is addressed must obey that warrant.

### **331 Interpleader**

(1) If a claim is made:

- (a) in respect of goods taken in execution under process issued out of the District Court or a Warden's Court, or
- (b) in respect of the proceeds or value of such goods,

by a person who is not the party against whom the process has issued, the Registrar of the District Court or a warden may, on application of the person charged with the execution of the process, issue a summons calling the person issuing the process and the person making the claim to appear before the District Court or the Warden's Court.

(2) If a summons has been so issued, any action which may have been brought in the Supreme Court or in the District Court in respect of the claim is stayed, and the court in which the action has been brought:

- (a) on proof of the issue of the summons, and
- (b) on proof that the goods were so taken in execution,

may order the person bringing the action to pay the costs of all proceedings had on the action after the service on that person of the summons.

(3) On the return of the summons, the District Court or Warden's Court must determine the claim and make such order between the parties, in respect of the claim and the costs of the proceedings, as it considers just.

(4) Any order so made may be enforced in the same way as any other order made in

proceedings before the District Court or a Warden's Court and the determination and order are final.

## **Division 6 Rules and practice directions**

### **332 Practice and procedure etc of Wardens' Courts**

The Governor may make rules in relation to the following matters:

- (a) the practice and procedure of Wardens' Courts,
- (b) the execution of the process of Wardens' Courts,
- (c) the fees to be allowed for barristers and solicitors practising in Wardens' Courts,
- (d) the expenses to be paid to witnesses in proceedings before Wardens' Courts,
- (e) the forms to be used for matters or proceedings in Wardens' Courts,
- (f) the forms to be used for the keeping of books, entries and accounts by the registrars of Wardens' Courts,
- (g) the fees to be paid in connection with matters or proceedings in Wardens' Courts.

### **333 Chief warden may issue practice directions**

The chief warden may issue practice directions, not inconsistent with this Act or the rules made under this Division, for or with respect to the practice and procedure of Wardens' Courts.

## **Division 7 Other functions of wardens**

### **334 Inquiries generally**

- (1) The Minister may direct a warden to hold an inquiry into any matter arising under, or connected with, this Act.
- (2) If, by or under this Act, a warden is authorised or required to inquire into any matter, the warden may for that purpose hold an inquiry into that matter and into all reasonably incidental matters.

### **335 Mining registrar may request inquiry by warden**

- (1) A mining registrar may refer to a warden for inquiry the question of whether Division 2 of Part 9 has been complied with by an applicant for a mineral claim or whether Division 3 of Part 9 has been contravened by the granting of a mineral claim.
- (2) After the conclusion of the inquiry, the warden is to furnish the mining registrar with a report on the warden's finding.

### **336 Procedure on inquiry**

Any inquiry held by a warden is to be conducted in public and, in holding the inquiry, the warden has and may exercise the functions of a Warden's Court.

### **337 No appeals against a warden's administrative functions**

No appeal lies from any decision or determination of a warden on an inquiry or in respect of any other function exercised by the warden acting otherwise than as a Warden's Court.

## **Division 8 Miscellaneous**

### **338 Witness neglecting to appear**

A person must not, without reasonable cause, fail to comply with a summons or subpoena requiring the person to attend as a witness:

- (a) at proceedings before a Warden's Court, or
- (b) at any inquiry before a warden,

if the summons or subpoena has been duly served on the person and if the costs of attendance, as fixed by the rules, have been tendered to the person.

Maximum penalty:

- (a) 100 penalty units, in the case of an offence committed by a corporation, or
- (b) 50 penalty units, in the case of an offence committed by an individual.

### **339 Disobedience of order**

A person against whom an order (other than an order for the payment of money) has been made by a Warden's Court must not fail to comply with the order.

Maximum penalty:

- (a) 100 penalty units, in the case of an offence committed by a corporation, or
- (b) 50 penalty units, in the case of an offence committed by an individual.

### **340 Person removed from land not to retake possession etc**

A person must not:

- (a) after being removed from any land pursuant to an order of a Warden's Court—attempt to retain or retake possession of that land, or
- (b) after a decision by a Warden's Court that some other person is entitled to use for mining purposes, or to divert, any water—resist that other person or his or her agents in that use or diversion.

Maximum penalty:

- (a) 100 penalty units, in the case of an offence committed by a corporation, or
- (b) 50 penalty units, in the case of an offence committed by an individual.

## **Part 16**

### **341-358 (Repealed)**

## **Part 17 Administration**

### **Division 1 Administration**

#### **359 Boards of management**

- (1) The Minister may constitute a board of management for the whole or any part of New South Wales.
- (2) A board of management may exercise, in respect of the area for which it is constituted, such of the functions of the Minister or of the Director-General as are delegated to it under this Act.
- (3) The regulations may provide for the constitution of a board of management and may regulate, or provide for the regulation of, its procedure.

#### **360 Mining registrars, deputy mining registrars, royalty officers and other staff**

Mining registrars, deputy mining registrars, royalty officers and such other staff as may be necessary for the purposes of this Act may be employed under Part 2 of the [Public Sector Management Act 1988](#).

#### **361 Inspectors**

The Minister may, by instrument in writing, appoint a person to be an inspector for the purposes of this Act.

#### **362 Exclusion of personal liability**

No matter or thing done by a body constituted by or under this Act, by a member of any such body or by any person acting under the direction of any such body subjects any such member or person personally to any action, liability, claim or demand if the matter or thing was done in good faith for the purposes of this or any other Act.

#### **363 Delegation of functions by Minister, Director-General or mining registrar**

- (1) The Minister may delegate any function under this Act (except this power of delegation) to any person.
- (2) The Director-General may delegate any function under this Act (except this power of

delegation or any function delegated to the Director-General by the Minister) to any person.

- (2A) A mining registrar may delegate any function under this Act or the regulations (except this power of delegation or any function delegated to the mining registrar by the Minister or the Director-General) to a deputy mining registrar.
- (3) A reference in this section to a function under this Act includes a reference to a function under the regulations and a function under a condition of an authority, a mineral claim or an opal prospecting licence.

### **364 Minister etc not to be holder of an authority, mineral claim or opal prospecting licence**

- (1) Neither the Minister nor any person employed in the Department may be the holder of an authority, a mineral claim or an opal prospecting licence.
- (2) This section does not prevent the Director-General from being the holder, on behalf of the Crown, of an exploration licence for an allocated mineral in respect of land within a mineral allocation area.

### **365 Disclosure of information etc**

- (1) A person must not disclose any information obtained in connection with the administration or execution of this Act, unless the disclosure is made:
- (a) with the consent of the person from whom the information was obtained, or
  - (b) in connection with the administration or execution of this Act, or
  - (c) for the purposes of any legal proceedings arising out of this Act or of any report of any such proceedings, or
  - (d) for the purposes of any investigation or inquiry conducted by a warden under this Act, or
  - (e) with the concurrence of the Minister, or
  - (f) under the [Freedom of Information Act 1989](#).
- (2) A person employed in the Department must not use for the purposes of personal gain any information obtained in connection with the administration or execution of this Act.

Maximum penalty: 100 penalty units.

## **Division 2 Classification of lands**

### **366 Mining divisions**

- (1) The Governor may, by order published in the Gazette, constitute any land as a mining division and may, by the same or a subsequent order so published, name the division and fix its boundaries.
- (2) A mining registrar is to be appointed for each mining division constituted under this section.

### **367 Reserves**

- (1) The Governor may, by order published in the Gazette, constitute any land as a reserve and may, by the same or a subsequent order so published, name the reserve and fix its boundaries.
- (2) The Governor may, by an order under this section, give any one or more of the following directions:
  - (a) that no exploration licence is to be granted over land in the reserve,
  - (b) that no assessment lease is to be granted over land in the reserve,
  - (c) that no mining lease is to be granted over land in the reserve,
  - (d) that no mineral claim is to be granted over land in the reserve.
- (3) In an order constituting land as a reserve, the Governor may stipulate that the reserve is to extend only to the surface of the land, to the surface of the land and the subsoil below the surface, to the surface of the land and the subsoil to a specified depth below the surface, or to the subsoil below or between any specified depth or depths below the surface of the land.
- (4) If:
  - (a) an application for an exploration licence is made or pending in respect of land that is the subject of a direction under subsection (2) (a), or
  - (b) an application for an assessment lease is made or pending in respect of land that is the subject of a direction under subsection (2) (b), or
  - (c) an application for a mining lease is made or pending in respect of land that is the subject of a direction under subsection (2) (c), or
  - (d) an application for a mineral claim is made or pending in respect of land that is the subject of a direction under subsection (2) (d),the application is a nullity to the extent to which it is made in respect of the land the

subject of the direction, but, if the application is also made in respect of other land, the application is taken to have been made in respect of that other land.

### **368 Mineral allocation areas**

- (1) The Governor may, by order published in the Gazette, constitute any land as a mineral allocation area and may, by the same or a subsequent order so published, name the area and fix its boundaries.

#### **Editorial note—**

For orders under this subsection see Gazettes No 101 of 20.8.1992, p 5946; No 127 of 19.11.1993, p 6850 and No 81 of 16.7.1999, p 5023.

- (2) A mineral allocation area may be constituted for all minerals, for specified minerals or groups of minerals or for all minerals other than specified minerals or groups of minerals.
- (3) More than one mineral allocation area may be constituted in respect of any land.

### **369 Notification areas**

- (1) The Dams Safety Committee may, by order published in the Gazette in relation to a prescribed dam, declare that the land described in the order, including land under the dam, is the notification area for the dam.
- (2) A notification area is an area which underlies or surrounds a prescribed dam and in relation to which the Dams Safety Committee is required by this Act to be notified of certain proposals to grant assessment leases or mining leases.

### **369A Fossicking districts**

The Minister may, by order published in the Gazette, constitute any land as a fossicking district and may, by the same or a subsequent order so published, name the district and fix its boundaries.

### **370 Graticulation of the Earth's surface**

- (1) For the purposes of this Act, the surface of the Earth is taken to be divided into graticular sections:
  - (a) by the meridian of Greenwich and by the meridians that are at a distance from that meridian of 5 minutes, or a multiple of 5 minutes, of longitude, and
  - (b) by the equator and by parallels of latitude that are at a distance from the equator of 5 minutes, or a multiple of 5 minutes, of latitude,each graticular section being bounded:
  - (c) by portions of 2 of those meridians that are at a distance from each other of 5 minutes of longitude, and

(d) by portions of 2 of those parallels of latitude that are at a distance from each other of 5 minutes of latitude.

(2) For the purposes of this Act, each graticular section is taken to be divided into 25 units, each unit being bounded:

(a) by portions of 2 meridians (being the meridian of Greenwich or the meridians that are at a distance from that meridian of 1 minute, or a multiple of 1 minute, of longitude) that are at a distance from each other of 1 minute of longitude, and

(b) by portions of 2 parallels of latitude (being the equator or parallels of latitude that are at a distance from the equator of 1 minute, or a multiple of 1 minute, of latitude) that are at a distance from each other of 1 minute of latitude.

### **371 Points to be ascertained by reference to Geocentric Datum of Australia**

The position on the surface of the Earth of a point, line or area that is necessary to be determined for the purposes of this Act, or of any order, instrument or notification under this Act, is to be determined by reference to the Geocentric Datum of Australia referred to in section 4 of the [Survey \(Geocentric Datum of Australia\) Act 1999](#).

## **Division 3 Offences**

### **372 Obstruction of wardens etc**

A person must not, without reasonable excuse, obstruct, hinder or resist a warden, a mining registrar, an inspector or any other person in the exercise of a function under this Act.

Maximum penalty: 100 penalty units.

### **373 Obstruction etc of holder of authority etc**

A person must not, without reasonable excuse, obstruct or hinder the holder of an authority, a mineral claim or an opal prospecting licence from doing any act which that holder is authorised by this Act to do.

Maximum penalty: 100 penalty units.

### **374 False or misleading information etc**

A person must not:

(a) in or in connection with an application under this Act, or

(b) in purported compliance with any requirement under this Act,

furnish information that the person knows to be false or misleading in a material particular.



Maximum penalty: 100 penalty units.

### **374A Contravention of conditions of mining title**

- (1) The holder of any lease, licence or mineral claim under this Act must not, without reasonable excuse, contravene or fail to comply with any conditions of the lease, licence or claim.

Maximum penalty:

- (a) if the condition of the lease, licence or claim is identified in the lease, licence or claim as a condition related to environmental management:
- (i) 1,000 penalty units, in case of an offence dealt with on indictment, or
  - (ii) 200 penalty units, in case of an offence dealt with summarily, or
- (b) in any other case—200 penalty units.
- (2) If the conditions of a lease, licence or mineral claim held by more than one person are contravened, each holder who knowingly authorised or permitted the contravention is guilty of an offence under this section.

### **375 Proceedings for offences**

- (1) Proceedings for an offence against this Act or the regulations are to be dealt with summarily before a Warden's Court or before a Local Court constituted by a Magistrate sitting alone, except as provided by this section.
- (2) If an appropriate election is made in accordance with Division 3 of Part 2 of the [Criminal Procedure Act 1986](#), any of the following offences may be dealt with on indictment:
- (a) an offence of mining in contravention of a provision of Division 1 of Part 2,
  - (b) an offence under Division 2 of Part 2,
  - (c) an offence, under section 374A, of contravening a condition of a lease, licence or mineral claim under this Act that is identified in the lease, licence or claim as a condition related to environmental management.
- (3) For the purposes of dealing with an offence in accordance with Division 3 of Part 2 of the [Criminal Procedure Act 1986](#), a Warden's Court has the functions of, and is taken to be, a Local Court.

### **375A Penalty notices for offences under section 374A**

- (1) The Minister may serve a penalty notice on the holder of a lease, licence or mineral claim under this Act if it appears to the Minister that the person has committed an offence under section 374A.

- (2) A penalty notice is a notice to the effect that, if the person served does not wish to have the matter determined by a court, the person may pay, within the time and to the person specified in the notice, the penalty prescribed by the regulations for the offence if dealt with under this section.
- (3) A penalty notice may be served personally or by post.
- (4) If the amount of the penalty prescribed for an alleged offence is paid under this section, no person is liable to any further proceedings for the alleged offence.
- (5) Payment under this section is not an admission of liability for the purposes of, and does not affect or prejudice, any civil claim, action or proceeding arising out of the same occurrence.
- (6) The regulations may:
  - (a) prescribe the amount of penalty for an offence under section 374A if dealt with under this section, and
  - (b) prescribe different amounts of penalty for different offences or classes of offences under that section.
- (7) The amount of penalty prescribed under this section for an offence may not exceed:
  - (a) 100 penalty units, in the case of an offence committed by a corporation, or
  - (b) 50 penalty units, in the case of an offence committed by an individual.
- (8) This section does not limit the operation of any provision made by or under this or any other Act relating to proceedings that may be taken in respect of offences.

### **376 Offences by corporations**

- (1) If a corporation contravenes any provision of this Act or the regulations, each person who is a director of the corporation or who is concerned in the management of the corporation is taken to have contravened the same provision if the person knowingly authorised or permitted the contravention.
- (2) A person may be proceeded against and convicted under subsection (1) whether or not the corporation has been proceeded against or convicted under the provision concerned.
- (3) Nothing in this section affects any liability imposed on a corporation for an offence committed by the corporation against this Act or the regulations.

## **Division 4 Miscellaneous**

### **377 Museums and laboratories**

The Minister may establish and maintain in connection with the Department:

- (a) museums for the purpose of providing instruction, by means of displays, classes, lectures or other methods, in geology, mineralogy, chemistry and engineering in their scientific and practical application to mining pursuits, and
- (b) laboratories for the assaying and testing of mineral products or for other analytical determination.

### **378 Purchase of coal bearing land**

The Minister may, from funds appropriated by Parliament, purchase on behalf of the Crown land containing seams of coal.

## **Part 18 Supplementary**

### **379 Saving of royal prerogative**

Except as expressly provided by this Act, this Act does not affect any prerogative of the Crown in respect of gold mines and silver mines.

### **380 Saving of other Acts etc**

Except as expressly provided by this Act, this Act does not affect any other Act or law that prohibits, regulates or restricts, or that has the effect of prohibiting, regulating or restricting:

- (a) the grant, renewal or transfer of an authority, a mineral claim or an opal prospecting licence, or
- (b) the exercise of any right conferred by or under this Act in respect of an authority, a mineral claim or an opal prospecting licence.

### **381 Prospecting unaffected by [Environmental Planning and Assessment Act 1979](#)**

If a person is authorised under this Act to prospect on any land:

- (a) nothing in, or done under, the [Environmental Planning and Assessment Act 1979](#) or an environmental planning instrument operates so as to prevent the person from carrying on prospecting operations on that land, and
- (b) to the extent to which anything in, or done under, that Act or any such instrument would so operate, it is of no effect in relation to the person.

### **382 Applications and tenders generally**

- (1) An application or tender under this Act must be in or to the effect of the approved form.
- (1A) If an approved form requires the form to be completed in a specified manner, or requires specified information to be included in, attached to or furnished with the form, the form is not duly completed unless it is completed in that manner and unless it includes, or has attached to it or furnished with it, that information.
- (2) An application or tender that is required to be lodged with a person must be so lodged in such manner, and during such times, as may be prescribed by the regulations but may, if the regulations so provide, be lodged with some other person.

### **382A Minister to determine certain fees**

The Minister may from time to time, with the concurrence of the Treasurer, determine:

- (a) the lodgment fees payable for the purposes of this Act and the regulations, and
- (b) the mining lease fees payable for the purposes of section 63 (3A).

### **383 Service of documents**

- (1) A document that is authorised or required under this Act to be served on any person may be served:
  - (a) personally or by post, or
  - (b) by leaving it with a person apparently of or above the age of 16 years at, or by posting it to, the person's place of business or, in the case of a corporation, the registered office of the corporation.
- (2) If a landholder on whom a document is authorised or required under this Act to be served is absent from the State or cannot, after diligent inquiry, be found or identified, and that person's place of residence or business cannot, after diligent inquiry, be ascertained, the document may be served by affixing it on some conspicuous part of the land.
- (3) If under this Act a document is authorised or required to be served on the holder of an authority or a mineral claim and there is more than one such holder, service on any one such holder of the document, together with copies of the document addressed to the other holders, is taken to be service on all of the holders.
- (4) If a person has more than one place of business, service may be effected under this section at any of those places.
- (5) Nothing in this section prevents service of a document from being effected by facsimile transmission or other electronic means, or by the use of the facilities of a

document exchange, but the burden of establishing that service has been so effected lies on the person asserting that fact.

- (6) A requirement of this Act to serve a document on a landholder is, if the landholder is the Crown, a requirement to serve it in the manner prescribed by the regulations.
- (7) The regulations may, in a particular case or class of cases, dispense with service on the Crown pursuant to a requirement referred to in subsection (6).

### **383A Service of documents on native title holders**

- (1) If a document is authorised or required under this Act to be served on a landholder who is a native title holder, service of the document is taken to be effected in accordance with section 383 if the document is served on a registered native title body corporate in relation to the land concerned.
- (2) If no approved determination of native title (within the meaning of the Commonwealth Native Title Act) exists in relation to the land concerned:
  - (a) a document authorised or required under this Act to be served on a landholder cannot, for the purposes of serving it on a landholder who is a native title holder who cannot be identified, be served in the manner prescribed by section 383 (2), and
  - (b) such a document may, however, be served on any such landholder by serving it, in a manner authorised by section 383 (1) and (4), on:
    - (i) any representative Aboriginal/Torres Strait Islander bodies for an area that includes the land concerned, and
    - (ii) any registered native title claimants in relation to the land concerned.
- (3)–(5) (Repealed)

### **383B Consent of landholders and others**

- (1) This section applies in relation to:
  - (a) the requirements of sections 31, 49, 62 and 188 that certain rights cannot be exercised or leases or mineral claims cannot be granted except with the written consent of a person or persons specified in the relevant section, and
  - (b) the provision in section 81 that certain operations may be carried out with the consent of the landholder, and
  - (c) the requirement of section 140 that certain operations may not be carried out otherwise than in accordance with an access arrangement agreed with each landholder or determined by an arbitrator as referred to in section 140 (b), and

- (d) the requirements of any regulations made under section 164 (5) or 211 (5) that restrict the exercise of a right of way otherwise than in accordance with the consent of the landholder, and
  - (e) the requirements of sections 166 and 213 that certain resources cannot be utilised otherwise than in accordance with the consent of the landholder, and
  - (f), (g) (Repealed)
  - (h) the requirement of section 265 (4) that rights cannot be exercised unless the amount of compensation payable to a landholder in respect of a mining area is the subject of a valid agreement or of an assessment.
- (2) If a landholder or other person whose consent or agreement must or may be obtained for a purpose mentioned in subsection (1) (a)–(e) or in relation to whom compensation must be agreed on or assessed for the purpose mentioned in subsection (1) (h) cannot, after diligent inquiry, be found or identified:
- (a) the rights may be exercised or the lease or mineral claim may be granted without the written consent of the landholder or person concerned, or
  - (b) the operations may be carried out without the consent of the landholder, or
  - (c) the operations may be carried out in accordance with any access arrangement made with, or determined in respect of, those landholders (if any) who have been found or identified without the agreement of a landholder who has not been found or identified, or
  - (d) the right of way may be exercised without the consent of the landholder, or
  - (e) the resources may be utilised without the consent of the landholder, or
  - (f) (Repealed)
  - (g) the rights under the mining lease may be exercised without the agreement as to, or the assessment of, the compensation.
- (3) For the purposes of subsection (2), a landholder who is a native title holder is taken to have been unable, after diligent inquiry, to be identified if:
- (a) where the purpose for which the landholder's consent or agreement is required to be obtained is an act to which Subdivision P of Division 3 of Part 2 of the Commonwealth Native Title Act applies:
    - (i) notice of an intention to carry out that purpose is given by the Government party under section 29 of that Act, and
    - (ii) at the expiration of the prescribed period, the landholder is neither a registered native title claimant nor a registered native title body corporate in

relation to the land concerned, or

- (b) where the purpose for which the landholder's consent or agreement is required to be obtained is not such an act:
  - (i) notice of an intention to carry out that purpose is served in the manner authorised by section 383 (1) and (4), on any representative Aboriginal/Torres Strait Islander bodies for an area that includes the land concerned, and
  - (ii) at the expiration of the prescribed period, the landholder is neither a registered native title claimant nor a registered native title body corporate in relation to the land concerned.

(4) In this section:

**Government party** has the same meaning as it has in the Commonwealth Native Title Act.

**prescribed period** means:

- (a) in relation to a notice referred to in subsection (3) (a)—the period of 4 months referred to in section 30 of the Commonwealth Native Title Act, or
- (b) in relation to a notice referred to in subsection (3) (b)—the period of 4 months commencing on service of the notice.

### **384 Defence in proceedings for defamation**

- (1) A person has qualified privilege in any proceedings for defamation arising out of an objection lodged under this Act.
- (2) This section does not limit any other right, privilege or immunity that a person has as a defendant in any such proceedings.

### **385 Payment of compensation**

Any amount payable under this Act by way of compensation (other than compensation payable under an access arrangement or compensation payable under Part 13) is to be paid out of money appropriated by Parliament.

### **386 Recovery of unpaid fees etc**

Any fee or charge imposed by or under this Act may be recovered, as a debt, in any court of competent jurisdiction.

### **387 Government agencies**

- (1) The Minister may, by order published in the Gazette, designate a corporation established by an Act as a Government agency for the purposes of the definition of **Government agency** in the Dictionary of words and expressions at the end of this

Act.

**Editorial note—**

For orders under this subsection see Gazette No 101 of 20.8.1992, p 5947.

- (2) For the purposes of this section, a State owned corporation (and any of its subsidiaries) within the meaning of the *State Owned Corporations Act 1989* is taken to be a corporation established by an Act.

**387A Application of Act in relation to former minerals**

- (1) This section applies to a substance that, having been prescribed by the regulations as a mineral for the purposes of the definition of **mineral** in the Dictionary at the end of this Act, ceases to be so prescribed.
- (2) This Act continues to apply to a substance to which this section applies as if it were a mineral, but for the purpose only of enabling the holder of a mining lease or mineral claim in respect of the substance to exercise the rights conferred by this Act on the holder of such a mining lease or mineral claim.
- (3) This section does not operate so as to allow the renewal or consolidation of a mining lease or mineral claim that relates only to a substance to which this section applies.

**388 Regulations**

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act and, in particular, for or with respect to any matter referred to in Schedule 4.
- (2) A regulation may create an offence punishable by a penalty not exceeding:
  - (a) 100 penalty units, in the case of an offence committed by a corporation, or
  - (b) 50 penalty units, in the case of an offence committed by an individual.

**389 Repeals**

- (1) The *Mining Act 1973* and the *Coal Mining Act 1973* are repealed.
- (2) The *Mining Regulations 1974* and the *Coal Mining Regulations 1974* are repealed.

**390 References to certain officers in mining titles**

- (1) The regulations may provide that a reference in any authority, mineral claim or opal prospecting licence to the holder of a specified office within the Department is, for the purposes of the performance of any specified function in connection with the authority, claim or licence, to be read as a reference to the Minister, and the authority, claim or licence is to be construed accordingly.



(2) Nothing in this section affects the Minister's power of delegation under section 363.

### **391 Savings, transitional and other provisions**

Schedule 6 has effect.

## **Schedule 1 Public consultation with respect to the granting of assessment leases and mining leases**

(Sections 41, 52, 63 and 64)

### **Part 1 Assessment leases**

#### **1 Notification of Government agencies and councils**

- (1) Before granting an assessment lease, the Minister must cause notice of the proposal to be served on:
  - (a) each Government agency that, in the opinion of the Minister, would be materially affected by the granting of the lease, and
  - (b) the Director of Planning, and
  - (c) each council within whose local government area the land the subject of the proposed lease is situated.
- (2) Such a notice:
  - (a) must state that an application for the lease has been lodged, and
  - (b) must contain a description or a plan of the land over which the lease is sought, and
  - (c) must state that objections to the granting of the lease (on the grounds that the person or body concerned has major proposals for some other use of that land) may be made to the Minister on or before the date specified in the notice.
- (3) The date specified in a notice under this clause must be a date occurring not less than 28 days after the date of service of the notice.

#### **2 Objections to granting of assessment lease**

- (1) A person or body on which a notice under this Division is served may object to the granting of an assessment lease on the grounds that the person or body has major proposals for some other use of the land.
- (2) An objection must be in writing and must be lodged with the Director-General on or before the date specified in the notice in that regard.
- (3) The Director-General is to cause a copy of any objection lodged under this clause to

be referred for comment to the applicant for the assessment lease concerned.

### **3 Resolution of objections**

- (1) The Minister may cause to be taken such steps as the Minister considers appropriate in connection with any objection under this Part and, if agreement is not reached concerning the acceptance, modification or withdrawal of the objection, the matter is to be referred to the Premier.
- (2) If any matter is so referred, the Premier may give such decision as the Premier considers appropriate.
- (3) If required by the Premier to do so, the Minister must refer such a matter to a warden for inquiry and report.

### **4 Granting of assessment lease if objection made**

An assessment lease in respect of which an objection has been duly made may not be granted unless the objection is withdrawn or otherwise resolved or is rejected by the Premier.

## **Part 2 Mining leases**

### **Division 1 Notification of Government agencies**

#### **5 Notification of Government agencies**

- (1) Before inviting tenders for a mining lease, the Minister must cause notice of the proposal to be served on each Government agency that, in the opinion of the Minister, would be materially affected by the granting of the lease.
- (2) Such a notice:
  - (a) must state that the Minister intends to invite tenders, and
  - (b) must describe the land to which the invitation will relate, and
  - (c) must state that objections to the granting of the lease, or proposals for the inclusion in the lease of any condition, may be made to the Minister on or before the date specified in the notice.
- (3) Before granting a mining lease (otherwise than by way of tender), the Minister must cause notice of the proposal to be served on each Government agency that, in the opinion of the Minister, would be materially affected by the granting of the lease.
- (4) Such a notice:
  - (a) must state that an application for the lease has been lodged, and

- (b) must contain a description or a plan of the land over which the lease is sought, and
  - (c) must state that objections to the granting of the lease, or proposals for the inclusion in the lease of any condition, may be made to the Minister on or before the date specified in the notice.
- (5) The date specified in a notice under this clause must be a date occurring not less than 28 days after the date of service of the notice.

## **6 Notification of Director of Planning**

- (1) Before granting a mining lease (whether by way of tender or otherwise), the Minister must cause notice of the proposal to be served on the Director of Planning.
- (2) Such a notice:
- (a) must state that a tender for the lease or an application for the lease has been lodged, and
  - (b) must contain a description or a plan of the land over which the lease is sought, and
  - (c) must contain a detailed description of the works to be undertaken if the lease is granted, including works and activities relating to:
    - (i) the preparation of the land for mining, and
    - (ii) the rehabilitation of the land either during the carrying on of mining operations or after they have ceased, and
  - (d) must contain a copy of any environmental impact statement that is required by Part 5 of the *Environmental Planning and Assessment Act 1979* to be prepared in relation to the tender or application, and
  - (e) must state that objections to the granting of the lease, or proposals for the inclusion in the lease of any condition, may be made to the Minister on or before the date specified in the notice.
- (3) The date specified in a notice under this clause must be a date occurring not less than 28 days after the date of service of the notice.
- (4) If, before granting a mining lease, the Minister becomes aware that the detailed description contained in a notice served under this clause requires alteration for any reason, the Minister must, before granting the lease, cause notice of the alteration to be served on the Director of Planning.

## **7 Notification of Dams Safety Committee**

- (1) Before inviting tenders for a mining lease in respect of land within a notification area, the Minister must cause notice of the proposal to be served on the Dams Safety Committee.
- (2) Such a notice:
  - (a) must state that the Minister intends to invite tenders, and
  - (b) must describe the land to which the invitation will relate, and
  - (c) must state that objections to the granting of the lease on grounds relating to the safety of a prescribed dam, or proposals for the inclusion in the lease of any condition relating to the safety of the prescribed dam, may be made to the Minister on or before the date specified in the notice.
- (3) Before granting a mining lease (otherwise than by way of tender) in respect of land within a notification area, the Minister must cause notice of the proposal to be served on the Dams Safety Committee.
- (4) Such a notice:
  - (a) must state that an application for the lease has been lodged, and
  - (b) must contain a description or a plan of the land over which the lease is sought, and
  - (c) must state that objections to the granting of the lease on grounds relating to the safety of a prescribed dam, or proposals for the inclusion in the lease of any condition relating to the safety of the prescribed dam, may be made to the Minister on or before the date specified in the notice.
- (5) The date specified in a notice under this clause must be a date occurring not less than 28 days after the date of service of the notice.

## **8 Notification of controlling bodies of exempted areas**

- (1) Before inviting tenders for a mining lease, the Minister must cause notice of the proposal to be served on the controlling body of each exempted area to which the invitation will relate.
- (2) Such a notice:
  - (a) must state that the Minister intends to invite tenders, and
  - (b) must describe the land to which the invitation will relate, and
  - (c) must state that objections to the granting of the lease, or proposals for the

inclusion in the lease of any condition, may be made to the Minister on or before the date specified in the notice.

- (3) Before granting a mining lease (otherwise than by way of tender), the Minister must cause notice of the proposal to be served on the controlling body of each exempted area over which the lease is sought.
- (4) Such a notice:
  - (a) must state that an application for the lease has been lodged, and
  - (b) must contain a description or a plan of the land over which the lease is sought, and
  - (c) must state that objections to the granting of the lease, or proposals for the inclusion in the lease of any condition, may be made to the Minister on or before the date specified in the notice.
- (5) The date specified in a notice under this clause must be a date occurring not less than 28 days after the date of service of the notice.

## **9 Objections to granting of mining lease**

- (1) A person or body (other than the Dams Safety Committee) on which a notice under this Division is served:
  - (a) may object to the granting of a mining lease, or
  - (b) may propose that specified conditions be included in the lease.
- (2) The Dams Safety Committee, in respect of land within a notification area:
  - (a) may object (on grounds relating to the safety of the prescribed dam) to the granting of a mining lease, or
  - (b) may propose that specified conditions relating to the safety of the prescribed dam be included in the lease.
- (3) An objection must be in writing and must be lodged with the Director-General on or before the date specified in the notice in that regard.
- (4) The Director-General is to cause a copy of any objection lodged under this clause to be referred for comment to the tenderer or applicant for the mining lease concerned.
- (5) If the Minister does not accept the objections or proposals of the Dams Safety Committee, or if the Dams Safety Committee fails to make any proposals or to inform the Minister that it does not propose to make any proposals, the matter must be dealt with in consultation with the Minister administering the [Dams Safety Act 1978](#).

## **10 Resolution of objections**

- (1) The Minister may cause to be taken such steps as the Minister considers appropriate in connection with any objection or proposal made under this Division and, if agreement is not reached concerning the acceptance, modification or withdrawal of the objection or proposal, the matter is to be referred to the Premier.
- (2) If any matter is so referred, the Premier may give such decision as the Premier considers appropriate.
- (3) If required by the Premier to do so, the Minister must refer such a matter to a warden for inquiry and report.

## **11 Granting of mining lease if objection or proposal made**

- (1) If an objection to the granting of a mining lease is duly made:
  - (a) in the case of an objection to the invitation of tenders—the invitation must not be made, or
  - (b) in the case of an objection to the granting of a mining lease—the lease must not be granted,unless the objection is withdrawn or otherwise resolved or is rejected by the Premier.
- (2) A mining lease must include:
  - (a) any condition proposed under this Division (unless the proposal for the inclusion of the condition is withdrawn or is rejected by the Premier) or, if such a condition is modified, the condition as so modified, and
  - (b) any condition directed by the Premier to be included in the lease.
- (3) The failure to include a condition in a mining lease does not affect the validity of the lease, but the Minister may, by instrument in writing, amend the lease so as to include the condition omitted.
- (4) The Minister must cause to be served on the holder of a mining lease amended under this clause a written notice setting out details of the amendment.
- (5) Such an amendment takes effect on the date on which the notice is served or on such later date as may be specified in the notice.

## **Division 2 Notification of councils etc where development consent required for mining**

### **12 Application of Division**

This Division applies:

- (a) in relation to a mining lease for a mineral or minerals, to land for which development consent is required before the land may be used for the purpose of obtaining minerals, and
- (b) in relation to a mining lease for a mining purpose or mining purposes only, to land for which development consent is required before the land may be used for that purpose or those purposes.

### **13 Notification of applicant and council**

- (1) Before granting a mining lease (whether by tender or otherwise) over land to which this Division applies, the Minister:
  - (a) must cause a written notice to be served on the applicant or tenderer requiring the applicant or tenderer, on or before the date specified in the notice, to apply to the appropriate consent authority for development consent to the use of the land for the purpose of obtaining minerals, and
  - (b) must cause a written notice to be served on the consent authority concerned informing the authority:
    - (i) that the applicant or tenderer has been required to apply for development consent, and
    - (ii) that proposals for the inclusion in the mining lease of conditions (including special purpose conditions) which the authority wishes to have included in the lease should be lodged with the Director-General on or before such date as is specified in the notice.
- (2) This clause does not apply:
  - (a) in relation to a mining lease for a mineral or minerals, to the granting of the mining lease over land in respect of which a development consent to the use of the land for the purpose of obtaining minerals is in force, or
  - (b) in relation to a mining lease for a mining purpose or mining purposes only, to the granting of the mining lease over land in respect of which a development consent to the use of the land for that purpose or those purposes is in force.

### **14 Consent of landowner not necessary in application required by this Division**

Any requirement of the *Environmental Planning and Assessment Act 1979* that an application for development consent be accompanied by the consent of the owner of the land concerned does not apply to an application under this Division.

### **15 Definition**

In this Division:

***special purpose condition*** means a condition concerning:

- (a) the preparation of land for mining, or
- (b) the mining methods to be employed while mining operations are being carried on, or
- (c) the rehabilitation of land, either while mining operations are being carried on or after they have ceased, or
- (d) the safety measures to be adopted, either before mining operations are commenced, while they are being carried on or after they have ceased, or
- (e) the security to be given with regard to the performance of any matter referred to in paragraph (a), (b), (c) or (d).

### **Division 3 Notification of councils etc where development consent not required for mining**

#### **16 Application of Division**

This Division applies:

- (a) in relation to a mining lease for a mineral or minerals, to land for which development consent is not required before the land may be used for the purpose of obtaining minerals, and
- (b) in relation to a mining lease for a mining purpose or mining purposes only, to land for which development consent is not required before the land may be used for that purpose or those purposes.

#### **17 Notification of councils**

- (1) Before inviting tenders for a mining lease, the Minister must cause notice of the proposal to be served on each council within whose local government area is situated the land to which the invitation relates.
- (2) Such a notice:
  - (a) must state that the Minister intends to invite tenders, and
  - (b) must describe the land to which the invitation will relate, and
  - (c) must state that objections to the granting of the lease, or proposals for the inclusion in the lease of any condition, may be made to the Minister on or before the date specified in the notice.
- (3) Before granting a mining lease (otherwise than by way of tender), the Minister must cause notice of the proposal to be served on each council within whose local government area is situated the land over which the mining lease is proposed to be



granted.

(4) Such a notice:

(a) must state that an application for the lease has been lodged, and

(b) must contain a description or a plan of the land over which the lease is sought, and

(c) must state that objections to the granting of the lease, or proposals for the inclusion in the lease of any condition, may be made to the Minister on or before the date specified in the notice.

(5) The date specified in a notice under this clause must be a date occurring not less than 28 days after the date of service of the notice.

### **18 Objections to granting of mining lease**

(1) A council on which a notice is served under this Division:

(a) may object to the granting of a mining lease, or

(b) may propose that specified conditions be included in the mining lease.

(2) An objection must be in writing and must be lodged with the Director-General on or before the date specified in the notice in that regard.

(3) The Director-General is to cause a copy of any objection lodged under this clause to be referred for comment to the tenderer or applicant for the mining lease concerned.

### **19 Consideration of objections**

In deciding whether or not to grant a mining lease, the Minister must take into account any objection or proposal made under this Division.

## **Division 4 Notification of owners of private land**

### **20 Application of Division**

(1) This Division applies to a mining lease that is proposed to extend to the surface of any land.

(2) References in this Division to:

(a) land, and

(b) a landholder,

are references only to land to whose surface the lease is proposed to extend, and the landholder of any such land, respectively.

## **21 Notification of landholders**

- (1) Before inviting tenders for a mining lease to which this Division applies, the Minister must cause notice of the proposal to be served on any landholder of the land concerned.
- (2) Such a notice:
  - (a) must state that the Minister intends to invite tenders, and
  - (b) must describe the land to which the invitation will relate, and
  - (c) must state that objections to the granting of the lease on the grounds that the land is agricultural land, and claims with respect to valuable works and structures on the land, may be made to the Minister within 28 days after the date on which the notice is served.
- (3) An applicant for a mining lease to which this Division applies must (within 21 days after lodging the application or, in a case to which section 383A (2) (b) applies, within 21 days after the expiration of the period referred to in that paragraph) cause notice of the application to be served on any landholder of the land concerned.
- (4) Such a notice:
  - (a) must state that an application for the lease has been lodged, and
  - (b) must contain a description, prepared in the manner prescribed by the regulations, of the land over which the lease is sought, and
  - (c) must state that objections to the granting of the lease on the grounds that the land is agricultural land, and claims with respect to valuable works and structures on the land, may be made to the Minister within 28 days after the date on which the notice is served.
- (5) A copy of every notice served in accordance with subclause (3) must be lodged with the Director-General within 21 days after the date on which the notice was served, together with a statutory declaration to the effect that each such notice was served and setting out the name and address of each landholder on whom it was served.

## **22 Objections to granting of mining lease**

- (1) A landholder of any land may object to the granting of the mining lease concerned on the ground that the land, or any part of the land, over which the lease is sought is agricultural land.
- (2) An objection must be in writing and must be lodged with the Director-General on or before the date specified in the relevant notice under clause 21.
- (3) Subclause (1) does not apply if the landholder consents in writing to the granting of

the mining lease over the land or if the applicant for the mining lease consents in writing to the surface of the land being excluded from the application.

- (4) A written consent given under this clause is irrevocable.
- (5) On receipt of an objection under this clause, the Director-General is to refer the objection to the Director-General of the Department of Agriculture who is to determine the objection in accordance with Schedule 2.

### **23 Agricultural land**

- (1) If land is determined to be agricultural land as a consequence of an objection under this Division:
  - (a) in the case of an objection to the invitation of tenders—the invitation must not be made, or
  - (b) in the case of an objection to the granting of a mining lease—the lease must not be granted,except with the written consent of the landholder.
- (2) A written consent given under this clause is irrevocable.
- (3) A mining lease may not be granted beneath the surface of any agricultural land except at such depths, and subject to such conditions, as the Minister considers sufficient to minimise damage to the surface.
- (4) A mining lease may nevertheless be granted over any part of land that has been determined to be agricultural land, including the surface of any such land, if the Minister considers that the granting of the lease over that part of the land is necessary to give access to any other part of the land to which the lease applies.

### **23A Identification of valuable works and structures**

- (1) A landholder of land to which an invitation for tenders will relate, or over which a mining lease is sought, may make a claim to the Minister that something on the land is a valuable work or structure.
- (2) A claim must be in writing, identifying the nature and location of the work or structure, and must be lodged with the Director-General on or before the date specified in the relevant notice under clause 21.
- (3) On receipt of a claim made under this clause, the Director-General:
  - (a) in the case of a claim relating to an invitation for tenders, must decide whether to accept the claim or to object to the claim, or
  - (b) in the case of a claim relating to an application for a mining lease, must cause

notice of the claim to be given to the applicant for the lease.

- (4) An applicant for a mining lease to whom such a notice is given may object to the claim.
- (5) An objection must be made in writing and lodged with the Director-General within 14 days after notice of the claim was given to the applicant.
- (6) Anything identified in a claim as being a valuable work or structure is taken to be a valuable work or structure for the purposes of section 62 unless it is declared not to be a valuable work or structure under clause 23B.

### **23B Consideration of objections to claims concerning valuable works and structures**

- (1) Unless it is earlier withdrawn, the Director-General must refer any objection made under clause 23A to a warden for inquiry and report.
- (2) At the conclusion of the inquiry into the objection, the warden must announce in open court the warden's finding and the purport of the warden's report and must transmit the finding and report to the Minister.
- (3) Anything in respect of which an objection has been made under clause 23A and which the warden's report declares not to be a valuable work or structure is taken not to be a valuable work or structure for the purposes of section 62.

## **Division 5 Notification of other persons**

### **24 Notification of the general public**

- (1) Before inviting tenders for a mining lease, the Minister must cause notice of the proposal to be published in the Gazette, in a newspaper circulating generally in the State and in one or more newspapers circulating in the locality in which the land is situated.
- (2) Such a notice:
  - (a) must state that the Minister intends to invite tenders, and
  - (b) must describe the land to which the invitation will relate, and
  - (c) must state that objections to the granting of the lease may be made in writing to the Minister and must explain (having regard to the provisions of clause 28) what persons are entitled to object, and
  - (d) must state that such objections should be made on or before the date specified in the notice.
- (3) Before granting a mining lease (otherwise than by way of tender), the Minister must cause notice of the proposal to be published in a newspaper circulating generally in

the State and in one or more newspapers circulating in the locality concerned.

- (4) Such a notice:
- (a) must state that an application for the lease has been lodged, and
  - (b) must contain a description or a plan of the land over which the lease is sought, and
  - (c) must state that objections to the granting of the lease may be made in writing to the Minister and must explain (having regard to the provisions of clause 28) what persons are entitled to object, and
  - (d) must state that such objections should be made on or before the date specified in the notice.
- (5) The date specified in a notice under this clause must be a date occurring not less than 28 days after the date of publication of the notice.

## **25 Notification of owners of prescribed dams**

- (1) Before inviting tenders for a mining lease in respect of land within a notification area, the Minister must cause notice of the proposal to be served on the owner of the relevant prescribed dam.
- (2) Such a notice:
- (a) must state that the Minister intends to invite tenders, and
  - (b) must describe the land to which the invitation will relate, and
  - (c) must state that objections to the granting of a mining lease may be made to the Minister on or before the date specified in the notice by any owner of the prescribed dam (other than a person referred to in clause 28) and may also be made under Division 1 (on grounds relating to the safety of the prescribed dam) by the Dams Safety Committee.
- (3) Before granting a mining lease in respect of land within a notification area, the Minister must cause notice of the proposal to be served on the owner of the relevant prescribed dam.
- (4) Such a notice:
- (a) must state that an application for the lease has been lodged, and
  - (b) must contain a description or a plan of the land over which the lease is sought, and
  - (c) must state that objections to the granting of the lease may be made to the

Minister on or before the date specified in the notice by any owner of the prescribed dam (other than a person referred to in clause 28) and may also be made under Division 1 (on grounds relating to the safety of the prescribed dam) by the Dams Safety Committee.

- (5) The date specified in a notice under this clause must be a date occurring not less than 28 days after the date of service of the notice.

## **26 Objections to granting of mining lease**

- (1) Any person (other than a person referred to in clause 28) may object to the granting of a mining lease.
- (2) An objection must be in writing and must be lodged with the Director-General on or before the date specified in the relevant notice under this Division.
- (3) The Director-General is to cause a copy of any objection lodged under this clause to be referred for comment to the tenderer or applicant for the mining lease concerned.

## **27 Warden's inquiry and report**

- (1) The Minister may not invite tenders for a mining lease, or grant a mining lease, until a warden has inquired into and reported on any objection under this Division.
- (2) At the conclusion of the inquiry, the warden must announce in open court the warden's finding and the purport of the warden's report and must transmit the finding and report to the Minister.

## **28 Certain persons not entitled to object**

An objection may not be made under this Division:

- (a) by any person or body that is entitled to object under Division 1 or 3 to the granting of a mining lease, or
- (b) by any person who is entitled, under the *Environmental Planning and Assessment Act 1979*, to make submissions in relation to the granting of any development consent that is required before the land concerned may be used for the purpose of obtaining minerals or for one or more mining purposes.

## **Schedule 2 Agricultural land**

(Sections 179 and 222 and cl 22, Sch 1)

### **1 Definitions**

- (1) In this Schedule:

***agricultural land*** means:

- (a) land that has been sown with not less than 2 crops of an annual species during the period of 10 years immediately preceding the relevant date, or
- (b) land that has been sown with 1 crop of an annual species during the period of 10 years immediately preceding the relevant date if the relevant authority is satisfied that:
  - (i) having regard to the date on which the land was brought under cultivation, it would not be reasonable to expect more than one such crop to have been sown, and
  - (ii) there was a sufficient reason for not having brought the land under cultivation at an earlier date, or
- (c) land on which:
  - (i) at the relevant date, shade, shelter or windbreak trees are growing, or
  - (ii) at any time during the period of 10 years immediately preceding the relevant date, edible fruit or nut bearing trees, vines or any other perennial crop approved by the relevant authority have or has been growing, or
- (d) pastures:
  - (i) that are sown with seed of a species and at a rate of application, or treated with fertiliser of a composition and at a rate of application, satisfactory to the relevant authority, and
  - (ii) that have, as a result of that sowing or treatment, maintained a level of pasture production that is substantially above that which might be expected of natural pastures, or
- (e) land that is used, to an extent acceptable to the relevant authority, for the production of grass seed, pasture legume seed, hay or silage, or
- (f) land that has a preponderance of improved species of pasture grasses.

**the relevant authority** means the Director-General of the Department of Agriculture or any officer of that Department authorised by the Director-General of that Department to exercise functions under this Schedule.

**the relevant date** means the date or dates with reference to which the relevant authority is required under clause 2 to decide whether or not any land is agricultural land.

- (2) For the purposes of paragraphs (a) and (b) of the definition of **agricultural land** in subclause (1), land is not to be treated as having been sown with a crop of an annual species unless, in the opinion of the relevant authority, the crop sown was carried

through to a successful use.

## **2 Decision by the relevant authority as to whether or not land is agricultural land**

- (1) When the relevant authority is required to decide whether or not any land is agricultural land, the relevant authority must do so:
  - (a) in the case of a reference under section 179, by deciding whether or not the land was agricultural land on the date on which the application for the mineral claim concerned was lodged, and
  - (b) in the case of a reference under section 222, by deciding whether or not the land was agricultural land on the date on which the notice, pursuant to which the objection referred to in that section was made, was served in accordance with section 221, and
  - (c) in the case of a reference under clause 22 of Schedule 1, by deciding whether or not the land was agricultural land on the date on which the invitation for tenders for the mining lease concerned was first published or the application for the mining lease concerned was lodged.
- (2) If the Director-General, when referring a question for decision under clause 22 of Schedule 1, certifies a date pursuant to clause 3 of this Schedule, the relevant authority may not decide, pursuant to subclause (1) (c), that the land concerned is agricultural land unless satisfied that it was agricultural land on the date so certified.

## **3 Date to be certified by Director-General**

When referring a question for decision under clause 22 of Schedule 1, the Director-General, if the tenderer or applicant for a mining lease over any land was, when the invitation for tenders was first published or the application was lodged, the holder of an exploration licence or mineral claim over that land, must issue to the relevant authority a certificate to that effect and as to the date on which the invitation for tenders for that licence was first published or the application for that licence or claim was lodged.

## **4 Relevant authority may decide that part only of land is agricultural land**

If the relevant authority is required to decide whether or not any land is agricultural land, nothing in this Act operates so as to prevent the relevant authority from deciding that a part only of the land is agricultural land.

## **Schedule 3 (Repealed)**



## **Schedule 4 Regulation making powers**

(Section 388)

### **1 Prospecting**

Regulating prospecting and the carrying on of operations for that purpose, the methods which may or may not be used for that purpose and the duties of specified persons in relation to prospecting operations.

### **2 Mining**

Regulating mining and the carrying on of operations for that purpose, the methods which may or may not be used for that purpose and the duties of specified persons in relation to mining operations.

### **3 Fossicking**

Regulating fossicking and the carrying on of operations for that purpose and the methods which may or may not be used for that purpose.

### **4 Administrative matters**

Prescribing the qualifications for, and the functions of, wardens, mining registrars, mining inspectors, mining surveyors and other persons acting in the administration of this Act.

### **5 Mining improvements**

Regulating the construction, use and maintenance of mining improvements on Crown lands in cases where a mining lease has not been granted.

### **6 Tourist activities**

Regulating the conduct of tourist activities in mining areas.

### **7 Wardens' inquiries**

Prescribing the procedure to be followed in connection with any inquiry held by a warden under this Act.

### **8 Fees, charges and refunds**

Regulating the imposition of fees and charges and authorising the postponement, refund or waiver of fees and charges.

### **9 Statistics, records and accounts**

Providing for:

- (a) the compilation of mining statistics, and

- (b) the furnishing of information for the purpose of enabling mining statistics to be compiled, and
- (c) the keeping of records and books of account, and
- (d) the inspection of, and the taking of extracts from, records and books so kept, and
- (e) the furnishing of returns and records.

#### **9A Aggregation of conditions of mining leases**

Providing for the aggregation of the labour or expenditure conditions of mining leases and the cancellation or variation of any such aggregation.

#### **10 Arbitrators' costs**

Regulating arbitrators' costs under this Act.

#### **11 (Repealed)**

#### **12 Savings and transitional provisions**

Prescribing provisions of a savings or transitional nature consequent on the consolidation of any existing leases under Part 6 or the transfer of parts of assessment leases or mining leases under Part 7.

### **Schedule 5 (Repealed)**

### **Schedule 6 Savings, transitional and other provisions**

(Section 391)

## **Part 1 Regulations**

### **1 Regulations**

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

*Mining Act 1992*

*Mining Legislation Amendment Act 1996*

*Native Title (New South Wales) Amendment Act 1998*

*Local Courts Amendment (Part-time Magistrates) Act 1999*

*Survey (Geocentric Datum of Australia) Act 1999*

*Offshore Minerals Act 1999*

*Mining Amendment Act 1999*

*Mining and Petroleum Legislation Amendment Act 2000*

- (1A) The regulations may also contain provisions of a savings or transitional nature consequent on the publication by the Surveyor-General of a notice under section 4 (2) of the *Survey (Geocentric Datum of Australia) Act 1999*.
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or the date of publication of the notice under section 4 (2) of the *Survey (Geocentric Datum of Australia) Act 1999* (as the case may be), or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than its date of publication in the Gazette, the provision does not operate so as:
- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before its date of publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted before the date of its publication.

## **Part 2 Provisions consequent on the enactment of the *Mining Act 1992***

### **2 Definitions**

- (1) In this Part:

**entitlement** means:

- (a) an authority, claim or opal prospecting licence granted or deemed to be granted under the *Mining Act 1973*, or
- (b) an authorisation or concession granted or deemed to be granted under the *Coal Mining Act 1973*.

**the relevant commencement** means:

- (a) in relation to a provision of the *Mining Act 1973* or the *Coal Mining Act 1973*—the date on which the provision is repealed, and
- (b) in relation to a provision of this Act—the date on which the provision commences.

- (2) A reference in this Part to the granting of an entitlement includes, in the case of a claim under the *Mining Act 1973*, a reference to the registration of the claim.

### **3 Mining Act 1973 or the [Coal Mining Act 1973](#) to continue to apply to certain applications**

- (1) This clause applies to an application for, or for the renewal or transfer of:
  - (a) any authority, claim or opal prospecting licence under the *Mining Act 1973*, or
  - (b) any authorisation or concession under the [Coal Mining Act 1973](#).
- (2) The provisions of the *Mining Act 1973* or the [Coal Mining Act 1973](#) continue to apply to applications and tenders duly lodged before the relevant commencement as if this Act had not been enacted.
- (3) Clause 4 applies to:
  - (a) an authority, claim or opal prospecting licence granted under the *Mining Act 1973* by virtue of this clause, and
  - (b) an authorisation or concession granted under the [Coal Mining Act 1973](#) by virtue of this clause,as if it had been granted immediately before the relevant commencement.
- (4) A reference in this clause to an application or tender that has been duly lodged includes a reference to an application or tender that, although not duly lodged, is an application or tender that could lawfully be dealt with under the *Mining Act 1973* or the [Coal Mining Act 1973](#).

### **4 Existing mining entitlements**

- (1) An exploration licence granted under the *Mining Act 1973* or an exploration permit or authorisation granted under the [Coal Mining Act 1973](#) and in force immediately before the relevant commencement is taken to be an exploration licence granted under this Act.
- (2) A mining lease or mining purposes lease granted under the *Mining Act 1973* or a coal lease granted under the [Coal Mining Act 1973](#) and in force immediately before the relevant commencement is taken to be a mining lease granted under this Act.
- (3) A claim registered under the *Mining Act 1973* and in force immediately before the relevant commencement is taken to be a mineral claim granted under this Act.
- (4) An opal prospecting licence granted under the *Mining Act 1973* and in force immediately before the relevant commencement is taken to be an opal prospecting licence granted under this Act.
- (5) In this clause, a reference to any form of entitlement granted under the *Mining Act 1973* or the [Coal Mining Act 1973](#) includes a reference to an entitlement that is deemed to have been granted under either of those Acts.

## **5 Directions concerning certain mining leases**

A direction in force under section 92 of the *Mining Act 1973* immediately before the relevant commencement is taken to be a direction under section 77 of this Act.

## **6 Directions concerning certain coal leases**

- (1) Any coal lease that is the subject of a direction given under section 72 of the *Coal Mining Act 1973* and in force immediately before the relevant commencement is taken to have been amended so as to include that mineral as a mineral to which the corresponding mining lease under this Act applies.
- (2) Any direction given under section 72A of the *Coal Mining Act 1973* and in force immediately before the relevant commencement is taken to be a direction in force under section 78 of this Act.

## **7 Directions to protect the environment**

- (1) Any condition imposed on an authority, authorisation or concession in accordance with section 118, 119 or 119A of the *Mining Act 1973* or section 94, 95 or 95A of the *Coal Mining Act 1973* is taken to have been imposed under Division 2 of Part 11 of this Act.
- (2) Any direction given under section 120 of the *Mining Act 1973* or section 96 of the *Coal Mining Act 1973* and in force immediately before the relevant commencement is taken to be a direction in force under section 240 of this Act.
- (3) Any direction given under section 172 of the *Mining Act 1973* or section 115 of the *Coal Mining Act 1973* and in force immediately before the relevant commencement is taken to be a direction in force under section 245 of this Act.

## **8 Environmental planning and assessment matters**

Sections 65 and 74 of this Act apply to and in respect of a mining lease granted in accordance with section 116 of the *Mining Act 1973* or section 91 of the *Coal Mining Act 1973* before the relevant commencement in the same way as they apply to and in respect of a mining lease granted in accordance with this Act.

## **9 Consolidation of leases**

- (1) Part 5A of the *Mining Act 1973* continues to apply to a draft consolidated mining lease prepared under section 111C of that Act before the relevant commencement as if this Act had not been enacted.
- (2) Any consolidated mining lease granted under Part 5A of the *Mining Act 1973* as a consequence of the operation of subclause (1) is taken to have been granted under Part 6 of this Act.

- (3) Part 4A of the *Coal Mining Act 1973* continues to apply to a draft consolidated coal lease prepared under section 82C of that Act before the relevant commencement as if this Act had not been enacted.
- (4) Any consolidated coal lease granted under Part 4A of the *Coal Mining Act 1973* as a consequence of the operation of subclause (3) is taken to have been granted under Part 6 of this Act.

## **10 Register of colliery holdings**

The register of colliery holdings kept under section 115A of the *Coal Mining Act 1973* is taken to be the register of colliery holdings kept under section 163 of this Act.

## **11 Rights of way**

Any right of way in force under section 175 of the *Mining Act 1973* or 117 of the *Coal Mining Act 1973* immediately before the relevant commencement is taken to be a right of way in force under section 164 of this Act.

## **12 Suspension of authorities**

Any suspension of the conditions of an authority made under Part 5 of the *Mining Act 1973* and in force immediately before the relevant commencement is taken to be a suspension of the conditions of the corresponding authority under section 168 of this Act.

## **13 Caveats**

Any caveat duly lodged under section 109 of the *Mining Act 1973* or section 106 of the *Coal Mining Act 1973* before the relevant commencement is taken to be a caveat duly lodged under section 124 of this Act and is to have effect as if this Act had been in force when it was lodged.

## **14 Claims**

- (1) Any obligation under the *Mining Act 1973* in connection with a claim registered under Part 4 of that Act (being an obligation in existence in force immediately before the relevant commencement) is taken to be an obligation under this Act in connection with the corresponding mineral claim.
- (2) Any security given in respect of a claim under Part 4 of the *Mining Act 1973* before the relevant commencement is taken to be security given in respect of the corresponding mineral claim under this Act.
- (3) Any claim whose registration had been renewed under Part 4 of the *Mining Act 1973* before the relevant commencement is taken to be a mineral claim renewed under Part 9 of this Act.
- (4) A certificate of registration of a claim or of renewal of registration of a claim issued

before the relevant commencement is taken to have been duly issued under this Act.

- (5) Any application for the registration of a person on whom the rights of a registered holder of a claim have devolved as the holder of the claim (being an application that had not been finally dealt with before the relevant commencement) is to continue to be dealt with as if this Act had not been enacted.
- (6) Any such registration is taken to be a transfer duly effected under this Act.
- (7) Any suspension of the conditions of a registered claim under Part 4 of the *Mining Act 1973* and in force immediately before the relevant commencement is taken to be a suspension of the conditions of the corresponding mineral claim under section 215 of this Act.

## **15 Permits**

- (1) Any permit granted under section 36A of the *Mining Act 1973* and in force immediately before the relevant commencement continues to have effect for the purposes for which it was granted.
- (2) A permit may be issued under section 254 of this Act in relation to the obligations of the holder of a registered claim under Part 4 of the *Mining Act 1973*.

## **16 Licence to process tailings**

Any licence in force under section 173 of the *Mining Act 1973* immediately before the relevant commencement continues in force for the term for which it was granted as if this Act had not been enacted.

## **17 Licence to construct tunnels etc**

Any licence in force under section 174 of the *Mining Act 1973* immediately before the relevant commencement continues in force for the duration of the mining lease (including any mining purposes lease that is taken to be a mining lease) in relation to which it was granted.

## **18 Access arrangements**

- (1) An access arrangement in force under Division 4A of Part 5 of the *Mining Act 1973* immediately before the relevant commencement is taken to be an access arrangement in force under Division 2 of Part 8 of this Act.
- (2) A person who held office as an arbitrator under section 84E of the *Mining Act 1973* immediately before the relevant commencement is taken to have been appointed under section 143 of this Act.
- (3) The Arbitration Panel established by section 84B of the *Mining Act 1973* is taken to be the Arbitration Panel established under section 139 of this Act.

- (4) Any person who was a member of the Arbitration Panel established under section 84B of the *Mining Act 1973* immediately before the relevant commencement is taken to be a member of the Arbitration Panel established by section 139 of this Act.
- (5) The conditions under which a member of the Arbitration Panel held office under the *Mining Act 1973* immediately before the relevant commencement are, until they are duly changed under this Act, to be the conditions under which the member holds office as a member of the Arbitration Panel under this Act.
- (6) Any notice served under section 84E or 84F of the *Mining Act 1973* before the relevant commencement is taken to have been duly served under section 142 or 143 of this Act.
- (7) Any matter done by an arbitrator before the relevant commencement for the purposes of a hearing under Division 4A of Part 5 of the *Mining Act 1973* is taken to have been done for the purposes of Division 2 of Part 8 of this Act.
- (8) An interim determination in force under section 84K of the *Mining Act 1973* immediately before the relevant commencement is taken to be an interim determination under section 149 of this Act.
- (9) A final determination in force under section 84M of the *Mining Act 1973* immediately before the relevant commencement is taken to be a final determination under section 151 of this Act.
- (10) Section 154 of this Act applies to a hearing conducted under Division 4A of Part 5 of the *Mining Act 1973* in the same way as it applies to a hearing conducted under Division 2 of Part 8 of this Act.

## **19 Compensation**

Any compensation payable under Part 8 of the *Mining Act 1973* or Part 8 of the *Coal Mining Act 1973* in respect of the granting of an entitlement under either of those Acts, or the exercise of rights under either of those Acts, before the relevant commencement is taken to be compensation payable under Part 13 of this Act.

## **20 Royalty**

Part 14 of this Act applies to royalty on coal and other minerals recovered pursuant to an instrument in force under the *Mining Act 1973* or the *Coal Mining Act 1973* before the relevant commencement in the same way as it applies to coal and other minerals recovered after that commencement.

## **21 Trust funds**

Any trust fund duly established under section 99 of the *Mining Act 1973* or section 77B of the *Coal Mining Act 1973* and in existence immediately before the relevant



commencement is taken to have been duly established under section 288 of this Act.

## **22 Inspectors**

Any person who was an inspector under section 183 of the *Mining Act 1973* immediately before the relevant commencement is taken to be an inspector under this Act.

## **23 Wardens and other officers**

Any person who held office as chief warden, warden or mining registrar under the *Mining Act 1973* immediately before the relevant commencement is taken to have been appointed as chief warden, warden or mining registrar under this Act.

## **24 Wardens' Courts**

Any Warden's Court established under the *Mining Act 1973* and in existence immediately before the relevant commencement is taken to have been established under this Act.

## **25 Proceedings**

- (1) Any proceedings that had been commenced under the *Mining Act 1973* in a Warden's Court but had not been finally dealt with before the relevant commencement are to continue to be dealt with in accordance with this Act.
- (2) Any decision of a Warden's Court under the *Mining Act 1973* and in force immediately before the relevant commencement is taken to be a decision of a Warden's Court under this Act.
- (3) Any order or injunction made or granted by a Warden's Court, or by a warden, under the *Mining Act 1973* and in force immediately before the relevant commencement is taken to be an order or injunction made or granted under this Act.
- (4) Any writ of execution issued by a Warden's Court under the *Mining Act 1973* and in force immediately before the relevant commencement is to be enforced as if this Act had not been enacted.
- (5) Any authorisation granted by a Warden's Court, or by a warden, under the *Mining Act 1973* or the *Coal Mining Act 1973* and in force immediately before the relevant commencement is taken to have been granted under this Act.
- (6) Any summons or subpoena issued by a Warden's Court, or by a warden, under the *Mining Act 1973* and in force immediately before the relevant commencement is taken to have been issued under this Act.

## **26 Appeals**

The *Mining Act 1973* continues to apply to an appeal, or an application for determination of a stated case, made under that Act before the relevant commencement as if this Act had not been enacted.

## **27 Wardens' inquiries**

Any inquiry conducted by a warden under section 178 or 178A of the *Mining Act 1973* before the relevant commencement is taken to be a warden's inquiry under this Act.

## **28 Evidentiary certificates**

A certificate issued under section 26F, 37A or 111 of the *Mining Act 1973* or under section 108 of the *Coal Mining Act 1973* before the relevant commencement continues to have effect in relation to proceedings under that Act as if this Act had not been enacted.

## **29 Certain decisions by the Minister**

Any decision given by the Minister in respect of a dispute referred to in section 179 of the *Mining Act 1973* or section 121 of the *Coal Mining Act 1973* before the relevant commencement is taken to be a decision given under the corresponding section of this Act.

## **30 Agreements concerning payment by instalments**

Any agreement in force under section 127 of the *Coal Mining Act 1973* immediately before the relevant commencement continues in force as if it were a condition of a mining lease under section 70 (4) of this Act.

## **31 Delegations**

Any delegation in force immediately before the relevant commencement under the *Mining Act 1973* or the *Coal Mining Act 1973* is taken to have been given under this Act and continues to have effect as if it had been given under this Act.

## **32 Disclosure of information**

Any information obtained by a person in connection with the administration or execution of the *Mining Act 1973* or the *Coal Mining Act 1973* is taken to have been obtained by the person in connection with the administration or execution of this Act.

## **33 Mining divisions**

Any division of a mining district constituted under the *Mining Act 1973* and in existence immediately before the relevant commencement is taken to be a mining division constituted under this Act, with the same name and boundaries as it had immediately before the relevant commencement.

## **34 Reserves**

(1) Any reserve constituted under the *Mining Act 1973* (including any reserve that is deemed to have been constituted under that Act) and in existence immediately before the relevant commencement is taken to be a reserve constituted under this Act, with the same name and boundaries as it had immediately before the relevant

commencement.

- (2) Any order in force under section 24 of the *Mining Act 1973* immediately before the relevant commencement, being an order containing a direction prohibiting the granting or registration of a particular entitlement over land in a reserve is taken to be an order prohibiting the granting of the entitlement that, by virtue of clause 4, is the corresponding entitlement over land in the reserve.

### **35 Opal prospecting areas**

- (1) Any opal prospecting area constituted under the *Mining Act 1973* and in existence immediately before the relevant commencement is taken to be an opal prospecting area constituted under this Act, with the same name and boundaries as it had immediately before the relevant commencement.
- (2) Any notice served in accordance with section 25A (2) of the *Mining Act 1973* before the relevant commencement is taken to be a notice duly served under section 221 of this Act.
- (3) Any objection duly made under section 25B (1) of the *Mining Act 1973* before the relevant commencement is taken to be an objection duly lodged under section 222 of this Act.
- (4) Any opal prospecting block constituted under the *Mining Act 1973* and in existence immediately before the relevant commencement is taken to be an opal prospecting block constituted under this Act, with the same designation and boundaries as it had immediately before the relevant commencement.
- (5) Any map prepared under section 25C of the *Mining Act 1973* before the relevant commencement is taken to have been duly prepared under section 225 of this Act.
- (6) The particulars depicted on any such map are taken to be the corresponding particulars for the purposes of this Act.

### **36 Claims for damages**

Section 26H of the *Mining Act 1973* continues to apply in relation to any injury or loss referred to in that section (being an injury or loss sustained before the relevant commencement) as if this Act had not been enacted.

### **37 Notices and instruments**

Any notice or instrument published or served in accordance with any provision of the *Mining Act 1973* or the *Coal Mining Act 1973* before the relevant commencement is taken to have been duly served under the corresponding provision of this Act.

### **38 Records**

Any records kept before the relevant commencement under section 105 of the *Mining Act 1973* or section 102 of the *Coal Mining Act 1973* are to form part of the records kept under section 159 of this Act.

### **39 Museums and laboratories**

Any museum or laboratory established under the *Mining Act 1973* and in existence immediately before the relevant commencement is taken to have been established under this Act.

### **40, 41 (Repealed)**

### **42 Directions concerning graticular sections**

A direction in force immediately before the relevant commencement for the purposes of the definition of **block** or **unit** in section 6 (1) of the *Mining Act 1973* or section 6 (1) of the *Coal Mining Act 1973* is taken to be a direction for the purposes of the corresponding definition in the Dictionary at the end of this Act.

### **43 Instruments under sec 77 of the Mining Act 1973**

An instrument lodged with the Director-General in accordance with section 77 (1) (c) of the *Mining Act 1973* before the relevant commencement is taken to be a notice of intention duly given in accordance with section 8 (1) of this Act.

### **44 References to provisions of repealed Acts**

- (1) In determining a relevant date in accordance with section 62 (4) of this Act:
  - (a) a reference to the date on which a notice was published in the Gazette under section 136 of this Act includes a reference to the date on which a notice was published in the Gazette under section 31 of the *Coal Mining Act 1973*, and
  - (b) a reference to the date on which an application for an exploration licence was lodged under this Act includes, in the case of an application relating to coal, a reference to the date on which an application for an authorisation or exploration permit was lodged under the *Coal Mining Act 1973*, and
  - (c) a reference to the date on which a mineral claim was granted under this Act includes a reference to the date on which a claim was registered under the *Mining Act 1973*.
- (2) A reference in clause 3 of Schedule 2 to the date on which an application for an exploration licence or mineral claim was lodged includes, in the case of an exploration licence, claim, authorisation or concession granted under the *Mining Act 1973* or the *Coal Mining Act 1973* that is taken to be an exploration licence or mineral claim granted under this Act, a reference to the date on which the application for the

exploration licence, claim, authorisation or concession was lodged under the *Mining Act 1973* or the *Coal Mining Act 1973*.

#### **45 Miscellaneous applications**

Any application (other than an application referred to in clause 3) that had been made but not dealt with under a provision of the *Mining Act 1973* or the *Coal Mining Act 1973* before the relevant commencement is taken to be an application under the corresponding provision of this Act and may continue to be dealt with accordingly.

#### **46 Construction of certain references**

In any other Act or instrument:

- (a) a reference to the *Mining Act 1973* or the *Coal Mining Act 1973* includes a reference to this Act, and
- (b) a reference to a provision of the *Mining Act 1973* or the *Coal Mining Act 1973* includes a reference to the corresponding provision of this Act, and
- (c) a reference to an entitlement granted under the *Mining Act 1973* or the *Coal Mining Act 1973* includes a reference to the corresponding entitlement granted under this Act.

#### **47 Instruments under former Acts**

Any instrument that had been approved by the Minister under section 107 of the *Mining Act 1973* or section 104 of the *Coal Mining Act 1973* before the commencement of this Act is taken to have been registered under section 161 of this Act.

### **Part 3 Provisions consequent on the enactment of the *Mining Legislation Amendment Act 1996***

#### **48 Definition**

In this Part, **amending Act** means the *Mining Legislation Amendment Act 1996*.

#### **49 Amendment of exploration licence, assessment lease and mineral claim conditions**

Sections 29A, 47A and 195A apply to and in respect of an exploration licence, assessment lease or mineral claim granted before the commencement of those sections in the same way as they apply to and in respect of an exploration licence, assessment lease or mineral claim granted after that commencement.

#### **50 Protection of dwelling-houses, gardens and improvements**

Sections 31, 49, 62 and 188, as amended by the amending Act, apply to and in respect of an authority or mineral claim granted before the commencement of those amendments in the same way as they apply to and in respect of an authority or mineral claim granted

after that commencement.

#### **51 Surface prospecting in respect of subsurface mining leases**

Section 81, as amended by the amending Act, applies to and in respect of all prospecting operations carried out in relation to a mining lease after the commencement of that amendment, whether or not prospecting operations have been carried out in relation to that mining lease before that commencement.

#### **52 Partial transfers of exploration licences**

Section 123, as amended by the amending Act, applies to and in respect of an exploration licence granted before the commencement of that amendment in the same way as it applies to and in respect of an exploration licence granted after that commencement.

#### **53 Waiver of minor procedural matters concerning applications for mineral claims**

Section 210A applies to and in respect of an application for a mineral claim made before the commencement of that section in the same way as it applies to and in respect of an application for a mineral claim made after that commencement.

#### **54 Limitation of right to challenge technical defects in mineral claims**

Section 210B applies to and in respect of a mineral claim granted before the commencement of that section in the same way as it applies to and in respect of a mineral claim granted after that commencement.

#### **55 Restrictions on grant of opal prospecting licence**

Section 227, as amended by the amending Act, applies to and in respect of an application for an opal prospecting licence made before the commencement of that amendment in the same way as it applies to and in respect of an application for an opal prospecting licence made after that commencement.

#### **56 Permits for surveys and ore sampling**

A permit that was in force under section 250 or 251, immediately before the repeal of that section by the amending Act, is taken to have been granted under section 250, as inserted by the amending Act.

#### **57 Assessment of compensation in relation to mineral claims and opal prospecting licences**

Sections 266 and 267, as amended by the amending Act, apply to and in respect of a mineral claim or opal prospecting licence granted before the commencement of those amendments in the same way as they apply to and in respect of a mineral claim or opal prospecting licence granted after that commencement, but do not affect any compensation determined before that commencement in respect of any such mineral claim or opal prospecting licence.

### **58 References for determination of agricultural land**

Clauses 2 and 3 of Schedule 2, as amended by the amending Act, apply to and in respect of a reference arising before the commencement of those amendments in the same way as they apply to and in respect of a reference arising after that commencement.

### **59 Royalty on coal in coal reject**

Division 3A of Part 14 applies to coal reject that the holder of a mining lease uses or disposes of on or after the commencement of that Division (even if the coal reject was recovered before that commencement).

### **60 Waiver of additional royalty for coal**

Section 287A applies in respect of coal disposed of on or after the commencement of that section (even if the coal was recovered before that commencement).

### **61 Lodgment fees**

A fee that, immediately before the commencement of section 382A, was prescribed by the regulations for the purposes of this Act or the regulations is taken to be an appropriate lodgment fee determined in accordance with that section.

## **Part 4 Provisions consequent on the enactment of the [Native Title \(New South Wales\) Amendment Act 1998](#)**

### **62 Conversion of existing exploration licences to low-impact exploration licences**

- (1) The holder of an exploration licence in force immediately before the commencement of Division 5 of Part 3 of this Act may apply to the Minister for its conversion to a low-impact exploration licence under that Division.
- (2) The Minister may approve the application only if satisfied that the notification and other requirements of that Division for the grant of a low-impact exploration licence have been complied with. For the purpose of converting the licence, the Minister is to amend the licence and its conditions by notice served on the holder of the licence.
- (3) On the service of the notice, the exploration licence becomes a low-impact exploration licence and is subject to the provisions of that Division.
- (4) An application under this clause may be made with respect to a part only of the land over which the exploration licence was granted. In that case, the Minister may, subject to the regulations, convert the licence as to that part of the land and continue the existing licence as to the remainder of the land.

### **63 Saving with respect to existing exploration licences or opal prospecting licences**

The amendments made to this Act by the [Native Title \(New South Wales\) Amendment Act](#)

1998 do not invalidate or affect any exploration licence or opal prospecting licence in force at the time the amendments are made.

## **Part 5 Provisions consequent on the enactment of the [Mining Amendment Act 1999](#)**

### **64 Definition**

In this Part, **amending Act** means the [Mining Amendment Act 1999](#).

### **65 Certain persons taken to be landholders**

Except in so far as the regulations otherwise provide, a class of persons that, immediately before the repeal of the definition of **occupier**, was prescribed for the purposes of that definition is taken to be a class of persons prescribed by or determined in accordance with the regulations to be landholders for the purposes of the definition of **landholder**.

### **66 Consents enabling the exercise of rights under mining titles**

- (1) In this clause, **consent provision** means section 31, 49, 62 or 188.
- (2) Rights referred to in a consent provision that were the subject of a written consent given under the consent provision before the date on which amendments made by the amending Act to the consent provision took effect may be exercised without the need to obtain consent under the consent provision as amended by the amending Act.

### **67 Notification of application for mineral claim**

- (1) A person:
  - (a) who, before the date on which amendments made by the amending Act to section 177 took effect, applied for a mineral claim over any land other than Crown land (within the meaning of that section, as in force immediately before that date), and
  - (b) whose application was not determined before that date,must serve notice on any person entitled, under that section as amended by the amending Act, to be notified of a proposed application.
- (2) Such a mineral claim is not to be granted unless a copy of a notice served as required by subclause (1) has been lodged in the same manner as the application.
- (3) The notice is taken, for the purposes of section 179, as amended by the amending Act, to be a notice under section 177, as so amended.

### **68 Compensation arising under mineral claim or opal prospecting licence**

The holder of a mineral claim or opal prospecting licence who, before the date on which amendments made by the amending Act to section 266 or 267, as the case may be, had



met the requirements of the relevant section in order to be entitled to exercise the rights conferred by the claim or licence is taken to have met the requirements of the relevant section, as amended by the amending Act, to exercise those rights.

## **Part 6 Provisions consequent on enactment of [Survey \(Geocentric Datum of Australia\) Act 1999](#)**

### **69 Definition**

In this Part, the **amending Act** means the [Survey \(Geocentric Datum of Australia\) Act 1999](#).

### **70 Boundaries of exploration licences**

- (1) On the commencement of this clause, an exploration licence that is in force applies to an area of land (in so far as a graticular section or unit referred to in section 370 is used to specify the area) determined in accordance with section 371 as repealed and re-enacted by the amending Act.
- (2) To the extent that, by the operation of subclause (1), the area to which an exploration licence in force on the commencement of this clause applies would include:
  - (a) land outside New South Wales, or
  - (b) land the subject of an authority or a mineral claim, or
  - (c) land the subject of an application for an authority or a mineral claim that was made before the commencement of this clause, or
  - (d) any other land over which, according to the provisions of Part 3 or of any other Act or law, the grant of an exploration licence is prohibited,that land is excluded from the area.
- (3) Land that, by operation of subclause (2), is excluded from the area to which an exploration licence applies because it is the subject of an authority or a mineral claim becomes subject to the exploration licence:
  - (a) if the authority or mineral claim ceases to have effect in relation to that land, and
  - (b) if, when it does so, the land is not then subject to a further authority or mineral claim.
- (4) Land that, by operation of subclause (2), is excluded from the area to which an exploration licence applies because it is subject to a pending application for an authority or a mineral claim becomes subject to the exploration licence:
  - (a) if the application is subsequently refused or withdrawn, or

(b) if, when the authority or a mineral claim is granted, the land does not become subject to the authority or claim.

- (5) On application made in writing, within 90 days after the commencement of this clause, by the holder of an exploration licence applying to an area from which any land has been excluded by the operation of subclause (1), the Minister, on being satisfied that, before the commencement of this clause, significant evidence of valuable mineral deposits existed in relation to the excluded land, may by order amend the licence so as to restore the whole or a specified part of the land excluded.
- (6) An order may be made under subclause (5) even though the land restored would, but for the order, have been subject to another exploration licence.
- (7) A person dissatisfied with the decision of the Minister on an application under this clause may appeal to a Warden's Court. In determining the appeal, the Court has all the functions of the Minister under this clause.
- (8) No compensation is payable to any person for loss or damage arising from the operation of this clause.

#### **71 Applications for exploration licences**

On the commencement of this clause, a pending application for an exploration licence applies to an area of land (in so far as a graticular section or unit referred to in section 370 is used to specify the area) determined in accordance with section 371 as repealed and re-enacted by the amending Act.

#### **72 Boundaries of assessment leases**

- (1) On the commencement of this clause, an assessment lease that is on foot applies to an area of land (in so far as a graticular section or unit referred to in section 370 is used to specify the area) determined in accordance with section 371 as repealed and re-enacted by the amending Act.
- (2) To the extent that, by the operation of subclause (1), the area to which an assessment lease that is on foot applies would include:
- (a) land outside New South Wales, or
  - (b) land the subject of an authority or a mineral claim, or
  - (c) land the subject of an application for an authority or a mineral claim that was made before the commencement of this clause, or
  - (d) any other land over which, according to the provisions of Part 4 or of any other Act or law, the grant of an assessment lease is prohibited,
- that land is excluded from the area.

- (3) On application made in writing, within 90 days after the commencement of this clause, by the holder of an assessment lease applying to an area from which any land has been excluded by the operation of subclause (1), the Minister, on being satisfied that, before the commencement of this clause, significant evidence of valuable mineral deposits existed in relation to the excluded land, may by order amend the lease so as to restore the whole or a specified part of the land excluded.
- (4) An order may be made under subclause (3) even though the land restored would, but for the order, have been subject to another assessment lease.
- (5) A person dissatisfied with the decision of the Minister on an application under this clause may appeal to a Warden's Court. In determining the appeal, the Court has all the functions of the Minister under this clause.
- (6) No compensation is payable to any person for loss or damage arising from the operation of this clause.

### **73 Applications for assessment leases**

On the commencement of this clause, a pending application for an assessment lease applies to an area of land (in so far as a graticular section or unit referred to in section 370 is used to specify the area) determined in accordance with section 371 as repealed and re-enacted by the amending Act.

## **Part 7 Provisions consequent on the enactment of the [Mining and Petroleum Legislation Amendment Act 2000](#)**

### **74 Definition**

In this Part, **amending Act** means the [Mining and Petroleum Legislation Amendment Act 2000](#).

### **75 Authorities and claims over land in proximity to improvements**

- (1) Rights exercised under an exploration licence:
  - (a) at a time before the amendment made by the amending Act to section 31 took effect, and
  - (b) the exercise of which contravened that section, but would not have done if that amendment had been in force at the time,are taken to have been exercised without contravention of that section, as in force at the time.
- (2) Rights exercised under an assessment lease:
  - (a) at a time before the amendment made by the amending Act to section 49 took

effect, and

- (b) the exercise of which contravened that section, but would not have done if that amendment had been in force at the time,

are taken to have been exercised without contravention of that section, as in force at the time.

- (3) A mining lease:

- (a) that was granted at a time before the amendment made by the amending Act to section 62 took effect, and

- (b) the grant of which contravened that section, but would not have done if that amendment had been in force at the time,

is taken to have been granted without contravention of that section, as in force at the time.

- (4) A mineral claim:

- (a) that was granted at a time before the amendment made by the amending Act to section 188 took effect, and

- (b) the grant of which contravened that section, but would not have done if that amendment had been in force at the time,

is taken to have been granted without contravention of that section, as in force at the time.

- (5) Subclauses (3) and (4) apply to a renewal of a mining lease or mineral claim in the same way as to its grant.

## **76 Conditions of mining titles**

The Minister may, by instrument in writing served on the holder of an authority, mineral claim or opal prospecting licence in force at the commencement of this clause, vary the conditions of the authority, claim or licence so as to identify those conditions of the authority, claim or licence that are related to environmental management.

## **77 Direction affecting consolidated mining lease**

The repeal by the amending Act of section 111 does not affect the operation of a condition that, immediately before the repeal of that section, continued to have effect by reason of that section.

## **Dictionary**

(Section 4)

**access arrangement** means an access arrangement under Division 2 of Part 8.

**allocated mineral**, in relation to a mineral allocation area, means a mineral or group of minerals in respect of which the mineral allocation area is constituted.

**appropriate lodgment fee** means the fee determined for the time being in accordance with section 382A with respect to the matter to which the fee relates.

**approved** means approved by the Minister.

**Arbitration Panel** means the Arbitration Panel established by section 139.

**arbitrator** means an arbitrator appointed under Division 2 of Part 8.

**assessment area** means land the subject of an assessment lease.

**assessment lease** means an assessment lease granted under Part 4.

**authority** means an exploration licence, an assessment lease or a mining lease.

**block** means a graticular section referred to in section 370 or, if the Minister so directs in a particular case, part of such a graticular section.

**chief inspector of coal mines** means the chief inspector of coal mines appointed under the [Coal Mines Regulation Act 1982](#).

**chief warden** means the chief warden appointed under section 293.

**claim area** means land the subject of a mineral claim.

**colliery holding** means a colliery holding registered in accordance with section 163.

**Commonwealth Native Title Act** means the [Native Title Act 1993](#) of the Commonwealth.

**consent authority** has the same meaning as it has in the [Environmental Planning and Assessment Act 1979](#).

**consolidated mining lease** means a lease granted under Part 6.

**controlling body**, in relation to an exempted area, means:

- (a) in the case of land referred to in paragraph (a) or (c) of the definition of **exempted area**—the person having the control and management of the land, or
- (b) in the case of land referred to in paragraph (b) of that definition—the holder of the lease referred to in that paragraph, or
- (c) in the case of land referred to in paragraph (d) of that definition—the person prescribed by the regulations as the controlling body for that land for the purposes of this definition.

**council** has the same meaning as it has in the [Local Government Act 1993](#).

**Crown Lands Acts** has the same meaning as it has in the [Crown Lands Act 1989](#).

**dam** includes the water or other material impounded by the dam.

**Dams Safety Committee** means the Dams Safety Committee constituted by section 7 of the [Dams Safety Act 1978](#).

**Department** means the Department of Mineral Resources.

**deputy mining registrar** means a deputy mining registrar referred to in section 360.

**development consent** has the same meaning as it has in the [Environmental Planning and Assessment Act 1979](#).

**Director-General** means the Director-General of the Department.

**environmental planning instrument** has the same meaning as it has in the [Environmental Planning and Assessment Act 1979](#).

**exclusion order** means an exclusion order referred to in section 175B.

**exempted area** means an area constituted by land:

- (a) reserved, dedicated, appropriated, resumed or acquired for public purposes (except land reserved for a temporary common or a commonage), whether vested in the Crown or in any person as trustee for public purposes, or
- (b) held under a lease for water supply by virtue of a special lease or otherwise, or
- (c) transferred, granted or vested in trust by the Crown for the purpose of a race-course, cricket-ground, recreation reserve, park or permanent common or for any other public purpose, or
- (d) prescribed by the regulations for the purposes of this definition.

**exercise a function** includes perform a duty.

**exploration area** means land the subject of an exploration licence.

**exploration licence** means an exploration licence granted under Part 3.

**fossicking district** means a fossicking district constituted under section 369A.

**function** includes power, authority and duty.

**Government agency** means:

- (a) a Government Department, or
- (b) an Administrative Office, or
- (c) a corporation designated by the Minister under section 387.

**group of minerals** means any minerals prescribed by the regulations as a group of minerals for the purposes of this definition.

**inspector** means an inspector appointed under section 361.

**landholder** means, in relation to any land:

- (a) the owner of an estate in fee simple in the land, or
- (b) a native title holder of the land, or
- (c) the holder of a lease or licence granted under the [Crown Lands Act 1989](#) over the land, or
- (d) the holder of a tenure referred to in Part 1 or 2 of Schedule 1 to the [Crown Lands \(Continued Tenures\) Act 1989](#) in the land, or
- (e) the holder of a permissive occupancy granted over the land, or
- (f) the holder of a lease granted under the [Western Lands Act 1901](#) over the land, or
- (g) a person identified in any register or record kept by the Registrar-General as a person having an interest in the land, or
- (h) a person of a class prescribed by or determined in accordance with the regulations to be landholders for the purposes of this definition,

but does not include a person of a class prescribed as outside the scope of this definition.

**local government area** has the same meaning as **area** has in the [Local Government Act 1993](#).

**mine** means:

- (a) when used as a noun—any place, pit, shaft, drive, level or other excavation, drift, gutter, lead, vein, lode, reef or salt-pan (whether occurring naturally or artificially created) in, on or by means of which, any mining operation is carried on, and
- (b) when used as a verb—to extract material from land for the purpose of recovering minerals from the material so extracted or to rehabilitate land from which material has been so extracted, but does not include any activity declared not to be mining by a regulation under section 11A.

**mineral** means any substance prescribed by the regulations as a mineral for the purposes of this definition, and includes coal and oil shale, but does not include uranium or petroleum.

**mineral allocation area** means a mineral allocation area constituted under section 368.

**mineral claim** means a mineral claim granted under Part 9.

**mineral claims district** means a mineral claims district constituted under Division 1 of Part 9.

**mining area** means land the subject of a mining lease.

**mining division** means a mining division constituted under section 366.

**mining improvement** includes:

- (a) any machinery used for or in connection with prospecting or mining, and
- (b) any race, drain, dam or reservoir so used.

**mining lease** means a mining lease granted under Part 5, and includes a consolidated mining lease.

**mining operations** means operations carried out in the course of mining.

**mining purpose** means any purpose prescribed by the regulations as a mining purpose for the purposes of this definition.

**mining registrar** means:

- (a) a mining registrar referred to in section 360, or
- (b) in relation to a mining division, a mining registrar exercising and performing in that division the functions of a mining registrar under this Act.

**native title holder** has the same meaning as it has in the Commonwealth Native Title Act.

**notification area**, in relation to a prescribed dam, means the land for the time being declared under section 369 to be the notification area for the dam.

**opal prospecting area** means an opal prospecting area constituted under Division 1 of Part 10.

**opal prospecting block** means an opal prospecting block constituted under Division 1 of Part 10.

**opal prospecting licence** means an opal prospecting licence granted under Division 2 of Part 10.

**party** means:

- (a) in relation to a hearing before an arbitrator—a person who is entitled to appear and be heard at the hearing pursuant to section 146, or
- (b) in relation to an access arrangement—the holder of a prospecting title to whom, or a landholder of land to which, the arrangement relates.

**permissive occupancy** has the same meaning as in the [Crown Lands \(Continued Tenures\) Act 1989](#).

**petroleum** has the same meaning as it has in the [Petroleum \(Onshore\) Act 1991](#).

**prescribed dam** has the same meaning as it has in the [Dams Safety Act 1978](#).

**privately owned mineral** means a mineral that is not owned by, or reserved to, the Crown.

**prospect** means to carry out works on, or to remove samples from, land for the purpose of testing the mineral bearing qualities of the land, but does not include any activity declared not to be prospecting by a regulation under section 11A.

**prospepecting operations** means operations carried out in the course of prospecting.

**publicly owned mineral** means a mineral that is owned by, or reserved to, the Crown.

**registered native title body corporate** has the same meaning as in the Commonwealth Native Title Act.

**registered native title claimant** has the same meaning as in the Commonwealth Native Title Act.



**reserve** means a reserve constituted under section 367.

**royalty officer** means a royalty officer referred to in section 360.

**special conditions** means:

- (a) in relation to a mineral claims district—the conditions specified under section 175 as the conditions to which mineral claims registered over land within the district are to be subject, or
- (b) in relation to an opal prospecting block—the conditions specified in respect of the block on the map prepared under section 225.

**surveyor** means a surveyor registered under the [Surveyors Act 1929](#).

**unit** means a unit into which a block is divided as referred to in section 370 or, if the Minister so directs in a particular case, part of such a unit.

**warden** means any warden appointed under section 293, and includes the chief warden.

**Warden's Court** means a Warden's Court established under section 294.