

# Mining Amendment Act 2008 No 19

[2008-19]



New South Wales

## Status Information

### Currency of version

Historical version for 17 July 2009 to 7 January 2010 (accessed 18 January 2025 at 1:12)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

Some, but not all, of the provisions displayed in this version of the legislation have commenced.

### Notes—

- **Does not include amendments by**  
[Statute Law \(Miscellaneous Provisions\) Act \(No 2\) 2009 No 106](#) (not commenced — to commence on 8.1.2010)
- **Proposed repeal**  
The Act is to be repealed by sec 6 (1) of this Act on the day following the day on which all of the provisions of this Act have commenced.

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

File last modified 14 December 2009

# Mining Amendment Act 2008 No 19



New South Wales

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# Mining Amendment Act 2008 No 19



New South Wales

An Act to amend the *Mining Act 1992* and other legislation to make further provision with respect to prospecting for and mining minerals.

## 1 Name of Act

This Act is the *Mining Amendment Act 2008*.

## 2 Commencement

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

## 3 Amendment of *Mining Act 1992 No 29*

The *Mining Act 1992* is amended as set out in Schedule 1.

## 4 Amendment of other Acts and instrument

Each Act and instrument set out in Schedule 2 is amended as set out in that Schedule.

## 5 Repeal of *Mining Amendment (Miscellaneous Provisions) Act 2004 No 75*

The *Mining Amendment (Miscellaneous Provisions) Act 2004* is repealed.

## 6 Repeal of this Act

- (1) This Act is repealed on the day following the day on which all of the provisions of this Act have commenced.
- (2) The repeal of this Act does not, because of the operation of section 30 of the *Interpretation Act 1987*, affect any amendment made by this Act.

## Schedule 1 Amendment of *Mining Act 1992*

(Section 3)

### [1] Section 3A

Insert after section 3:

### **3A Objects**

The objects of this Act are to encourage and facilitate the discovery and development of mineral resources in New South Wales, having regard to the need to encourage ecologically sustainable development, and in particular:

- (a) to recognise and foster the significant social and economic benefits to New South Wales that result from the efficient development of mineral resources, and
- (b) to provide an integrated framework for the effective regulation of authorisations for prospecting and mining operations, and
- (c) to provide a framework for compensation to landholders for loss or damage resulting from such operations, and
- (d) to ensure an appropriate return to the State from mineral resources, and
- (e) to require the payment of security to provide for the rehabilitation of mine sites, and
- (f) to ensure effective rehabilitation of disturbed land and water, and
- (g) to ensure mineral resources are identified and developed in ways that minimise impacts on the environment.

### **[2] Sections 5 and 6**

Omit sections 5–9. Insert instead:

#### **5 Mining or prospecting without authorisation**

A person must not prospect for or mine any mineral except in accordance with an authorisation that is in force in respect of that mineral and the land where the prospecting or mining is carried on.

Maximum penalty for prospecting in contravention of this section: 200 penalty units, and, in the case of a continuing offence, a further penalty of 50 penalty units for each day that the offence continues.

Maximum penalty for mining in contravention of this section:

- (a) 1,000 penalty units, in the case of an offence committed by a corporation, or
- (b) 1,000 penalty units or imprisonment for 5 years, or both, in the case of an offence committed by a natural person,

and, in the case of a continuing offence, a further penalty of 50 penalty units for each day that the offence continues.

## **6 Unauthorised carrying out of mining purposes**

- (1) A person must not carry out a mining purpose specified for the purposes of this section except in accordance with an authorisation that is in force in respect of the land where the purpose is carried out.

Maximum penalty:

- (a) 1,000 penalty units, in the case of an offence committed by a corporation, or  
(b) 1,000 penalty units or imprisonment for 5 years, or both, in the case of an offence committed by a natural person,

and, in the case of a continuing offence, a further penalty of 50 penalty units for each day that the offence continues.

- (2) The regulations may provide for the exemption, by order of the Minister, of a person or class of persons from the operation of this section with respect to the carrying out of a particular mining purpose, or a class of mining purposes, that is specified for the purposes of this section.
- (3) The mining purposes specified for the purposes of this section are the following mining related purposes:
- (a) the construction, maintenance or use of any reservoir, dam (including a tailings dam), drain or water race, other than any reservoir, dam, drain or water race principally used for purposes not connected with mining or any other activities regulated by or under an authorisation,
- (b) opal puddling,
- (c) the removal, stockpiling or depositing of overburden, ore or tailings to the extent that it is associated with mineral extraction or mine beneficiation.

### **[3] Section 10**

Omit the section. Insert instead:

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

- (1) It is a defence to a prosecution of a person for an offence under section 5 if the person establishes that the person was prospecting for or mining minerals in the course of:
- (a) fossicking, or

### **Note—**

Section 12 declares fossicking to be a lawful activity.

- (b) carrying out an activity in accordance with section 81.
- (2) It is a defence to a prosecution of a person for an offence under section 6 if the person establishes that the person was carrying out the mining purpose in the course of carrying out an activity in accordance with section 81.
- (3) It is a defence to the prosecution of a person for an offence under section 5 or 6 if the person establishes that the person was prospecting for or mining minerals, or carrying out the mining purpose:
  - (a) in accordance with rights under an authority or a mineral claim that have devolved on the person by operation of law, and
  - (b) at a time when the person had applied under section 162 or 202 to have the person's name recorded as the holder of the authority or mineral claim and the application had not been refused.

**[4] Section 11A Certain activities taken not to be prospecting or mining**

Omit section 11A (1). Insert instead:

- (1) The regulations may declare that, or provide for the declaration by the Minister that, a specified activity is, or a specified class or classes of activities are, not prospecting or mining for the purposes of this Act.

**[5] Section 11A (2)**

Omit "regulation". Insert instead "declaration".

**[6] Section 11A (3)**

Omit the subsection. Insert instead:

- (3) Part 14 applies, subject to any modifications necessary to give effect to a declaration under subsection (1) and any modifications prescribed by the regulations:
  - (a) to royalty payable under subsection (2) in the same way as it applies to royalty payable on a mineral recovered under a mining lease, and
  - (b) to the person by whom royalty is payable as if the person were the holder of a mining lease.

**[7] Sections 12B, 12C and 12D**

Omit the penalty provisions wherever occurring. Insert instead:

Maximum penalty:

- (a) 1,000 penalty units, in the case of an offence committed by a corporation, or
- (b) 1,000 penalty units or imprisonment for 5 years, or both, in the case of an offence committed by a natural person.

**[8] Sections 13-13B**

Omit section 13. Insert instead:

**13 Application for exploration licence**

- (1) Any person may apply for an exploration licence.
- (2) To avoid doubt, the owner of privately owned minerals may apply for an exploration (mineral owner) licence or any other exploration licence with respect to those minerals.

**Note—**

The owner of privately owned minerals may choose to apply for an ordinary exploration licence with respect to those minerals, rather than an exploration (mineral owner) licence. In relation to exploration (mineral owner) licences see section 24 (4).

- (3) An application that relates to land in a mineral allocation area may not be made, except with the Minister's consent, in relation to any group of minerals that includes an allocated mineral.
- (4) An application for an exploration licence must:
  - (a) specify the group or groups of minerals in respect of which the application is made, and
  - (b) be lodged with the Director-General, and
  - (c) be accompanied by the required information and the application fee prescribed by the regulations, and
  - (d) if the application is for an exploration (mineral owner) licence with respect to privately owned minerals that have more than one owner, be made by all the owners.
- (5) The required information is as follows:
  - (a) a description, prepared in the approved manner, of the proposed exploration area,
  - (b) particulars of the financial resources and relevant technical advice available to the applicant,

- (c) particulars of the program of work proposed to be carried out by the applicant in the proposed exploration area,
  - (d) particulars of the estimated amount of money that the applicant proposes to spend on prospecting in that area,
  - (e) if the application is for an exploration (mineral owner) licence, evidence that the minerals to which the application relates are owned by the applicant,
  - (f) any other information that is prescribed by the regulations.
- (6) If there is more than one applicant for the licence, a reference in subsection (5) to the applicant is a reference to each applicant.

### **13A Notice of application for exploration licence**

- (1) Within 14 days (or such other period as may be prescribed by the regulations) after lodging an application for an exploration licence, the applicant must cause notice of the application to be published in a newspaper circulating generally in the State and in at least one newspaper circulating in the locality of the proposed exploration area.
- (2) The notice must:
- (a) state that an application for an exploration licence has been lodged, and
  - (b) contain a plan of the proposed exploration area, and
  - (c) comply with any other requirements that are prescribed by the regulations for the purposes of this subsection.

### **13B Limit on subsequent applications for exploration licences**

If a person:

- (a) applies for the grant or renewal of a mineral owner authority in relation to particular land and that application is refused, or
- (b) was the holder of a mineral owner authority in relation to particular land when that authority was cancelled,

the person may not, within 2 years after that refusal or cancellation, apply for an exploration (mineral owner) licence in relation to that land except with the Minister's consent.

### **[9] Section 14 Invitations for tenders**

Insert "(other than an exploration (mineral owner) licence)" after "exploration licence" in section 14 (2).



**[10] Section 15 Tenders**

Omit “particulars” from section 15 (1) (b). Insert instead “information”.

**[11] Section 15 (1) (c)**

Omit “appropriate lodgment fee”.

Insert instead “lodgment fee prescribed by the regulations”.

**[12] Section 15 (2)**

Omit the subsection. Insert instead:

(2) The required information is as follows:

- (a) particulars of the financial resources and relevant technical advice available to the tenderer,
- (b) particulars of the program of work proposed to be carried out by the tenderer in the proposed exploration area,
- (c) particulars of the estimated amount of money that the tenderer proposes to expend on prospecting,
- (d) any other information that is specified in the tender invitation.

**[13] Sections 16, 22 (1) and (3), 23 (1) and (2), 34, 38 (1) and (3), 41 (1) and (3), 54, 59 (1), 62 (7), 63 (1), (3) and (5), 70 (2) (a), 77 (4), 114 (1), (3), (4) and (7), 115 (1), 116 (1) and (2), 117 (2), 125 (1), 128 (1), (2) and (4) and 135**

Omit “Minister” wherever occurring. Insert instead “decision-maker”.

**[14] Section 17 Exclusion of land from application or tender**

Omit section 17 (1). Insert instead:

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

**[15] Section 17 (4)**

Insert after section 17 (3):

- (4) This section does not apply to an application for an exploration (mineral owner) licence.

**[16] (Repealed)**

**[17] Section 19 (3)**

Insert “, unless the decision-maker makes a determination under subsection (4)” after “as the case requires”.

**[18] Section 19 (4)**

Insert after section 19 (3):

- (4) The decision-maker may determine that subsection (3) does not apply with respect to the land or to a part of the land if the decision-maker is satisfied that having the land or that part subject to both the licence and the other authorisation concerned is not likely to make the exercise of rights under the licence or the other authorisation impracticable.

**[19] Section 20**

Omit the section.

**[20] (Repealed)**

**[21] Section 22 (2)**

Omit the subsection. Insert instead:

- (2) Without limiting the generality of subsection (1) or any other provision of this Act, an application may be refused on any one or more of the following grounds:
- (a) that the applicant (or, in the case of an applicant that is a corporation, a director of the corporation) has contravened this Act or the regulations (whether or not the person has been prosecuted or convicted of any offence arising from the contravention) or has been convicted of any other offence relating to mining or minerals,
  - (b) that the decision-maker reasonably considers that the applicant provided false or misleading information in or in connection with the application,
  - (c) that the decision-maker considers it appropriate to do so having taken into account the matters required by section 238.

**Note—**

Section 238 specifies additional matters that may be taken into account in deciding whether or not an application should be refused.

**[22] Section 23 Power of decision-maker in relation to tenders**

Omit section 23 (3). Insert instead:

- (3) Without limiting the generality of subsections (1) and (2) or any other provision of this Act, a tender may be refused on any one or more of the following grounds:
- (a) that the tenderer (or, in the case of a tenderer that is a corporation, a director of the corporation) has contravened this Act or the regulations (whether or not the person has been prosecuted or convicted of any offence arising from the contravention) or has been convicted of any other offence relating to mining or minerals,
  - (b) that the decision-maker reasonably considers that the tenderer provided false or misleading information in or in connection with an application or any report provided under this Act for or with respect to the tender,
  - (c) that the decision-maker considers it appropriate to do so having taken into account the matters required by section 238.

**Note—**

Section 238 specifies additional matters that may be taken into account in deciding whether or not an application should be refused.

**[23] Section 24 Land and minerals for which exploration licence may be granted**

Insert after section 24 (3):

- (4) However, an exploration (mineral owner) licence may be granted:
- (a) only in respect of privately owned minerals, and
  - (b) only to the owner of those minerals.

**[24] Section 25 Shape and dimensions of land over which exploration licence may be granted**

Omit section 25 (1). Insert instead:

- (1) The land over which an exploration licence is granted must comply with the regulations in relation to shape and size.

**[25] Section 25 (3)**

Omit section 25 (3) and (4). Insert instead:

- (3) Subsections (1) and (2) do not apply with respect to an exploration (mineral owner) licence.

**[26] Sections 26 and 27**

Omit the sections. Insert instead:

**26 Conditions of exploration licence**

- (1) An exploration licence may be issued subject to conditions or unconditionally.
- (2) Without limiting the generality of subsection (1), the conditions of an exploration licence may include any of the following:
- (a) a condition requiring the holder of the licence to pay royalty to the Minister on any minerals recovered under the licence (but only if it is not an exploration (mineral owner) licence),
  - (b) a condition with respect to cores and samples obtained in the course of drilling.
- (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.

**27 Term of exploration licence**

An exploration licence:

- (a) takes effect on the date on which it is granted or on such later date, or on the occurrence of such later event, as the decision-maker may determine, and
- (b) ceases to have effect on the expiration of:
  - (i) 2 years after the date on which it took effect, in the case of an exploration (mineral owner) licence, or
  - (ii) such period (not exceeding 5 years) as the decision-maker determines, in the case of any other exploration licence.

**[27] Sections 29 and 30**

Omit sections 29–30. Insert instead:

**29 Rights under exploration licence**

- (1) An exploration licence authorises:
- (a) the conduct, in accordance with the conditions of the licence, of prospecting

and prospecting operations of a kind determined by the Minister for the purposes of this section by order published in the Gazette, and

- (b) any other kinds of prospecting and prospecting operations authorised by the decision-maker.
- (2) The holder of an exploration licence may apply in writing to the decision-maker for a variation of the licence to authorise other kinds of prospecting or prospecting operations to be carried out.
- (3) An application must:
- (a) be made in the approved form and manner (if any), and
  - (b) contain any information that is prescribed by the regulations, and
  - (c) be accompanied by the fee (if any) prescribed by the regulations.
- (4) The decision-maker may:
- (a) vary the licence in accordance with the application and make any variation to the conditions of the licence that the decision-maker considers appropriate, or
  - (b) refuse the application.
- (5) The decision-maker is to give the applicant written notice of the outcome of the application.
- (6) Any variation of the licence or conditions of the licence takes effect on the date on which written notice of the variation is served on the applicant or any later date specified in the notice.

**Note—**

The concurrence of the Minister under the [National Parks and Wildlife Act 1974](#) is required to the grant of a mining lease on land within a state conservation area under that Act.

### **30 Review of determination under section 29**

- (1) The holder of an exploration licence may, within 30 days (or such longer period as may be prescribed) after being served with written notice of the determination of an application under section 29, apply to the decision-maker for a review of the determination.
- (2) An application must:
- (a) be made in the approved form and manner (if any), and
  - (b) contain any information that is prescribed by the regulations, and

- (c) be accompanied by the fee (if any) prescribed by the regulations.
- (3) The making of an application for review of a determination does not operate to stay the determination.
- (4) On a review, the decision-maker may confirm or change the determination.
- (5) The decision-maker is to give the applicant written notice of the outcome of the review.
- (6) If the decision-maker changes a determination, the changed determination replaces the earlier determination from the date of the written notice.
- (7) A decision on a review may not be further reviewed under this section.

**[28] (Repealed)**

**[29] Section 32EA**

Insert after section 32E:

**32EA Review of determination under section 32E**

- (1) The Minister must give an applicant under section 32E written notice of the outcome of the application.
- (2) The holder of a low-impact exploration licence may, within 30 days (or such longer period as may be prescribed) after being served with written notice of the determination under section 32E apply to the decision-maker for a review of the determination.
- (3) An application must:
  - (a) be made in the approved form and manner (if any), and
  - (b) contain any information that is prescribed by the regulations, and
  - (c) be accompanied by the fee (if any) prescribed by the regulations.
- (4) The making of an application for review of a determination does not operate to stay the determination.
- (5) On a review, the decision-maker may confirm or change the determination.
- (6) The decision-maker is to give the applicant written notice of the outcome of the application.
- (7) If the decision-maker changes a determination, the changed determination replaces the earlier determination as from the date of the written notice.

(8) A decision on a review may not be further reviewed under this section.

**[30] Sections 33-33B**

Omit section 33. Insert instead:

**33 Application for assessment lease**

- (1) Any person may apply for an assessment lease.
- (2) To avoid doubt, the owner of privately owned minerals may apply for an assessment (mineral owner) lease or any other assessment lease with respect to those minerals.

**Note—**

The owner of privately owned minerals may choose to apply for an ordinary assessment lease with respect to those minerals, rather than an assessment (mineral owner) lease. In relation to assessment (mineral owner) leases see section 42 (4).

- (3) An application that relates to land in a mineral allocation area may not be made in relation to an allocated mineral 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 Minister's consent.
- (4) An application for an assessment lease must:
  - (a) specify the mineral or minerals in respect of which the application is made, and
  - (b) be lodged with the Director-General, and
  - (c) be accompanied by the required information and the application fee prescribed by the regulations, and
  - (d) if the application is for an assessment (mineral owner) lease with respect to privately owned minerals that have more than one owner, be made by all the owners.
- (5) The required information is as follows:
  - (a) a description, prepared in the approved manner, of the proposed assessment area,
  - (b) an assessment of the mineral bearing capacity of land in that area and of the extent of any mineral deposits in that land,
  - (c) particulars of the financial resources and technical advice available to the

applicant,

- (d) particulars of the program of work proposed to be carried out by the applicant in the proposed assessment area,
  - (e) particulars of any program of marketing or environmental study proposed to be carried out by the applicant,
  - (f) particulars of the estimated amount of money that the applicant proposes to spend on prospecting in the proposed assessment area,
  - (g) if the application is for an assessment (mineral owner) lease, evidence that the minerals to which the application relates are owned by the applicant,
  - (h) any other information that is prescribed by the regulations.
- (6) If there is more than one applicant for the lease, a reference in subsection (5) to the applicant is a reference to each applicant.

### **33A Notice of application for assessment lease**

- (1) Within 14 days (or such other period as may be prescribed by the regulations) after lodging an application for an assessment lease, the applicant must cause notice of the application to be published in a newspaper circulating generally in the State and in at least one newspaper circulating in the locality concerned.
- (2) The notice must:
  - (a) state that an application for an assessment lease has been lodged, and
  - (b) contain a plan of the proposed assessment area, and
  - (c) comply with any other requirements that are prescribed by the regulations for the purposes of this subsection.

### **33B Limit on subsequent applications**

If a person:

- (a) applies for the grant or renewal of a mineral owner authority in relation to particular land and that application is refused, or
- (b) was the holder of a mineral owner authority in relation to particular land when that authority was cancelled,

the person may not, within 2 years after that refusal or cancellation, apply for an assessment (mineral owner) lease in relation to that land except with the Minister's consent.



**[31] Section 35**

Omit the section. Insert instead:

**35 Exclusion of land from assessment lease application**

- (1) The decision-maker may, by order in writing, direct that any part of the land to which an application for an assessment lease 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.
- (3) This section does not apply to an application for an assessment (mineral owner) lease.

**[32] (Repealed)**

**[33] Section 37 (3)**

Insert “, unless the decision-maker makes a determination under subsection (4)” after “case requires”.

**[34] Section 37 (4)**

Insert after section 37 (3):

- (4) The decision-maker may determine that subsection (3) does not apply with respect to the land or to a part of the land if the decision-maker is satisfied that having the land or that part subject to both the lease and the other authorisation concerned will not make the exercise of rights under the lease or the other authorisation impracticable.

**[35] (Repealed)**

**[36] Section 39**

Omit the section.

**[37] (Repealed)**

**[38] Section 41 (2)**

Omit the subsection. Insert instead:

- (2) Without limiting the generality of subsection (1) or any other provision of this Act, an application may be refused on any one or more of the following grounds:

- (a) that the applicant (or, in the case of an applicant that is a corporation, a director of the corporation) has contravened this Act or the regulations (whether or not the person has been prosecuted or convicted of any offence arising from the contravention) or has been convicted of any other offence relating to mining or minerals,
- (b) that the decision-maker reasonably considers that the applicant provided false or misleading information in or in connection with the application,
- (c) that the decision-maker considers it appropriate to do so having taken into account the matters required by section 238.

**Note—**

Section 238 specifies additional matters that may be taken into account in deciding whether or not an application should be refused.

**[39] Section 42 Land and minerals for which assessment lease may be granted**

Insert after section 42 (3):

- (4) However, an assessment (mineral owner) lease may be granted:
  - (a) only in respect of privately owned minerals, and
  - (b) only to the owner of those minerals.

**[40] Sections 44 and 45**

Omit the sections. Insert instead:

**44 Conditions of assessment lease**

- (1) An assessment lease may be issued subject to conditions or unconditionally.
- (2) Without limiting the generality of subsection (1), the conditions of an assessment lease may include any of the following:
  - (a) a condition requiring the holder of the lease to pay royalty to the Minister on any minerals recovered under the lease (but only if it is not an assessment (mineral owner) lease),
  - (b) a condition with respect to cores and samples obtained in the course of prospecting.
- (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.

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

An assessment lease:

- (a) takes effect on the date on which it is granted or on such later date, or on the occurrence of such later event, as the decision-maker may determine, and
- (b) ceases to have effect on the expiration of:
  - (i) 2 years after the date on which it took effect, in the case of an assessment (mineral owner) lease, or
  - (ii) such period (not exceeding 5 years) as the decision-maker determines, in the case of any other assessment lease.

#### **[41] Sections 47 and 48**

Omit sections 47–48. Insert instead:

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

- (1) An assessment lease authorises:
  - (a) the conduct, in accordance with the conditions of the lease, of prospecting and prospecting operations of a kind determined by the Minister by order under section 29, and
  - (b) any other kinds of prospecting and prospecting operations authorised by the decision-maker.
- (2) The holder of an assessment lease may apply in writing to the decision-maker for a variation of the lease to authorise other kinds of prospecting or prospecting operations to be carried out.
- (3) An application must:
  - (a) be made in the approved form and manner (if any), and
  - (b) contain any information that is prescribed by the regulations, and
  - (c) be accompanied by the fee (if any) prescribed by the regulations.
- (4) The decision-maker may:
  - (a) vary the lease in accordance with the application and make any variations to the conditions of the lease that the decision-maker considers appropriate, or
  - (b) refuse the application.
- (5) The decision-maker is to give the applicant written notice of the outcome of any

application.

- (6) Any variation of the lease or conditions of the lease takes effect on the date on which written notice of the variation is served on the applicant or any later date specified in the notice.

#### **48 Review of determination under section 47**

- (1) The holder of an assessment lease may, within 30 days (or such longer period as may be prescribed) after being served with written notice of the determination of an application under section 47, apply to the decision-maker for a review of the determination.
- (2) An application must:
  - (a) be made in the approved form and manner (if any), and
  - (b) contain any information that is prescribed by the regulations, and
  - (c) be accompanied by the fee (if any) prescribed by the regulations.
- (3) The making of an application for review of a determination does not operate to stay the determination.
- (4) On a review, the decision-maker may confirm or change the determination.
- (5) The decision-maker is to give the applicant written notice of the outcome of any application under this section.
- (6) If the decision-maker changes a determination, the changed determination replaces the earlier determination as from the date of the written notice.
- (7) A decision on a review may not be further reviewed under this section.

#### **[42] (Repealed)**

#### **[43] Sections 51-51B**

Omit section 51. Insert instead:

#### **51 Application for mining lease**

- (1) Any person may apply for a mining lease.
- (2) To avoid doubt, the owner of privately owned minerals may apply for a mining (mineral owner) lease or any other mining lease with respect to those minerals.

##### **Note—**

The owner of privately owned minerals may choose to apply for an ordinary mining lease with respect to those minerals, rather than a mining (mineral owner) lease. In relation to mining (mineral

owner) leases see section 68 (4).

- (3) An application that relates to land in 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 Minister's consent.
- (4) An application for a mining lease must:
  - (a) specify the mineral or minerals, or the mining purpose or mining purposes, in respect of which the application is made, and
  - (b) be lodged with the Director-General, and
  - (c) be accompanied by the required information and the application fee prescribed by the regulations, and
  - (d) if the application is for a mining (mineral owner) lease with respect to privately owned minerals that have more than one owner, be made by all the owners.
- (5) The required information is as follows:
  - (a) a description, prepared in the approved manner, of the proposed mining area,
  - (b) an assessment of the mineral bearing capacity of land in that area and of the extent of any mineral deposits in that land,
  - (c) particulars of the financial resources and technical advice available to the applicant,
  - (d) particulars of the program of work proposed to be carried out by the applicant in the proposed mining area,
  - (e) if the application is for a mining (mineral owner) lease, evidence that the minerals to which the application relates are owned by the applicant,
  - (f) any other information that is prescribed by the regulations.
- (6) If there is more than one applicant for the lease, a reference in subsection (5) to the applicant is a reference to each applicant.

### **51A Notice of application for mining lease**

- (1) Within 14 days (or such other period as may be prescribed by the regulations) after lodging an application for a mining lease, the applicant must cause notice

of the application to be published in a newspaper circulating generally in the State and in at least one newspaper circulating in the locality concerned.

(2) The notice must:

- (a) state that an application for a mining lease has been lodged, and
- (b) contain a plan of the proposed mining area, and
- (c) comply with any other requirements that are prescribed by the regulations for the purposes of this subsection.

### **51B Limitation on subsequent applications**

If a person:

- (a) applies for the grant or renewal of a mineral owner authority in relation to particular land and that application is refused, or
- (b) was the holder of a mineral owner authority in relation to particular land when that authority was cancelled,

the person may not, within 2 years after that refusal or cancellation, apply for a mining (mineral owner) lease in relation to that land except with the Minister's consent.

#### **[44] Section 52 Invitations for tenders**

Insert "(other than a mining (mineral owner) lease)" after "mining lease" in section 52 (2).

#### **[45] Section 53 Tenders**

Omit "particulars" from section 53 (1) (b). Insert instead "information".

#### **[46] Section 53 (1) (c)**

Omit "appropriate lodgment fee".

Insert instead "lodgment fee prescribed by the regulations".

#### **[47] Section 53 (2)**

Omit the subsection. Insert instead:

(2) The required information is as follows:

- (a) particulars of the financial resources and relevant technical advice available to the tenderer,
- (b) particulars of the program of work proposed to be carried out by the tenderer in

the proposed mining area,

(c) any other information that is specified in the tender invitation.

**[48] Section 55 Exclusion of land from application or tender**

Omit section 55 (1). Insert instead:

(1) The decision-maker may, by order in writing, direct that any part of the land to which an application or tender for a mining lease relates be excluded from the application or tender.

**[49] Section 55 (4)**

Insert after section 55 (3):

(4) This section does not apply to an application for a mining (mineral owner) lease.

**[50] Section 56**

Omit the section.

**[51] (Repealed)**

**[52] Section 58 (3)**

Insert “, unless the decision-maker makes a determination under subsection (4)” after “case requires”.

**[53] Section 58 (4)**

Insert after section 58 (3):

(4) The decision-maker may determine that subsection (3) does not apply with respect to the land or to a part of the land if the decision-maker is satisfied that having the land or that part subject to both the lease and the other authorisation concerned is not likely to make the exercise of rights under the lease or the other authorisation impracticable.

**[54] (Repealed)**

**[55] Section 60**

Omit the section.

**[56], [57] (Repealed)**

**[58] Section 63 (2)**

Omit the subsection. Insert instead:

- (2) Without limiting the generality of subsection (1) or any other provision of this Act, an application may be refused on any one or more of the following grounds:
- (a) that the applicant (or, in the case of an applicant that is a corporation, a director of the corporation) has contravened this Act or the regulations (whether or not the person has been prosecuted or convicted of any offence arising from the contravention) or has been convicted of any other offence relating to mining or minerals,
  - (b) that the decision-maker reasonably considers that the applicant provided false or misleading information in or in connection with the application or any report provided under this Act for or with respect to the lease,
  - (c) that the decision-maker considers it appropriate to do so having taken into account the matters required by section 238.

**Note—**

Section 238 specifies additional matters that may be taken into account in deciding whether or not an application should be refused.

**[59] Section 63 (3A)**

Omit “appropriate mining lease fee (as determined under section 382A)”.

Insert instead “mining lease fee prescribed by the regulations”.

**[60] Section 63 (6)**

Insert after section 63 (5):

- (6) A mining lease may not be granted over land in respect of a mining purpose or mining purposes relating only to mining under a mining (mineral owner) lease if the land is not owned by the holder of the mining (mineral owner) lease.

**[61] Section 64 Power of decision-maker in relation to tenders**

Omit section 64 (3). Insert instead:

- (3) Without limiting the generality of subsections (1) and (2) or any other provision of this Act, a tender may be refused on any one or more of the following grounds:



- (a) that the tenderer (or, in the case of a tenderer that is a corporation, a director of the corporation) has contravened this Act or the regulations (whether or not the person has been prosecuted or convicted of any offence arising from the contravention) or has been convicted of any other offence relating to mining or minerals,
- (b) that the decision-maker reasonably considers that the tenderer provided false or misleading information in or in connection with the application,
- (c) that the decision-maker considers it appropriate to do so having taken into account the matters required by section 238.

**Note—**

Section 238 specifies additional matters that may be taken into account in deciding whether or not an application should be refused.

**[62] (Repealed)**

**[63] Section 68 Land and minerals for which mining lease may be granted**

Insert after section 68 (3):

- (4) However, a mining (mineral owner) lease may be granted:
  - (a) only in respect of privately owned minerals, and
  - (b) only to the owner of those minerals.

**[64] Section 70 Conditions of mining lease**

Omit section 70 (1). Insert instead:

- (1) A mining lease is subject to the following conditions:
  - (a) a condition that the holder of the lease must not suspend mining operations in the mining area otherwise than in accordance with the written consent of the decision-maker,
  - (b) a condition that the holder must comply with a rehabilitation and environmental management plan approved by the Director-General under this Act in carrying out any activities authorised by the lease, or that the holder of a lease is authorised to carry out under this Act (whether in or outside the mining area),
  - (c) any other conditions that the decision-maker may impose.

**Note—**

Division 5 of Part 11 sets out procedures for the approval of rehabilitation and environmental

management plans.

**[65] Section 70 (2) (g)**

Insert after section 70 (2) (f):

- (g) conditions relating to cores and samples obtained in the course of mining or mining operations,

**[66] Section 70 (2A) and (3)**

Omit the subsections.

**[67] Section 71**

Omit the section. Insert instead:

**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 decision-maker may determine, and
- (b) ceases to have effect at the expiration of such period as the decision-maker determines, being a period that must not exceed 21 years, except with the Premier's concurrence.

**[68] (Repealed)**

**[69] Section 73 Rights under mining lease**

Omit section 73 (2). Insert instead:

- (2) While a mining lease is in force, the holder of the lease and any person acting as agent or employee of the holder, or delivering goods or providing services to the holder, for the purpose of a requirement of or an activity authorised by the lease may:
  - (a) for that purpose enter and be on the mining area, and
  - (b) do anything so authorised or required.
- (3) Despite subsection (1), the only prospecting and prospecting operations that a mining lease authorises are:
  - (a) prospecting and prospecting operations of a kind determined by the Minister by order under section 29, or

- (b) any other kinds of prospecting and prospecting operations authorised by the decision-maker.
- (4) The holder of the lease may apply in writing to the decision-maker for a variation of the lease or conditions of the lease to authorise other kinds of prospecting or prospecting operations to be carried out.
- (5) An application must:
  - (a) be made in the approved form and manner (if any), and
  - (b) contain any information that is prescribed by the regulations, and
  - (c) be accompanied by the fee (if any) prescribed by the regulations.
- (6) The decision-maker may:
  - (a) vary the lease in accordance with the application and make any variations to the conditions of the lease that the decision-maker considers appropriate, or
  - (b) refuse the application.
- (7) The decision-maker is to give the applicant written notice of the outcome of any application under this section.
- (8) Any variation of the lease or the conditions of the lease takes effect on the date on which written notice of the variation is served on the applicant or any later date specified in the notice.
- (9) In this section:

***mining area*** includes, in relation to a lease that does not include the surface of land, any part of the surface of land on which the holder of the lease is authorised, in accordance with section 81, to carry out activities.

**[70] Section 74**

Insert after section 73:

**74 Review of determination under section 73**

- (1) The holder of a mining lease may, within 30 days (or such longer period as may be prescribed) after being served with written notice of the determination of an application under section 73, apply to the decision-maker for a review of the determination.
- (2) An application must:
  - (a) be made in the approved form and manner (if any), and

- (b) contain any information that is prescribed by the regulations, and
- (c) be accompanied by the fee (if any) prescribed by the regulations.
- (3) The making of an application for review of a determination does not operate to stay the determination.
- (4) On a review, the decision-maker may confirm or change the determination.
- (5) The decision-maker is to give the applicant written notice of the outcome of the application.
- (6) If the decision-maker changes a determination, the changed determination replaces the earlier determination from the date of the written notice.
- (7) A decision on a review may not be further reviewed under this section.

**[71] (Repealed)**

**[72] Section 77 Addition of mineral to mineral mining lease**

Insert after section 77 (4):

- (4A) A direction may be given in respect of a mining (mineral owner) lease only if the additional mineral is owned by the holder of that lease.

**[73] Section 79**

Omit the section. Insert instead:

**79 Amendment of mining lease in respect of expenditure and labour conditions**

- (1) The decision-maker 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 amendment takes effect on the date on which written notice of the amendment is served on the holder of the lease or on any later date specified in the notice.

**[74] Section 81 Surface activities in relation to subsurface leases**

Omit "prospecting operations on the surface of the land" from section 81 (1).

Insert instead "on the surface of the land any activities that are prescribed by the regulations".

**[75] Section 81 (2)**

Omit the subsection.

**[76] Section 81 (3)**

Omit “prospecting operations”. Insert instead “prescribed activities”.

**[77] Section 83A**

Omit the section. Insert instead:

**83A Mining subleases**

- (1) The holder of a mining lease, other than a mining (mineral owner) lease, may grant a mining sublease with respect to all or part of the mining area under the mining lease (the **head lease**).
- (2) A sublease may be renewed, or its term or conditions varied, according to law.
- (3) However, the granting, renewal or variation of the term or a condition of a mining sublease has no effect for the purposes of this Act unless the sublease is registered in accordance with section 163A.
- (4) A sublease that has been registered in accordance with section 163A ceases to have effect for the purposes of this Act if:
  - (a) the term of the sublease or head lease expires, or
  - (b) it ceases to have effect in accordance with the conditions of the sublease, or
  - (c) it is removed from the register of mining subleases in accordance with section 163B,whichever occurs first.
- (5) The holder of a mining sublease must not grant a further mining sublease with respect to all or any part of the sublease area.
- (6) The granting, renewal or variation of the term or a condition or registration of a mining sublease does not prevent any action being taken under this Act (including variation, suspension or cancellation) in respect of the head lease.

**[78] (Repealed)**

**[79] Part 6, Division 6**

Omit the Division.

**[80] Section 113 Applications for renewal**

Omit section 113 (2)–(4). Insert instead:

- (2) An application for the renewal of an authority must be lodged with the Director-General within the period set out below:
  - (a) in the case of the renewal of an exploration licence or an assessment lease—within the period of 2 months before the licence or lease ceases to have effect, or
  - (b) in the case of the renewal of a mining lease for 1 year or less—within the period of 2 months before the lease ceases to have effect, or
  - (c) in the case of the renewal of a mining lease for more than 1 year—not earlier than 5 years and not later than 1 year before the lease ceases to have effect.
- (3) An application for renewal must be accompanied by the application fee prescribed by the regulations and any information that is prescribed by the regulations.

**[81] (Repealed)**

**[82] Section 114 Power of decision-maker in relation to renewal applications**

Omit section 114 (2). Insert instead:

- (2) Without limiting the generality of subsection (1) or any other provision of this Act, an application may be refused on any one or more of the following grounds:
  - (a) that the applicant (or, in the case of an applicant that is a corporation, a director of the corporation) has contravened this Act or the regulations or a condition of the authority (whether or not the person has been prosecuted or convicted of any offence arising from the contravention) or has been convicted of any other offence relating to mining or minerals,
  - (b) that a person has contravened a condition of the authority (whether or not the person has been prosecuted or convicted of any offence arising from the contravention),
  - (c) that the decision-maker reasonably considers that the holder of the authority provided false or misleading information in or in connection with the application or any report provided under this Act for or with respect to the authority,
  - (d) that the decision-maker considers it appropriate to do so having taken into account the matters required by section 238.

**Note—**

Section 238 specifies additional matters that may be taken into account in deciding whether or not an application should be refused.

**[83] Section 114 (6)**

Omit the subsection. Insert instead:

- (6) The area of land over which an exploration licence may be renewed is not to exceed half the area over which the licence was in force when the application for renewal was made unless the decision-maker is satisfied that special circumstances exist that justify renewal of the licence over a larger area.

**[84] Section 118 Date from which renewal of authority has effect**

Omit section 118 (1). Insert instead:

- (1) The renewal of an authority takes effect on the date on which the application for renewal is granted or on any later date, or on the occurrence of any later event, that the decision-maker may determine.

**[85] Sections 120-122**

Omit sections 120-123. Insert instead:

**120 Application for approval of transfer**

- (1) The holder of an authority may apply for approval of the transfer of the authority to another person.
- (2) An application for approval must be lodged with the Director-General, include any information that is prescribed by the regulations and be accompanied by the following:
  - (a) the application fee prescribed by the regulations,
  - (b) the consent of the proposed transferee,
  - (c) in the case of a partial transfer, a plan identifying the area to which the new authority would apply.

**121 Power of decision-maker in relation to transfer approval applications**

- (1) After considering an application for approval of the transfer of an authority, the decision-maker may:
  - (a) approve the transfer in accordance with the application, or
  - (b) refuse the application.

- (2) Without limiting the generality of subsection (1) or any other provision of this Act, an application may be refused on any one or more of the following grounds:
- (a) that the applicant (or, in the case of an applicant that is a corporation, a director of the corporation) has contravened this Act or the regulations (whether or not the person has been prosecuted or convicted of any offence arising from the contravention) or has been convicted of any other offence relating to mining or minerals,
  - (b) that the decision-maker reasonably considers that the applicant provided false or misleading information in or in connection with an application,
  - (c) that the decision-maker considers it appropriate to do so having taken into account the matters required by section 238.

**Note—**

Section 238 specifies additional matters that may be taken into account in deciding whether or not an application should be refused.

- (3) An application for the transfer of a mineral owner authority may be approved only:
- (a) if the proposed transferee is the owner of the minerals to which the authority relates, or
  - (b) if the proposed transferee is not the owner, subject to the condition that the transfer does not come into effect until the decision-maker notifies the applicant in writing that the decision-maker is satisfied that the proposed transferee has become the owner.
- (4) In approving a full transfer, the decision-maker may, subject to this Act, vary the conditions of the authority or include further conditions in the authority.
- (5) In approving a partial transfer, the decision-maker:
- (a) may, subject to this Act, vary the conditions of the original authority, and
  - (b) is to determine the conditions of the new authority.
- (6) Without limiting subsection (4) or (5), the decision-maker may vary an authority by adding conditions, including conditions that impose obligations on the transferor or the transferee to rehabilitate land or water affected by mining or prospecting or by associated activities carried out on land that is the subject of the transfer.
- (7) The decision-maker is to give the applicant written notice of the outcome of the application.



- (8) This section does not affect the operation of section 75V (Approvals etc legislation that must be applied consistently) or 93 (Granting and modification of approval by approval body) of the *Environmental Planning and Assessment Act 1979*.

## **122 Registration of transfers**

- (1) If the transfer of an authority has been approved, the transferor or transferee of the authority may, within 3 months after being notified of the approval, apply for registration of the transfer.
- (2) Any such application must be:
- (a) lodged with the Director-General, and
  - (b) accompanied by the application fee prescribed by the regulations, and
  - (c) accompanied by:
    - (i) in the case of a full transfer—a document signed by the decision-maker and the transferee acknowledging the terms of the authority after the transfer, and
    - (ii) in the case of a partial transfer—a document signed by the decision-maker and the transferor acknowledging the terms of the original authority after the transfer, and
    - (iii) in the case of a partial transfer—a document signed by the decision-maker and the transferee acknowledging the terms of the new authority.
- (3) On receipt of the application, the Director-General must register the transferee as the holder of the authority or (in the case of a partial transfer) the new authority.
- (4) On registration of a full transfer the transferee becomes the holder of the authority and any variation of the authority under this Division takes effect.
- (5) On registration of a partial transfer:
- (a) 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 is taken to have been granted to the transferee for the period from the date of registration until the date on which the original authority is due to expire and subject to the conditions determined under this Division, and
  - (c) the transferee becomes the holder of the new authority, and

(d) any variation of the original authority under this Division takes effect.

**[86] Section 124 Caveats**

Omit “appropriate lodgment fee” from section 124 (1).

Insert instead “lodgment fee prescribed by the regulations”.

**[87] Part 7, Division 3 and Part 9, Division 6, headings**

Omit “**or operational suspension**” wherever occurring.

**[88] Section 125 Grounds for cancellation of authority**

Omit section 125 (1) (b). Insert instead:

- (b) if the holder of the authority contravenes a provision of this Act or the regulations (whether or not the holder is prosecuted or convicted of any offence arising from the contravention), or
- (b1) if a person contravenes a condition of the authority (whether or not the person is prosecuted or convicted of any offence arising from the contravention), or
- (b2) if the decision-maker reasonably considers that the holder of the authority provided false or misleading information in or in connection with an application or any report provided under this Act for or with respect to the authority, or
- (b3) if the decision-maker considers it appropriate to do so having taken into account the matters required by section 238, or

**[89] Section 125 (3)**

Omit the subsection. Insert instead:

- (3) Action may be taken under this section whether or not any other action has been taken in respect of the authority under this Act.

**[90] Section 126**

Omit the section. Insert instead:

**126 Cancellations of authorities**

- (1) Before cancelling an authority on a ground referred to in section 125 (1) (b)–(d) or (f), the decision-maker is to:
  - (a) cause written notice of the proposed cancellation and the grounds for it to be served on the holder of the authority, and

- (b) give the holder a reasonable opportunity to make representations with respect to the proposed cancellation, and
  - (c) take any such representations into consideration.
- (2) The decision-maker is to cause written notice of the cancellation of an authority to be given to the holder of the authority.
  - (3) The cancellation takes effect on the date on which the written notice of the cancellation is given to the holder of the authority.
  - (4) The cancellation of an authority does not affect any liability incurred by the holder of the authority before the cancellation took effect.

**[91] Section 127 Compensation for cancellation**

Omit “or operations under it are suspended” from section 127 (1).

**[92] Section 128 Appeals against decisions concerning cancellations**

Omit “, or suspend operations under,” from section 128 (1).

**[93] Section 128 (1A)**

Omit “or suspension, or of the Minister’s”. Insert instead “or of the”.

**[94] Section 133 Nomination of authority holder by applicant or tenderer**

Omit section 133 (3).

**[95] Section 135 Waiver of minor procedural matters**

Omit “particulars” from section 135 (1) (c). Insert instead “information”.

**[96]-[98] (Repealed)**

**[99] Section 140**

Omit the section. Insert instead:

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

- (1) The holder of a prospecting title must not carry out prospecting operations on any land except in accordance with an access arrangement relating to the land that:
  - (a) is agreed (orally or in writing) between the landholder and the holder of the prospecting title, or
  - (b) is determined by an arbitrator in accordance with this Division.

- (2) The arrangement may be one that is agreed before, on or after the grant of the prospecting title.
- (3) However, if the arrangement is one that was agreed before the grant of the prospecting title, it must have been in effect immediately before the grant.
- (4) If, immediately before the grant of a prospecting title any land to which the title relates was, or was in, an authorisation area and the subject of an agreed access arrangement (an **existing arrangement**) that complied with this section, that land is taken to be subject to an access arrangement for the purposes of this section if the holder of the prospecting title:
  - (a) was the holder of the authorisation immediately before the granting of the prospecting title, or
  - (b) is the assignee of the rights under the existing arrangement.
- (5) Subsection (4) ceases to apply to land if a subsequent access arrangement is agreed or determined in relation to the land.

**[100] Section 144 Appointment of arbitrator in default of agreement**

Omit “appropriate lodgment fee” from section 144 (2).

Insert instead “application fee prescribed by the regulations”.

**[101] (Repealed)**

**[102] Part 8, Division 3, heading**

Omit the heading. Insert instead:

Division 3 **Records, registration and reports**

**[103] Section 159 Records**

Omit section 159 (2). Insert instead:

- (2) The record must be kept in the approved form (if any) and must contain the particulars prescribed by the regulations.

**[104] Section 161 Registration of certain interests**

Omit “appropriate lodgment fee” from section 161 (3).

Insert instead “application fee prescribed by the regulations”.

**[105] Section 161 (7A)**

Omit the subsection.

**[106] Section 161 (11)**

Insert after section 161 (10):

- (11) An interest arising under a mining sublease is not a legal or equitable interest for the purposes of this section.

**[107] Section 162 Devolution of rights of holder of authority**

Insert at the end of the section:

- (2) To avoid doubt, the granting or registration under this Act of a mining sublease does not result in the devolution of the rights of the holder of the head lease to any person.

**[108] Section 163 Colliery holdings**

Insert after section 163 (2) (a):

- (aa) the name of the colliery holding, and  
(ab) the name of the colliery holder, and  
(ac) a plan showing the location of the holding, and

**[109] Section 163 (3)-(6D)**

Omit section 163 (3)-(6). Insert instead:

- (3) The holder of a mining lease or registered mining sublease that authorises the holder to mine for coal or to carry out mining purposes in connection with the mining of coal must apply to have the mining area or sublease area registered as a colliery holding or recorded on the register as part of an existing colliery holding before commencing mining operations under the lease or sublease.

Maximum penalty: 20 penalty units.

- (4) A person who is lawfully carrying out mining purposes on land in connection with the mining of coal (and doing so otherwise than as the holder of a mining lease or registered mining sublease) may apply to have the land registered as a colliery holding or recorded on the register as part of an existing colliery holding.
- (5) A person may not be recorded as the colliery holder of a colliery holding registered under this section unless the person is the holder of a mining lease or registered mining sublease that is part of the colliery holding.

- (6) A person who has an interest in a colliery holding registered under this section may apply to have the registration of the holding concerned:
- (a) cancelled, or
  - (b) amended so as to exclude land from the holding, or
  - (c) amended so as to transfer land from the holding to another registered colliery holding, or
  - (d) amended with respect to the identity of the colliery holder.
- (6A) An application under this section must be:
- (a) signed by the persons or classes of persons prescribed by the regulations, and
  - (b) accompanied by any fee and any particulars and consents to the making of the application prescribed by the regulations, and
  - (c) lodged with the Director-General.
- (6B) Within 14 days after an application is lodged (or within such longer period as may be prescribed by the regulations), the Minister must:
- (a) grant the application and cause the register to be updated, as soon as practicable, in accordance with the application, or
  - (b) refuse the application on any of the following grounds:
    - (i) the application does not comply with the requirements of this section,
    - (ii) if the application is for registration of a holding or with respect to the name of a holding—the name proposed for the holding may cause confusion (because, for example, it is the same as or similar to a name that is or was used for another holding, whether registered or not).
- (6C) The Minister may, by order in writing:
- (a) direct a person who is required to or may apply for land to be registered as a colliery holding or recorded on the register as part of an existing colliery holding to apply for that registration or recording in accordance with this section within the time specified by the order, or
  - (b) direct that a colliery holding is to be registered with a specified name or that the registered name of a colliery holding is to be amended, or
  - (c) direct that a person be registered as the colliery holder of a colliery holding, if no person has been registered or nominated for registration of the colliery holding.

(6D) A person who is given a direction under subsection (6C) must not, without reasonable excuse, fail to comply with the direction.

Maximum penalty: 20 penalty units.

**[110] Section 163 (8) and (9)**

Omit “subsection (6)” wherever occurring. Insert instead “subsection (6C)”.

**[111] Section 163 (8)**

Omit “subsection (3A) or (4)”. Insert instead “subsection (4) or (6)”.

**[112] Section 163 (9)**

Omit “direction” and “instrument” wherever occurring. Insert instead “order”.

**[113] Section 163 (10)**

Insert after section 163 (9):

(10) The register of colliery holdings must be kept available for inspection, free of charge, by members of the public at such offices of the Department as may be prescribed by the regulations.

**[114] Sections 163A-163C**

Insert after section 163:

**163A Registration of mining subleases**

- (1) The Director-General is to cause to be kept a register of mining subleases containing such information as is prescribed by the regulations.
- (2) Any person claiming to have been granted a mining sublease or to be the holder of a mining sublease may apply in writing for registration of the sublease or of its renewal or variation.
- (3) An application must not be made without the Minister’s approval.
- (4) An application must be in the approved form, lodged with the Director-General and accompanied by the following:
  - (a) documentary evidence of the sublease, including its term and conditions,
  - (b) a plan of the sublease area,
  - (c) documentary evidence that a security deposit to the Minister’s satisfaction has been provided and is being maintained in relation to the sublease area,

- (d) documentary evidence of the Minister's approval of the application (if required),
  - (e) the application fee prescribed by the regulations,
  - (f) any other information that is prescribed by the regulations.
- (5) The Director-General may register the document by which the mining sublease is evidenced only if satisfied that the applicant holds the sublease.
- (6) The registration of a mining sublease under this section does not affect any liability that the holder of the sublease would otherwise have to a penalty for an offence under this Act, including an offence that relates to the head lease.
- (7) The regulations may exempt an application or class of applications from the requirement in subsection (3).
- (8) The register of mining subleases must be kept available for inspection, free of charge, by members of the public at such offices of the Department as may be prescribed by the regulations.

### **163B Deregistration of mining subleases**

- (1) Any person who would be entitled to apply to have a mining sublease registered under this Act may apply for the removal of the sublease from the register.
- (2) An application must be in writing, lodged with the Director-General and accompanied by the written consent of the sublessor.
- (3) The Director-General may grant or refuse an application to remove a sublease from the register of mining subleases.

### **163C Reports**

- (1) The holder of an authorisation must prepare and lodge reports of all prospecting activity carried out under the authorisation.

**Note—**

Reports can also be required by the conditions of an authorisation—see section 239C.

- (2) The regulations may make provision for or with respect to the following:
  - (a) the content, form or lodgment of the reports,
  - (b) the exemption of any person, class of persons, authorisation or class of authorisations from a requirement of this section or the regulations under this section,
  - (c) prohibiting or regulating the disclosure of reports required to be lodged or



made under this section or a condition of an authorisation.

- (3) A person who fails, without reasonable excuse, to prepare or lodge a report in accordance with this section or the regulations is guilty of an offence.

Maximum penalty: 100 penalty units.

- (4) If there is an inconsistency between a condition of an authorisation and a reporting requirement imposed under this section, the condition prevails to the extent of the inconsistency.

**[115] Section 164 Rights of way**

Insert “(other than a mineral owner authority)” after “holder of an authority” in section 164 (1).

**[116]-[118] (Repealed)**

**[119] Section 168A**

Insert after section 168:

**168A Addition or variation of conditions in certain circumstances**

- (1) Without limiting any other provision of this Act, the decision-maker may amend an authorisation, by imposing conditions on the authorisation or varying existing conditions, in order to remove an inconsistency between the authorisation and a development consent.

**Note—**

The Dictionary to this Act defines **development consent** to include an approval under Part 3A of the [Environmental Planning and Assessment Act 1979](#).

- (2) However, subsection (1) applies only if:

- (a) the development consent was granted after the authorisation, or
- (b) the development consent was granted on or before the date on which the authorisation was granted and the inconsistency arose from a subsequent modification of the consent.

- (3) An amendment under this section takes effect on the date on which notice of the amendment is served on the holder of the authorisation or on such later date as may be specified in the notice.

**[120] Section 169**

Omit the section.

**[121], [122] (Repealed)**

**[123] Section 172**

Omit the section.

**[124] Section 173 Constitution of mineral claims districts**

Omit “within a single mining division” from section 173 (1).

**[125] Section 173 (2) (c)**

Omit “land within an exempted area” and “that area”.

Insert instead “reserved land” and “that land”, respectively.

**[126] Section 175 Special conditions**

Omit “lodged” from section 175 (2) (f).

Insert instead “provided and maintained, in accordance with Part 12A,”.

**[127] Section 175 (4)**

Omit “land within an exempted area” and “that area”.

Insert instead “reserved land” and “that land” respectively.

**[128] Section 176 Marking out of proposed claim area**

Omit “must be situated wholly within a single mining division and” from section 176 (2).

**[129] Section 178 Application for granting of mineral claim**

Omit section 178 (2) (c) and (d). Insert instead:

(c) must be accompanied by the application fee prescribed by the regulations, and

(d) must be accompanied by any information that is prescribed by the regulations, and

(e) must be lodged with the Director-General, and

**[130] Section 179 Objection as to agricultural land**

Omit “mining registrar for the mining division within which the land is situated” from section 179 (2).

Insert instead “Director-General”.

**[131] Section 179 (3)**

Omit “mining registrar is to refer the objection to the Director-General of the Department

of Agriculture who”.

Insert instead “Director-General”.

**[132] Section 180 General restrictions**

Omit section 180 (2) and (3). Insert instead:

- (2) A mineral claim may not be granted over land that is not situated within a mineral claims district.

**[133] Section 181**

Omit the section.

**[134] (Repealed)**

**[135] Section 183 (3)**

Insert “, unless the Director-General makes a determination under subsection (4)” after “case requires”.

**[136] Section 183 (4)**

Insert after section 183 (3):

- (4) The Director-General may determine that subsection (3) does not apply with respect to the land or to a part of the land if the Director-General is satisfied that having the land or that part subject to both the claim and the other authorisation concerned is not likely to make the exercise of rights under the claim or the other authorisation impracticable.

**[137] Sections 184, 190 (1) and (5), 193, 194 (1), 198 (1), 199A (1), 200 (3), 201 (1), 203 (3), 204 (1), 205 (2), 206 (4), 215 (1) and (2), 218A (1) (a) and (b), 228 (1) and (3), 229 (d), 233 (1) (a) and (e), 234 (1) and 335 (2)**

Omit “mining registrar” wherever occurring.

Insert instead “Director-General”.

**[138] (Repealed)**

**[139] Section 185**

Omit the section.

**[140] Section 187 Agricultural land**

Omit “that is within a mineral claims district” from section 187 (2).

**[141], [142] (Repealed)**

**[143] Section 190 (2)**

Omit section 190 (2). Insert instead:

- (2) Without limiting the generality of subsection (1) or any other provision of this Act, an application may be refused on any one or more of the following grounds:
- (a) that the applicant (or, in the case of an applicant that is a corporation, a director of the corporation) has contravened this Act or the regulations (whether or not the person has been prosecuted or convicted of any offence arising from the contravention) or has been convicted of any other offence relating to mining or minerals,
  - (b) that the Director-General reasonably considers that the applicant provided false or misleading information in or in connection with the application,
  - (c) that the Director-General considers it appropriate to do so having taken into account the matters required by section 238.

**Note—**

Section 238 specifies additional matters that may be taken into account in deciding whether or not an application should be refused.

**[144] Section 190 (3)**

Omit “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)”.

Insert instead “Director-General before the application is determined, the Director-General may”.

**[145] Section 190 (4)-(4B) and (7)**

Omit the subsections.

**[146] Section 192 Conditions of mineral claim**

Omit section 192 (1). Insert instead:

- (1) A mineral claim is subject to:
- (a) any special conditions that apply to the land, and
  - (b) the conditions imposed on the holder of the claim under section 211 as to his or her exercise of any right of way under that section in respect of the claim area,

and

- (c) the conditions to which the holder of the claim is subject pursuant to any registered access management plan in force in respect of that land, and
- (d) any other conditions (not inconsistent with any other condition referred to in this subsection) that the Director-General imposes.

**[147]-[149] (Repealed)**

**[150] Section 195A**

Omit the section.

**[151] Section 197 Application for renewal of mineral claim**

Omit section 197 (2) and (3). Insert instead:

- (2) An application for renewal of a mineral claim:
  - (a) must be accompanied by the application fee prescribed by the regulations, and
  - (b) must be lodged with the Director-General within 2 months before the day on which the claim would otherwise expire.
- (3) If an application for renewal of a mineral claim is not finally dealt with before the date on which the mineral claim would otherwise cease to have effect, the mineral claim continues to have effect in relation to the land to which the application relates (and no other land) until the application is finally determined.

**[152] Section 198 Determination of application for renewal of mineral claim**

Omit section 198 (2) and (3). Insert instead:

- (2) Without limiting the generality of subsection (1) or any other provision of this Act, an application may be refused on any one or more of the following grounds:
  - (a) that the applicant (or, in the case of an applicant that is a corporation, a director of the corporation) has contravened this Act or the regulations or a condition of the claim (whether or not the person has been prosecuted or convicted of any offence arising from the contravention) or has been convicted of any other offence relating to mining or minerals,
  - (b) that a person has contravened a condition of the claim (whether or not the person has been prosecuted or convicted of any offence arising from the contravention),
  - (c) that the Director-General reasonably considers that the holder of the claim

provided false or misleading information in or in connection with an application or any report provided under this Act for or with respect to the claim,

- (d) that the Director-General considers it appropriate to do so having taken into account the matters required by section 238.

**Note—**

Section 238 specifies additional matters that may be taken into account in deciding whether or not an application should be refused.

- (3) The Director-General may, on renewing a mineral claim, vary the conditions of the claim in such manner as the Director-General may (in accordance with the special conditions) determine.

**[153] Section 199A Term of renewal**

Omit “, in the case of a mineral claim over land that is situated within a mineral claims district, not exceeding” from section 199A (1) (b).

**[154] Section 200 Application for transfer of mineral claim**

Omit section 200 (2). Insert instead:

- (2) An application for the transfer of a mineral claim:
- (a) must be accompanied by the application fee prescribed by the regulations, and
  - (b) must be lodged with the Director-General, and
  - (c) must contain any information prescribed by the regulations, and
  - (d) must be accompanied by the written consent of the proposed transferee, and
  - (e) must be accompanied by a copy of the relevant notice served under subsection (2A).

**[155] Section 201 Determination of application for transfer of mineral claim**

Omit section 201 (2) and (3). Insert instead:

- (2) Without limiting the generality of subsection (1) or any other provision of this Act, an application may be refused on any one or more of the following grounds:
- (a) that the applicant (or, in the case of an applicant that is a corporation, a director of the corporation) has contravened this Act or the regulations (whether or not the person has been prosecuted or convicted of any offence arising from the contravention) or has been convicted of any other offence relating to mining or minerals,

(b) that the Director-General reasonably considers that the applicant provided false or misleading information in or in connection with an application,

(c) that the Director-General considers it appropriate to do so having taken into account the matters required by section 238.

**Note—**

Section 238 specifies additional matters that may be taken into account in deciding whether or not an application should be refused.

(3) The Director-General may, on transferring a mineral claim, vary the conditions of the claim in such manner as the Director-General may (in accordance with the special conditions) determine.

**[156] Section 202**

Omit the section. Insert instead:

**202 Devolution of rights of holder of mineral claim**

A person on whom the rights of the holder of a mineral claim have devolved by operation of law may apply to the Director-General to have that person's name recorded as the holder of the claim and, if the Director-General is satisfied that those rights have so devolved, the Director-General must so record the name of the applicant.

**[157] Sections 203 (1), 210A (1), 218A (1), 233 (1) and 335 (1)**

Omit "A mining registrar" wherever occurring.

Insert instead "The Director-General".

**[158] Sections 203 (1) (a) and 210A (2)**

Omit "the mining registrar" wherever occurring.

Insert instead "the Director-General".

**[159] Section 203 (1) (c)-(c3)**

Omit section 203 (1) (c). Insert instead:

(c) if the holder of the claim contravenes a provision of this Act or the regulations (whether or not the holder is prosecuted or convicted of any offence arising from the contravention), or

(c1) if a person contravenes a condition of the claim (whether or not the holder is

prosecuted or convicted of any offence arising from the contravention), or

(c2) if the Director-General reasonably considers that the holder of the claim provided false or misleading information in or in connection with an application or any report provided under this Act for or with respect to the claim, or

(c3) if the Director-General considers it appropriate to do so having taken into account the matters required by section 238, or

**[160] Section 203 (2) (a)**

Omit “mining registrar for the mining division within which the claim area is situated”.

Insert instead “Director-General”.

**[161] Section 203 (4)**

Omit the subsection.

**[162] Section 204 Cancellations of mineral claims**

Omit “(c), (d), (e) or (h), or suspending operations under a claim” from section 204 (1).

Insert instead “(b)–(e) or (h)”.

**[163] Section 204 (1) (a) and (b)**

Omit “or suspension” wherever occurring.

**[164] Section 204 (2) and (3)**

Omit “or suspension of operations under” wherever occurring.

**[165] Section 204 (2)**

Omit “or suspension” where secondly occurring.

**[166] Section 204 (3)**

Omit “or suspension” where secondly occurring.

**[167] Section 204 (4) and (5)**

Omit the subsections.

**[168] Section 205 Compensation for cancellation of mineral claims**

Omit “or operations under it are suspended” from section 205 (1).

**[169] Sections 206 (1), 210A (2) and 226 (3)**

Omit “a mining registrar” wherever occurring.



Insert instead “the Director-General”.

**[170] Section 206 Review of decisions concerning cancellation of mineral claims**

Omit “, or suspend operations under,” from section 206 (1).

**[171] Section 208 Withdrawal of application**

Omit “mining registrar with whom the application or objection was lodged” from section 208 (1).

Insert instead “Director-General”.

**[172] (Repealed)**

**[173] Section 211 Rights of way**

Omit “in the case of land within a mineral claims district,” wherever occurring in section 211 (2) (b) and (6) (b).

**[174], [175] (Repealed)**

**[176] Section 211 (9)**

Omit “In the case of land within a mineral claims district, the”.

Insert instead “The”.

**[177], [178] (Repealed)**

**[179] Section 217**

Omit sections 216 and 217. Insert instead:

**217 Settlement of certain disputes**

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 apply to a Warden’s Court for a determination on the matter.

**[180] Section 218A Records**

Omit “mining registrar’s office” from section 218A (3).

Insert instead “office of the Department”.

**[181] Section 219**

Omit the section.

**[182] (Repealed)**

**[183] Section 223 Certain land not to be included in opal prospecting area**

Omit “an exempted area” from section 223 (1) (c).

Insert instead “reserved land”.

**[184] Section 223A Special conditions**

Omit “lodged” from section 223A (2) (d).

Insert instead “provided and maintained, in accordance with Part 12A,”.

**[185] Section 225 Map of opal prospecting area to be prepared**

Omit “mining registrar for each mining division within which the opal prospecting area, or any part of the opal prospecting area, is situated” from section 225 (1) (b).

Insert instead “Director-General”.

**[186] Section 225 (3)**

Omit “mining registrar for each mining division within which the relevant opal prospecting area, or any part of the area, is situated”.

Insert instead “Director-General”.

**[187] Section 225 (4)**

Omit the subsection. Insert instead:

- (4) The Director-General must cause a copy of the map to be kept available for inspection during office hours, free of charge, in such location or locations as the Director-General determines.

**[188] (Repealed)**

**[189] Section 226 (2)**

Omit the subsection. Insert instead:

- (2) An application must be in writing, lodged with the Director-General and accompanied by:
  - (a) the application fee prescribed by the regulations, and
  - (b) any information that is prescribed by the regulations.

**[190] Section 227 Restrictions on grant of licence**

Omit “in the same mining division” from section 227 (1) (d).

**[191] Section 228 Power of Director-General in relation to applications**

Omit section 228 (2). Insert instead:

- (2) Without limiting the generality of subsection (1) or any other provision of this Act, an application may be refused on any one or more of the following grounds:
- (a) that the applicant (or, in the case of an applicant that is a corporation, a director of the corporation) has contravened this Act or the regulations (whether or not the person has been prosecuted or convicted of any offence arising from the contravention) or has been convicted of any other offence relating to mining or minerals,
  - (b) that the Director-General reasonably considers that the applicant provided false or misleading information in or in connection with the application,
  - (c) that the Director-General considers it appropriate to do so having taken into account the matters required by section 238.

**Note—**

Section 238 specifies additional matters that may be taken into account in deciding whether or not an application should be refused.

**[192] Section 228 (4)-(6)**

Omit the subsections.

**[193] Section 232A**

Omit the section.

**[194] Section 233 Grounds of cancellation of opal prospecting licence**

Omit section 233 (1) (b). Insert instead:

- (b) if the holder contravenes a provision of this Act or the regulations (whether or not the holder is prosecuted or convicted of any offence arising from the contravention), or
- (b1) if a person contravenes a condition of the licence (whether or not the holder is prosecuted or convicted of any offence arising from the contravention), or
- (b2) if the Director-General reasonably considers that the holder of the licence provided false or misleading information in or in connection with an application or any report

provided under this Act for or with respect to the licence, or

(b3) if the Director-General considers it appropriate to do so having taken into account the matters required by section 238, or

**[195] Section 233 (2)**

Omit “the mining registrar for the mining division within which the opal prospecting block is situated”.

Insert instead “the Director-General”.

**[196], [197] (Repealed)**

**[198] Section 235A**

Omit sections 235A and 235B. Insert instead:

**235A Records**

- (1) The Director-General is to cause to be kept a record of:
  - (a) every application for an opal prospecting licence that is made, and
  - (b) every opal prospecting licence that is granted or cancelled, and
  - (c) the amendment of any opal prospecting licence.
- (2) The record must be kept in the approved form and must contain the particulars prescribed by the regulations.
- (3) The record must be kept available for inspection, free of charge, by members of the public at such office or offices of the Department as the Director-General determines.

**[199], [200] (Repealed)**

**[201] Section 236**

Omit the section.

**[202], [203] (Repealed)**

**[204] Part 11 Protection of the environment**

Omit Divisions 1 and 2 of the Part. Insert instead:

## **Division 1 Environmental consideration in decision-making**

### **237 Interpretation**

In this Division:

**approval** means any form of permission whether under this or any other Act or law.

**authorisation decision** means a decision (whether in response to an application or otherwise) about whether or not:

- (a) to grant, renew, transfer, suspend or cancel an authorisation, or
- (b) to impose conditions on, or vary the conditions of, an authorisation, or
- (c) to approve an application to register a mining sublease, or
- (d) to approve a rehabilitation and environmental management plan under section 246H.

**environmental performance**—see section 239.

**other relevant legislation** means any legislation (whether or not repealed or of a place outside the State) declared by the regulations to be other relevant legislation for the purposes of this Division.

**relevant person** means:

- (a) in the case of a decision relating to the transfer of an authorisation—the proposed transferee, and
- (b) in any other case—the applicant for or holder of the authorisation concerned.

### **238 Environment and environmental performance to be taken into account**

(1) In making an authorisation decision, the decision-maker is to take into account:

- (a) the likely impact on the environment of activities authorised by the authorisation or undertaken in the authorisation area or proposed authorisation area in connection with activities authorised by the authorisation (including any impact outside the authorisation area), and
- (b) the environmental performance of each relevant person and, if a relevant person is a corporation, of any related corporation, and
- (c) any guidelines approved by the Director-General for the purposes of this section.

(2) The decision-maker may:

- (a) have studies (including environmental impact studies) carried out or engage persons to provide advice, as the decision-maker considers necessary, to assist in the making of an authorisation decision, and
  - (b) consider any reports or studies prepared in connection with a relevant decision referred to in subsection (3).
- (3) This section does not require the decision-maker:
- (a) to consider or assess any matters that have already been, or are to be, considered or assessed by a Minister or public authority in connection with an approval of the Minister or authority, or
  - (b) to take into account the impact of the uses of any products obtained or derived from the minerals or other things obtained as a result of activities authorised by the authorisation, unless the uses are activities authorised by the authorisation.
- (4) The decision-maker may, in making an authorisation decision, disregard a contravention of the environment protection legislation, having regard to its seriousness or otherwise, the length of time since it occurred, and any other matters that appear relevant to the decision-maker.
- (5) Nothing in this section affects any requirement for an applicant to provide information or documents in connection with an application under this Act.

### **239 Meaning of environmental performance**

- (1) In this Division, the ***environmental performance*** of a relevant person and, if the relevant person is a corporation, of any related corporation, includes:
- (a) whether the person or related corporation has contravened any of the environment protection legislation or any other relevant legislation, or has held an approval that has been suspended or revoked under the environment protection legislation or other relevant legislation, and
  - (b) if the relevant person is a corporation, whether a director of the corporation:
    - (i) has contravened the environment protection legislation or any other relevant legislation, or has held an approval that has been suspended or revoked under the environment protection legislation or other relevant legislation, or
    - (ii) is or has been the director of another corporation that has contravened the environment protection legislation or any other relevant legislation, or has held an approval that has been suspended or revoked under the environment protection legislation or any other relevant legislation.

- (2) A reference in this section to a director of a corporation extends to a person involved in the management of the affairs of the corporation.

### **239A Recovery of public money spent under section 238**

- (1) If public money is spent under section 238 (2) in having studies carried out or engaging persons to provide advice, the decision-maker may, by written notice, require the relevant person concerned to reimburse the Government, within the time specified in the notice, for the money, or any part of the money, reasonably incurred.
- (2) The decision-maker may recover from the relevant person any unpaid amounts specified in the notice as a debt in a court of competent jurisdiction.

## **Division 2 Conditions relating to the environment, rehabilitation and reporting**

### **239B Conditions for environment protection and rehabilitation**

- (1) Without limiting any other provision of this Act, a condition may be imposed on an authorisation that requires the holder to carry out activities for any one or more of the following purposes:
- (a) the conservation of the environment, protection of the environment from harm as a result of activities under the authorisation or the prevention, control or mitigation of any such harm,
  - (b) the rehabilitation of land or water that is or may be affected by activities under the authorisation,
  - (c) the afforestation (including for carbon sequestration within the meaning of section 87A of the [Conveyancing Act 1919](#) and related environmental purposes) of any part of the authorisation area that may have been adversely affected by activities under the authorisation,
  - (d) the offsetting of any such adverse effects by the dedication or conservation of land for a public purpose or the rehabilitation of land or water other than the authorisation area.
- (2) However, a condition referred to in subsection (1) (c) may be imposed only at the request of an applicant for, or the holder of, the authorisation.
- (3) A condition may be imposed under this section:
- (a) whether or not the land or water that is or may be affected by the activities is or has at any time been an authorisation area, and
  - (b) whether or not the activities were carried out by the current holder of the

authorisation, and

- (c) whether or not the activities were authorised by the authorisation, and
  - (d) if the authorisation has been previously wholly or partly transferred, whether or not the activities were carried out under the transferred authority.
- (4) A condition relating to land or water outside an authorisation area (including land previously in an authorisation area):
- (a) may be imposed only in relation to matters arising, or likely to arise, directly from activities carried out under an authorisation or under section 81, and
  - (b) may require the provision and management of environmental off-sets related to the matters referred to in paragraph (a), and
  - (c) may require the monitoring of environmental impacts and the provision of environmental data in relation to the land or water.
- (5) A condition may be imposed on the holder of an authorisation in relation to the rehabilitation of land or water affected by activities carried on under an authorisation that has been cancelled or previously carried on without an authorisation, only if the condition is imposed when the authorisation is granted or with the consent of the holder.
- (6) A condition imposed under this section may be varied or revoked by written notice served on the holder of the authorisation.
- (7) A condition imposed under this section takes effect on the date on which the written notice is served on the holder of the authorisation or on any later date specified in the notice.
- (8) This section does not affect the operation of section 75V (Approvals etc legislation that must be applied consistently) or 93 (Granting and modification of approval by approval body) of the *Environmental Planning and Assessment Act 1979*.

### **239C Conditions requiring reporting**

- (1) A condition may be imposed on an authorisation to require the holder to provide the Director-General with reports detailing any one or more of the following:
- (a) the extent to which the conditions of the authorisation, or any provisions of this Act or the regulations applicable to activities under the authorisation, have or have not been complied with,
  - (b) particulars of any non-compliance with any such conditions or provisions,



- (c) the reasons for any such non-compliance,
  - (d) any action taken, or to be taken, to prevent any recurrence, or to mitigate the effects, of that non-compliance.
- (2) A condition imposed under this section (a **reporting condition**) may require a report to be certified as correct by the holder, another person approved by the Director-General or a person who is a member of a class of persons prescribed by the regulations.
- (3) A condition imposed under this section takes effect on the date on which written notice of the condition is served on the holder of the authorisation or on any later date specified in the notice.
- (4) A condition imposed under this section may be varied or revoked by written notice served on the holder of the authorisation.
- (5) A person who gives a certificate for the purposes of a reporting condition is guilty of an offence if the person gives the certificate knowing that any of the statements certified is false or misleading in a material respect.

Maximum penalty:

- (a) in the case of a corporation—1,000 penalty units, or
- (b) in the case of a natural person—500 penalty units.

### **239D Use of information provided under reporting condition**

- (1) Any document or information provided under a reporting condition imposed under this Division may be taken into consideration by the Director-General or the Minister and used for the purposes of this Act.
- (2) Without limiting subsection (1), any such document or information is admissible in evidence in any prosecution of the holder of the authorisation for any offence against this Act or the regulations, whether or not the information or statements might incriminate that holder.
- (3) The Director-General is authorised, despite any other Act or law, to provide a relevant agency with any such document or information.
- (4) In this section, **relevant agency** means the Department or a public authority engaged in administering or executing the environment protection legislation, the *Environmental Planning and Assessment Act 1979* or such other legislation, if any, as may be prescribed by the regulations.

#### **[205] Part 11, Division 3, heading**

Omit the heading. Insert instead:

### Division 3 **Environmental, rehabilitation and other directions**

#### **[206] Sections 239E-240E**

Omit section 240. Insert instead:

#### **239E Definitions**

In this Division:

**authorisation** includes a mining sublease and (except in sections 240 (4) and 240A) an authorisation that has ceased to have effect.

**authorised person** means:

- (a) a person engaged in connection with the taking of steps under section 241 (1),  
or
- (b) the Director-General, or
- (c) a person authorised in writing by the Director-General for the purposes of this Division, or
- (d) an inspector.

**mining sublease** includes a mining sublease that has ceased to have effect.

**responsible person** means:

- (a) in relation to an authorisation that is in force:
  - (i) a holder of the authorisation, or
  - (ii) in the case of a mining lease or registered mining sublease that authorises the holder to mine for coal or carry out mining purposes connected with the land—a person who is the operator of the mine concerned within the meaning of the *Coal Mine Health and Safety Act 2002*, or
- (b) in relation to an authorisation that has ceased to be in force—a person who was a responsible person, in relation to that authorisation, immediately before the authorisation ceased to be in force.

#### **240 Directions**

- (1) The Director-General or an inspector may, by written notice, direct a responsible person in relation to an authorisation to do any one or more of the following:
  - (a) to give effect to a condition of an authorisation (except a condition requiring payment of royalty or provision or maintenance of a security deposit),

- (b) to address any adverse impact that activities carried out under, or purportedly carried out under, an authorisation have had on any aspect of the environment,
  - (c) to address a risk of there being such an impact,
  - (d) to conserve the environment, protect it from harm as a result of activities under the authorisation or to prevent, control or mitigate any such harm,
  - (e) to rehabilitate land or water that is or may be affected by activities under the authorisation.
- (2) A direction may require a responsible person to carry out or stop carrying out particular activities, carry out activities in a particular manner or achieve specified outcomes, within such period (if any) as is specified in the direction.
- (3) However, a direction to a responsible person in the person's capacity as the holder of a mining sublease may only impose requirements relating to activities under the sublease or in relation to the sublease area.
- (4) If a direction is issued to a person who is not the holder of the authorisation to which the direction relates, the Director-General must cause a copy of the direction to be served on the holder within 5 days after the direction is issued.

#### **240A Direction to suspend operations**

- (1) The Director-General may, by written notice (a **suspension notice**), direct a responsible person to suspend (by such time as is specified in the direction and until further notice) all, or any specified, operations under an authorisation if the Director-General considers that there has been a contravention of:
- (a) a direction under section 240 that relates to the authorisation, or
  - (b) a condition of the authorisation (including a condition requiring the payment of royalty or provision or maintenance of a security deposit), or
  - (c) an access arrangement that relates to the authorisation area, or
  - (d) an agreement or assessment under Part 13 relating to the payment of compensation in connection with the authorisation.
- (2) Before giving a suspension notice, the Director-General is to:
- (a) cause written notice of the proposed suspension notice and the grounds for it to be served on the holder of the authorisation, and
  - (b) give the holder a reasonable opportunity to make representations with respect to the proposed suspension notice, and

- (c) take any such representations into consideration.
- (3) The suspension notice takes effect on the date on which it is given to the holder of the authorisation.
- (4) The suspension of an authority does not affect any liability incurred by the holder of the authorisation before the cancellation took effect.
- (5) The holder of an authorisation is not entitled to compensation merely because of the suspension of operations under the authorisation in accordance with a suspension notice.
- (6) If a suspension notice under this section is issued to a person who is not the holder of the authorisation concerned, the Director-General must cause a copy of the notice to be served on the holder within 5 days after the notice is issued.

#### **240B Revocation or variation**

- (1) A direction under this Division may be revoked or varied by a subsequent direction issued in accordance with this Division.
- (2) A direction may be varied by modification of, or addition to, its terms and specifications.
- (3) Without limiting the above, a direction may be varied by extending the time for complying with the direction.

#### **240C Breach of direction**

If a person fails, without reasonable excuse, to comply with a direction under this Division:

- (a) the person to whom the direction was issued, and
- (b) the holder of the authorisation to which the direction relates (if not the person to whom the direction was issued),

are each guilty of an offence.

Maximum penalty: 500 penalty units and, in the case of a continuing offence, a further penalty of 50 penalty units for each day that the offence continues.

#### **240D Effect of direction**

The issuing of a direction under this Division does not affect:

- (a) the liability of any person to any penalty for an offence in relation to an authorisation, or
- (b) the amount of security deposit that is or may be required under an

authorisation, or

- (c) the operation of any other provision of this Act or the regulations that requires or enables other action to be taken in relation to any contravention or other circumstances to which the direction relates.

**Note—**

For example, the issuing of a direction does not affect the power to cancel an authority under section 125.

**240E Fee**

- (1) The purpose of this section is to enable the recovery of the administrative costs of preparing and issuing a direction under this Division (not including a direction that varies an earlier direction under this Division).
- (2) A person to whom a direction is issued must within 30 days pay the fee prescribed by the regulations to the Director-General.

**[207] Section 241 Rehabilitation by Minister at holder's expense**

Insert after section 241 (2):

- (3) An authorised person may enter any land and do anything that in the person's opinion is necessary for or in connection with the taking of those steps (including gaining access from that land to other land).
- (4) However, an authorised person must not enter land unless the person:
  - (a) has given the occupier of the land reasonable notice of the person's intention to do so, and
  - (b) enters the land at a reasonable time (except in the case of an emergency), and
  - (c) uses no more force than is reasonably necessary to effect entry, and
  - (d) before entering any premises on the land that are used only for residential purposes, has obtained the permission of the occupier of those premises.
- (5) A person who suffers damage caused by the taking of steps under this section is entitled to be paid reasonable compensation by the person who failed to comply with the direction (as referred to in subsection (1)).
- (6) Division 3 of Part 13 and Part 15 apply (with such modifications as may be prescribed by the regulations) to that compensation as if it were compensation payable for a compensable loss (within the meaning of Division 3 of Part 13).

**[208] Part 11, Division 3A**

Insert after Division 3 of Part 11:

**Division 3A Derelict mine sites**

**242A Declaration of derelict mine sites**

- (1) The Minister may, by order published in the Gazette, declare as a derelict mine site any land that, in the opinion of the Minister:
  - (a) was used for, or has been affected by, mining operations or prospecting operations, and
  - (b) has been abandoned.
- (2) The declaration is to identify the land with reasonable particularity.
- (3) In making the declaration, the Minister is to have regard to any matters that are prescribed by the regulations.
- (4) The Minister may declare land as a derelict mine site whether or not it is possible to identify or locate the landholder or the holder of an authorisation under which operations referred to in subsection (1) (a) were carried out.
- (5) A declaration cannot be challenged in any legal proceedings commenced later than 3 months after the order is published in the Gazette.
- (6) Subsection (5) has effect despite the provisions of any other Act or law, but does not apply so as to affect any appeal from proceedings commenced within 3 months after the declaration is published in the Gazette.

**242B Rehabilitation of derelict mine site**

- (1) The Director-General may cause steps to be taken to have a derelict mine site fully or partially rehabilitated and may, for that purpose, enter into contracts or agreements.
- (2) An authorised person may enter any land and do anything that in the person's opinion is necessary for or in connection with the rehabilitation (including gaining access to other land from that land).
- (3) However, an authorised person must not enter land unless the person:
  - (a) has given the occupier of the land reasonable notice of the person's intention to do so, and
  - (b) enters the land at a reasonable time (except in the case of an emergency),

and

(c) uses no more force than is reasonably necessary to effect entry.

(4) A landholder who suffers damage caused by an authorised person entering the landholder's land under this section is entitled to be paid reasonable compensation by the Crown unless the landholder obstructed, hindered or restricted the authorised person's entry.

(5) Division 3 of Part 13 and Part 15 apply (with such modifications as may be prescribed by the regulations) to that compensation as if it were compensation payable for a compensable loss (within the meaning of Division 3 of Part 13).

(6) In this section:

**authorised person** means:

(a) a person engaged in connection with the taking of steps under subsection (1), or

(b) the Director-General, or

(c) a person authorised in writing by the Director-General for the purposes of this section, or

(d) an inspector.

#### **242C Derelict Mine Sites Fund**

(1) There is established in the Special Deposits Account the Derelict Mine Sites Fund.

(2) Money in the Fund is under the control of the Director-General and may be spent by the Director-General only for the purposes authorised by this section.

(3) There is to be paid into the Fund:

(a) the balance of any money received from the sale of mining plant under section 246A after all deductions have been made in accordance with that section, and

(b) the proceeds of investment of money in the Fund, and

(c) money obtained under a security deposit that is payable into the Fund under section 261F or 261G, and

(d) any other money that is appropriated by Parliament for the purposes of the Fund, that is required by law to be paid into the Fund or that the Minister has approved being paid into the Fund.

- (4) Subject to the regulations, there may be paid out of the Fund:
- (a) compensation payable to a landholder under section 242B, and
  - (b) any other costs associated with the rehabilitation of derelict mine sites under this Division, as determined by the Director-General.

**[209] Section 243**

Omit the section. Insert instead:

**243 Application of Division**

This Division applies to land that ceases to be subject to an authorisation.

**[210] Section 244 Definitions**

Insert in alphabetical order:

***forfeiture order*** means an order under section 246.

***former holder***, in relation to an authorisation that has ceased to apply to land, means the person who was the holder of the authorisation immediately before the authorisation ceased to apply to the land.

***landholder*** of land means the owner of an estate in fee simple of the land, the controlling body in relation to reserved land or the holder, over or in the land, of:

- (a) a lease or licence granted under the *Crown Lands Act 1989*, or
- (b) a tenure referred to in Part 1 or 2 of Schedule 1 to the *Crown Lands (Continued Tenures) Act 1989* in the land, or
- (c) a lease granted under the *Western Lands Act 1901* over the land.

**[211] Section 244, definition of “mining plant”**

Insert “prospecting,” after “used for”.

**[212] Section 244, definition of “prescribed period”**

Omit the definition. Insert instead:

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



**[213] Sections 245-246X**

Omit sections 245 and 246. Insert instead:

**245 Clearing away of mining plant**

- (1) If land ceases to be subject to an authorisation, the former holder of the authorisation:
  - (a) may, within the prescribed period, and
  - (b) must, if directed to do so by the Minister by written notice served on the person, within the period specified in the notice,  
  
remove from the land mining plant brought onto, or erected on, that land in the course of mining operations carried out under the authorisation.
- (2) The Minister may give a direction even though the prescribed period has not expired.

**246 Forfeiture of mining plant**

- (1) If an item of mining plant is not duly removed under section 245, the Minister may, by order published in the Gazette, declare the item to be forfeited to:
  - (a) a person whom the Minister is satisfied has a right to the control, use or benefit of the plant, or
  - (b) if the Minister is not so satisfied, to one of the following as the Minister thinks fit and specifies in the order:
    - (i) the Crown,
    - (ii) a landholder on whose land the plant is located.
- (2) The Minister is to cause a copy of the forfeiture order to be served on the person to whom the item is forfeited (if the person is not the Crown) and each landholder.
- (3) Ownership of the plant vests in the person to whom the item is forfeited, freed and discharged from all other estates and interests in the plant:
  - (a) when the period for applying under section 246C to the Land and Environment Court for a review of the order expires without an application being made, or
  - (b) if any such application is made within that period, when the court confirms the order or the application is withdrawn,

whichever occurs first.

#### **246A Disposal of forfeited mining plant**

- (1) A person must not dispose of or otherwise deal with any estate or interest in an item of mining plant that is the subject of a forfeiture order unless ownership of the plant has vested in the person under this Division.

Maximum penalty: 100 penalty units.

- (2) The proceeds of any disposal of an item of mining plant forfeited to the Crown under this Division must be paid into the Derelict Mine Sites Fund, after deduction of the following amounts:
  - (a) the costs of the disposal and of any matter incidental to or connected with the disposal,
  - (b) the costs of removing from the land concerned any plant remaining unsold after the disposal,
  - (c) any amount owing in respect of compensation for compensable loss within the meaning of Division 3 of Part 13,
  - (d) any other amount that the Director-General certifies to be a deductible amount.
- (3) If the proceeds of any such disposal are less than the amounts to be deducted, the proceeds are to be applied in or towards meeting those amounts in such manner as the Minister directs.

#### **246B Consultation and notice about plant removal or forfeiture**

- (1) Before giving a direction under section 245 or making a forfeiture order, in relation to an item of plant on land that has ceased to be subject to an authorisation, the Minister is, if practicable:
  - (a) to give the holder of the former authorisation and each landholder of the land written notice of the intention to issue the direction or order, and
  - (b) to take into account any submissions that are received in response to the notice within 21 days after the notice is given.
- (2) A failure to comply with subsection (1) does not invalidate a direction or order.

#### **246C Review of order vesting mining plant**

- (1) A landholder on whose land an item of mining plant is located that is the subject of a forfeiture order may, within 28 days after a copy of the order is served on the landholder, apply to the Land and Environment Court for a review of the

order.

- (2) The landholder must serve a copy of the application on the Minister in accordance with the rules under section 332.
- (3) The Minister is a party to the review proceedings.
- (4) The court may dispose of the application:
  - (a) by varying or revoking the order, or
  - (b) by confirming the order.
- (5) If the court revokes the order, it may make an order vesting the item of plant in:
  - (a) a person whom the court is satisfied has a right to the control, use or benefit of the plant, or
  - (b) if the court is not so satisfied, one of the following, as the court thinks fit:
    - (i) the Crown,
    - (ii) a landholder on whose land the plant is located.

#### **246D Limitation of challenges to forfeiture**

- (1) The forfeiture of an item of plant under this Division cannot be challenged in any legal proceedings commenced later than 3 months after the forfeiture order is published in the Gazette.
- (2) This section has effect despite the provisions of any other Act, but does not apply so as to affect:
  - (a) any appeal from proceedings commenced within the period of 3 months referred to in subsection (1), or
  - (b) the operation of section 246C.

#### **246E Liabilities in relation to vesting of or defect in forfeited plant**

- (1) A person in whom the ownership of an item of plant vests under this Division is not, because of that vesting, liable to pay compensation or make any other payment to any other person.
- (2) The Crown does not incur any liability (including liability for compensation) in respect of any loss or injury suffered by a person because of the operation of or a defect in plant that is forfeited under this Division.
- (3) This section does not limit the generality of section 362.

(4) In this section:

**compensation** includes damages or any other form of monetary compensation.

**the Crown** means the Crown within the meaning of the [Crown Proceedings Act 1988](#), and includes any officer, employee or agent of the Crown.

## **Division 5 Rehabilitation and environmental management plans**

### **246F Definitions**

In this Division:

**approved**, in relation to a rehabilitation and environmental management plan, means approved under this Division.

**guidelines** means guidelines issued by the Director-General for the purposes of this Division and published in the Gazette.

### **246G Rehabilitation and environmental management plans for authorisations other than mining leases**

- (1) A condition may be imposed on an authorisation (other than a mining lease) that the holder must comply with a rehabilitation and environmental management plan approved by the Director-General in carrying out activities authorised by the authorisation (whether inside or outside the authorisation area).
- (2) A condition imposed on an authorisation under this section takes effect on the date on which written notice of the condition is served on the holder of the authorisation or on any later date that is specified in the notice.

#### **Note—**

Section 70 makes it a condition of a mining lease that the holder comply with an approved rehabilitation and environmental management plan. Section 378D makes it an offence not to comply with a condition of an authorisation.

### **246H Application for approval of rehabilitation and environmental management plan**

- (1) The holder of an authorisation may apply in writing to the Director-General for approval of a rehabilitation and environmental management plan or a variation of a rehabilitation and environmental management plan for the purposes of the authorisation.
- (2) The Director-General may grant or refuse the application.
- (3) The Director-General may grant an application only if satisfied that the plan or

the plan as varied:

- (a) describes how activities are to be carried out under the authorisation and how the authorisation area is to be managed after those activities cease, and
- (b) addresses any other matters that are prescribed by the regulations, and
- (c) is consistent with the conditions of the authorisation, and
- (d) is consistent with the guidelines.

**Note—**

Section 238 requires the Director-General to take certain matters into account in deciding whether or not to approve a rehabilitation and environmental management plan.

- (4) The Director-General must approve a new plan or a variation of a plan if satisfied that the plan or variation is necessary for compliance with a condition of a licence under the *Protection of the Environment Operations Act 1997* or a development consent.
- (5) The Director-General may refuse to approve the variation of a rehabilitation and environmental management plan if the Director-General considers that the variation would be more appropriately dealt with by a new plan (because of, for example, the number of changes proposed).

**246I Term of rehabilitation and environmental management plan**

- (1) A rehabilitation and environmental management plan remains in force for a period of 7 years commencing on its approval, or such other period, if any, as may be specified by the Director-General in the notice of its approval.
- (2) While a plan is still in force the Director-General may, on the written application of the holder of the authorisation and by written notice to the holder, extend the period for which it is in force for such period as the Director-General thinks fit.

**246J Continuing rehabilitation obligations**

- (1) If:
  - (a) an authorisation expires or is cancelled (whether or not at the request of a holder of the authorisation), and
  - (b) at that time an obligation of the person who was the holder under a condition imposed under section 70 (1) (b) or this Division was not discharged,

the person remains liable to comply with that obligation until it is discharged and is liable to a penalty for any non-compliance as if the authorisation were still in

force and the person were still a holder of the authorisation.

- (2) The Minister may determine that the person is not subject to:
  - (a) any particular obligation under this section, or
  - (b) all the person's remaining obligations under this section.
- (3) A determination under subsection (2) is to be in writing.

#### **246K Reviews**

- (1) If the Director-General refuses an application under this Division, the applicant may, within 2 months after the refusal, apply in writing to the Minister to review the refusal.
- (2) In reviewing a refusal, the Minister is to have regard to:
  - (a) any reasons given by the Director-General for the decision, and
  - (b) any supporting information that the applicant may submit in relation to the application for review, and
  - (c) any other information that the Minister considers relevant.
- (3) On a review, the Minister:
  - (a) has all the functions and discretions of the Director-General in respect of the matter that is under review, and
  - (b) cannot approve a rehabilitation and environmental management plan, or a variation of a plan, other than that for which approval was sought from the Director-General.
- (4) The decision of the Minister on a review is taken to be the decision of the Director-General and is to be given effect to accordingly.

#### **246L Applications—miscellaneous provisions**

- (1) An application under this Division must:
  - (a) be made in the approved form and manner (if any), and
  - (b) contain any information that is prescribed by the regulations, and
  - (c) be accompanied by the fee (if any) prescribed by the regulations.
- (2) The Director-General or the Minister must cause written notice of his or her decision on an application under this Division to be given to the applicant (including, if the decision is to refuse the application, the reasons for that

refusal) within the period prescribed by the regulations.

- (3) An application under this Division is taken to have been refused if it has not been determined within the period prescribed by the regulations.
- (4) However, this does not preclude the determination of an application after that period expires.

## **Division 6 Audits**

### **246M Relationship of this Division to other provisions**

This Division does not affect any other provision of this Act that:

- (a) enables an authorisation to be subject to a condition requiring monitoring or reporting, or
- (b) relates to functions exercisable by persons for the purpose of auditing compliance with this Act, the regulations or conditions of authorisations.

### **246N Nature of audit**

An audit under this Division is a periodic or particular documented evaluation of prospecting or mining operations (including management practices, systems and plant) for any one or more of the following purposes:

- (a) to provide information on compliance or otherwise with obligations under the authorisation or other related legal requirements under this or any other law (including in relation to the protection of the environment from the impacts of, or the rehabilitation of land affected by, activities under the authorisation),
- (b) to provide information on compliance or otherwise with codes of practice or policies relevant to the authorisation,
- (c) to enable a determination of whether the way activities are being carried out under the authorisation can be improved in order to protect the environment.

### **246O Accreditation and regulation of auditors**

The regulations may make provision for or with respect to either or both of the following:

- (a) the accreditation of auditors for the purposes of this Division,
- (b) the carrying out of audits by auditors.

### **246P Conditions for mandatory audits**

- (1) A condition that requires one or more mandatory audits to be undertaken, to the

satisfaction of the Director-General, for any one or more of the purposes referred to in section 246N (a **mandatory audit condition**) may be imposed on an authorisation.

- (2) A mandatory audit condition must specify the purpose or purposes of the audit.
- (3) A mandatory audit condition may require any one or more of the following:
  - (a) appointment of an auditor to undertake the audit,
  - (b) approval by the Director-General of the auditor before being appointed,
  - (c) preparation of particular written documentation during the course of the audit,
  - (d) preparation of an audit report,
  - (e) production to the Director-General of the audit report.
- (4) A mandatory audit condition may also:
  - (a) specify the format and level of detail required for the audit, or
  - (b) require the auditor to submit the proposed format and level of detail to the Director-General for approval.
- (5) A mandatory audit condition may be varied or revoked by written notice served on the holder of the authorisation.
- (6) A condition imposed under this section takes effect on the date on which written notice of the condition is served on the holder of the authorisation or on any later date specified in the notice.
- (7) This section does not affect the operation of section 75V (Approvals etc legislation that must be applied consistently) or 93 (Granting and modification of approval by approval body) of the *Environmental Planning and Assessment Act 1979*.

#### **246Q Certification of audit report**

The audit report for a mandatory audit is taken not to have been duly produced to the Director-General unless it is accompanied by:

- (a) a declaration signed by the holder of the authorisation certifying that the holder has not knowingly provided any false or misleading information to the auditor and has provided all relevant information to the auditor, and
- (b) a declaration signed by the auditor:
  - (i) setting out the auditor's qualifications, and



- (ii) certifying that the report is accurate, and that the auditor has not knowingly included any false or misleading information in it or failed to include any relevant information in it.

#### **246R Offences relating to audit information**

- (1) A person who provides information to an auditor in connection with a mandatory audit, knowing the information to be false or misleading in a material respect, is guilty of an offence.
- (2) The holder of an authorisation who fails to provide information to an auditor in connection with a mandatory audit being carried out in relation to the authorisation, knowing the information to be materially relevant to the audit, is guilty of an offence.
- (3) An auditor who includes information in an audit report produced to the Director-General in connection with a mandatory audit, knowing the information to be false or misleading in a material respect, is guilty of an offence.
- (4) An auditor who fails to provide information in an audit report produced to the Director-General in connection with a mandatory audit, knowing the information to be materially relevant to the audit, is guilty of an offence.
- (5) The holder of an authorisation who:
  - (a) fails to retain any written documentation required to be prepared by the holder in connection with a mandatory audit for a period of at least 5 years after the audit report concerned was produced to the Director-General (or such other period as is prescribed by the regulations), or
  - (b) fails to produce during that period any such documentation to the Director-General on request,is guilty of an offence.

Maximum penalty:

- (a) in the case of a corporation—1,000 penalty units, or
- (b) in the case of a natural person—500 penalty units.

#### **246S Self-incriminatory information not exempt**

Information must be supplied by a person in connection with a mandatory audit, and this Division applies to any such information that is supplied, whether or not the information might incriminate the person.

### **246T Use of information**

- (1) Any information in an audit report or other documentation supplied to the Director-General in connection with a mandatory audit may be supplied by the Director-General to, and taken into consideration by, any person who has functions under this Act, the *Environmental Planning and Assessment Act 1979* or the environment protection legislation and may be used by that person for the purposes of those laws.
- (2) Without limiting subsection (1):
  - (a) the Director-General is authorised, despite any other Act or law, to provide a relevant agency with any such information, and
  - (b) any such information is admissible in evidence in any prosecution of the holder of an authorisation for any offence (whether under this Act or otherwise).
- (3) In this section, **relevant agency** means the Department, or a public authority engaged in administering or executing the environment protection legislation, the *Environmental Planning and Assessment Act 1979* or such other legislation, if any, as may be prescribed by the regulations.

### **246U Nature of voluntary audit**

- (1) For the purposes of this Division, a voluntary audit is an audit commissioned or carried out voluntarily, whether or not in relation to activities carried out under an authorisation.
- (2) An audit is not voluntary if there is a contemporaneous requirement for a mandatory audit in relation to the same or substantially the same activity or other matter and the audits are to be carried out by the same person.

### **246V Protected documents**

- (1) Documents prepared for the sole purpose of a voluntary audit are protected documents for the purposes of this Act.
- (2) The protected documents include the final report of the audit and any documents prepared during the course of the audit for the sole purpose of the audit.
- (3) Without affecting the generality of subsection (1) or (2), documents are not protected if they are prepared wholly or partly in connection with monitoring or reporting that is required by any conditions of an authorisation or by a direction under section 240.

### **246W Nature of protection**

- (1) A protected document:
  - (a) is not admissible in evidence against any person in any proceedings connected with the administration or enforcement of this Act, the environment protection legislation or such other legislation, if any, as may be prescribed, and
  - (b) must not be inspected, copied, seized or otherwise obtained by the Department, any authority prescribed by the regulations or by any other person for any purpose connected with such administration or enforcement.
- (2) Neither the Department, a prescribed authority nor any other person may, for the purpose referred to in subsection (1) (b), require a person to answer any question or provide any information about the existence of the document or about what it contains.
- (3) The onus of establishing that a document is a protected document lies on the person asserting that it is protected.
- (4) A court may inspect any document that is claimed to be a protected document for the purpose of determining whether it is or is not a protected document.
- (5) The regulations may prescribe procedures for making and determining claims that a document is a protected document.

### **246X Lifting of protection**

- (1) Documents prepared in relation to a voluntary audit cease to be protected if the person asserting or relying on the protection uses or relies on (or attempts to use or rely on) the whole or any part of one or more of the documents, whether directly or indirectly, in any proceedings connected with the administration or enforcement of this Act, the environment protection legislation or such other legislation, if any, as may be prescribed.
- (2) This section does not apply where the person is using or relying on (or attempting to use or rely on) a document for the purpose of establishing that the document is protected.

#### **[214] Part 12, heading**

Omit the heading. Insert instead:

Part 12 **Powers of entry and inspection**

#### **[215] Part 12, Divisions 1-1E**

Omit Division 1. Insert instead:

## **Division 1 Preliminary**

### **247 Purposes for which powers under Part may be exercised**

Powers may be exercised under this Part for the following purposes:

- (a) for determining whether there has been compliance with or a contravention of this Act or the regulations or any authorisation, direction, notice or requirement issued or made under this Act,
- (b) for obtaining information or records for purposes connected with the administration of this Act,
- (c) generally for administering this Act.

### **248 Effect on other functions**

Nothing in this Part:

- (a) affects any function under any other Part of this Act or under any other Act, or
- (b) limits the conditions that may be attached to an authorisation.

## **Division 1A Powers to require information and records**

### **248A Application of Division**

This Division applies whether or not a power of entry under Division 1B is being or has been exercised.

### **248B Requirement to provide information and records**

- (1) An inspector may, by written notice given to a person, require the person to furnish to the inspector such information or records (or both) as the inspector requires by the notice in connection with any matter relating to the administration of this Act.
- (2) The notice must specify the manner in which the information or records are required to be furnished and a reasonable time by which the information or records are required to be furnished.
- (3) If a record required to be furnished under the notice is in electronic, mechanical or other form, the notice requires the record to be furnished in written form, unless the notice otherwise provides.
- (4) The notice may only require a person to furnish existing records that are in the person's possession or that are within the person's power to obtain lawfully.

- (5) The inspector to whom a record is furnished under the notice may take copies of the record.

## **Division 1B Powers of entry and search**

### **248C Powers to enter premises**

- (1) An inspector may enter:
- (a) any premises at which the inspector reasonably suspects that any prospecting operations, mining operations or mining purposes are being or are about to be carried out—at any time, and
  - (b) any premises that the inspector reasonably suspects have been, are being or are likely to be affected by prospecting operations, mining operations or a mining purpose—at any time, and
  - (c) any premises where the inspector reasonably believes that documents that relate to any activity referred to in paragraph (a) or (b) are kept—at any time.
- (2) The power to enter premises authorises entry by foot or by means of a motor vehicle or other vehicle, or by an aircraft, or in any other manner.
- (3) Entry may be effected with the aid of such police officers or other inspectors as the inspector considers necessary and with the use of reasonable force.
- (4) Entry may be effected to any premises with the authority of a search warrant under section 248F.

### **248D Entry into residential premises only with permission or warrant**

This Division does not entitle an inspector to enter any part of premises used only for residential purposes without the permission of the occupier or the authority of a search warrant under section 248F.

### **248E Powers of inspectors to do things at premises**

- (1) An inspector may, at any premises lawfully entered, do anything that in the opinion of the inspector is necessary to be done for the purposes of this Part, including (but not limited to) the things specified in subsection (2).
- (2) An inspector may do any or all of the following:
- (a) examine and inspect any works, plant, vehicle, aircraft or other article,
  - (b) take and remove samples,
  - (c) make such examinations, inquiries and tests as the inspector considers

necessary,

- (d) take such photographs, films, audio, video and other recordings as the inspector considers necessary,
  - (e) require records to be produced for inspection,
  - (f) examine and inspect any records,
  - (g) take extracts from, or a copy of, any records,
  - (h) seize anything that the inspector has reasonable grounds for believing is connected with an offence against this Act or the regulations,
  - (i) for the purposes of paragraph (h), direct the occupier of the premises where the thing is seized to retain it at those premises or at another place under the control of the occupier,
  - (j) do any other thing the inspector is empowered to do under this Part.
- (3) The power to seize anything connected with an offence includes a power to seize:
- (a) a thing with respect to which the offence has been committed, and
  - (b) a thing that will afford evidence of the commission of the offence, and
  - (c) a thing that was used for the purpose of committing the offence.

A reference to any such offence includes a reference to an offence that there are reasonable grounds for believing has been committed.

#### **248F Search warrants**

- (1) An inspector may apply to an authorised officer within the meaning of the *Law Enforcement (Powers and Responsibilities) Act 2002* for the issue of a search warrant if the inspector believes on reasonable grounds that:
  - (a) a provision of this Act or the regulations is being or has been contravened at any premises, or
  - (b) there is in or on any premises matter or a thing that is connected with an offence under this Act or the regulations.
- (2) An authorised officer within the meaning of the *Law Enforcement (Powers and Responsibilities) Act 2002* to whom an application is made may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising an inspector named in the warrant:
  - (a) to enter the premises, and

(b) to exercise any function of an inspector under this Part.

(3) Division 4 of Part 5 of the *Law Enforcement (Powers and Responsibilities) Act 2002* applies to a search warrant issued under this section.

(4) **Definitions** In this section:

***matter or a thing*** connected with an offence means:

(a) matter or a thing with respect to which the offence has been committed, or

(b) matter or a thing that will afford evidence of the commission of an offence,  
or

(c) matter or a thing that was used, or is intended to be used, for the purpose of committing the offence.

***offence*** includes an offence that there are reasonable grounds for believing has been, or is to be, committed.

#### **248G Inspectors may request assistance**

A person may accompany an inspector and take all reasonable steps to assist the inspector in the exercise of his or her functions under this Part if the inspector is of the opinion that the person is capable of providing assistance to the inspector in the exercise of those functions.

#### **248H Assistance to be given to inspectors**

(1) This section applies for the purpose of enabling an inspector to exercise any of the powers of an inspector under this Part in connection with any premises.

(2) The Director-General may, by written notice given to the owner or occupier of the premises, require the owner or occupier to provide such reasonable assistance and facilities as are specified in the notice within a specified time and in a specified manner.

(3) Assistance and facilities can be required under this section, whether they are of the same kind as, or a different kind from, any prescribed by the regulations.

#### **248I Care to be taken**

In the exercise of a power of entering or searching premises under this Part, the inspector must do as little damage as possible.

#### **248J Compensation**

The Crown is to compensate all interested parties for any damage caused by an inspector in exercising a power under this Part of entering premises (but not any

damage caused by the exercise of any other power), unless the occupier obstructed or hindered the inspector in the exercise of the power of entry.

## **Division 1C Additional powers relating to certain offences**

### **248K Purposes for which powers under Division may be exercised**

- (1) Powers may be exercised under this Division for determining whether there has been compliance with or a contravention of any of the following provisions of this Act:
  - (a) Division 1 of Part 2 or 378A (in relation to a condition imposed under section 70 (1) (b) or 246G),
  - (b) section 239C, 240C, 246R or 378A (in relation to a condition imposed under section 239B (1)).
- (2) Powers may only be exercised under this Part in relation to a provision referred to in subsection (1) (b) if an inspector reasonably suspects that a failure to comply with, or contravention of, the provision has resulted, or may result, in harm to the environment that:
  - (a) involves actual or potential harm to the health or safety of human beings or to ecosystems that is not trivial, or
  - (b) results in actual or potential loss or property damage of an amount, or amounts in aggregate, exceeding \$10,000 (or such other amount as is prescribed by the regulations).
- (3) Evidence obtained by the use of powers exercised under this Division may be used in respect of offences other than offences referred to in subsection (1).

### **248L Power of inspectors to require answers**

- (1) An inspector may require a person whom the inspector suspects on reasonable grounds to have knowledge of matters in respect of which information is reasonably required for a purpose to which this Division applies to answer questions in relation to those matters.
- (2) The Director-General may, by written notice, require a corporation to nominate, in writing within the time specified in the notice, a director or officer of the corporation to be the corporation's representative for the purpose of answering questions under this section.
- (3) Answers given by a person nominated under subsection (2) bind the corporation.
- (4) An inspector may, by written notice, require a person to attend at a specified



place and time to answer questions under this section if attendance at that place is reasonably required in order that the questions can be properly put and answered.

- (5) The place and time at which a person may be required to attend is to be:
- (a) a place or time nominated by the person, or
  - (b) if the place and time nominated is not reasonable in the circumstances or a place and time is not nominated by the person, a place and time nominated by the inspector that is reasonable in the circumstances.

#### **248M Recording of evidence**

- (1) An inspector may cause any questions and answers to questions given under this Division to be recorded if the inspector has informed the person who is to be questioned that the record is to be made.
- (2) A record may be made using sound recording apparatus or audio visual apparatus, or any other method determined by the inspector.
- (3) A copy of any such record must be provided by the inspector to the person who is questioned as soon as practicable after it is made.
- (4) A record may be made under this section despite the provisions of any other law.

#### **248N Power of inspectors to demand name and address**

- (1) An inspector may require a person whom the inspector suspects on reasonable grounds to have offended or to be offending against a provision referred to in section 248K to state his or her full name and residential address.
- (2) An inspector may request a person who is required under this section to state his or her full name and residential address to provide proof of the name and address. It is not an offence under section 248S to fail to comply with any such request.
- (3) The maximum penalty for an offence under section 248S in connection with a requirement under this section is 100 penalty units, despite anything to the contrary in that section.

#### **248O Additional powers of entry**

- (1) This section applies in addition to the powers of entry to premises conferred by section 248C.
- (2) An inspector may enter any other premises at any reasonable time.

- (3) Division 1B applies in respect of a power of entry conferred by this section in the same way as it applies to a power of entry conferred by that Division.

## **Division 1D Powers with respect to articles**

### **248P Definition**

In this Division, **article** includes any plant, motor or other vehicle, aircraft, vessel or other thing of any description.

### **248Q Application of Division**

Nothing in this Division limits the functions that may be exercised under any other Division of this Part.

### **248R Power to inspect and test**

- (1) An inspector may, for the purposes of this Part, inspect and test any article.
- (2) The inspector may, for the purposes of any such inspection or testing:
  - (a) enter the article, and
  - (b) enter in accordance with this Act the premises where the article is located, and
  - (c) operate the article, and
  - (d) take photographs or video films of the article, and
  - (e) inspect or test any substance being carried by the article or in any container on the article, and
  - (f) take a sample of any such substance for testing.

## **Division 1E General**

### **248S Offences**

- (1) A person who, without lawful excuse, neglects or fails to comply with a requirement made of the person under this Part is guilty of an offence.
- (2) A person who wilfully delays or obstructs an inspector in the exercise of the inspector's powers under this Part is guilty of an offence.
- (3) A person who impersonates an inspector is guilty of an offence.

Maximum penalty:

- (a) in the case of a corporation—1,000 penalty units and, in the case of a continuing

offence, a further penalty of 10 penalty units for each day the offence continues, or

- (b) in the case of a natural person—200 penalty units and, in the case of a continuing offence, a further penalty of 5 penalty units for each day the offence continues.

**248T Provisions relating to requirements to furnish records, information or answer questions**

- (1) A person is not guilty of an offence of failing to comply with a requirement under this Part to furnish records or information or to answer a question unless the person was warned on that occasion that a failure to comply is an offence.
- (2) A person is not excused from a requirement under this Part to furnish records or information or to answer a question on the ground that the record, information or answer might incriminate the person or make the person liable to a penalty.
- (3) However, any information furnished or answer given by a natural person in compliance with a requirement under this Part is not admissible in evidence against the person in criminal proceedings (except proceedings for an offence under this Part) if:
  - (a) the person objected at the time to doing so on the ground that it might incriminate the person, or
  - (b) the person was not warned on that occasion that the person may object to furnishing the information or giving the answer on the ground that it might incriminate the person.
- (4) Any record furnished by a person in compliance with a requirement under this Part is not inadmissible in evidence against the person in criminal proceedings on the ground that the record might incriminate the person.
- (5) Further information obtained as a result of a record or information furnished or of an answer given in compliance with a requirement under this Part is not inadmissible on the ground:
  - (a) that the record or information had to be furnished or the answer had to be given, or
  - (b) that the record or information furnished or answer given might incriminate the person.
- (6) This section extends to a requirement under this Part to state a person's name and address.

### **248U Revocation or variation**

- (1) A notice given under this Part may be revoked or varied by a subsequent notice or notices.
- (2) A notice may be varied by modification of, or addition to, its terms and specifications.
- (3) Without limiting subsection (2), a notice may be varied by extending the time for complying with the notice.
- (4) A notice may only be revoked or varied by an inspector (whether or not the inspector who gave the notice).

### **248V Extraterritorial application**

A notice may be given under this Part to a person in respect of a matter even though the person is outside the State or the matter occurs or is located outside the State, so long as the matter relates to the administration of this Act (including, but not limited to investigation of, or enforcement action relating to, offences against this Act).

### **[216] Part 12, Division 2, heading**

Omit the heading. Insert instead:

Division 2 **Entry in other circumstances**

### **[217] Section 249**

Omit the section. Insert instead:

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

- (1) The Minister may grant a permit to any person to enter any land to enable the person:
  - (a) to do on that land all such things as are reasonably necessary to comply with a condition under section 239B, or
  - (b) to carry out work in accordance with a direction in force under section 240, or
  - (c) to remove any mining plant from any land in accordance with a direction under section 245 or as a result of a disposal of the plant under section 246A.
- (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 things that are reasonably necessary to achieve the purpose for which the permit is granted.

**[218] (Repealed)**

**[219] Section 255**

Omit the section.

**[220] Section 255A Restriction of power of entry: permit holders**

Omit “this Part” from section 255A (2). Insert instead “the permit”.

**[221] Sections 256 and 257**

Omit the sections. Insert instead:

**256 Entry into residential premises only with permission**

Nothing in this Division or Division 2 entitles any person to enter any part of premises used only for residential purposes without the permission of the occupier.

**257 Obstruction**

A person must not, without reasonable excuse, obstruct, hinder or restrict any other person who is:

- (a) entering land, or carrying out any other activity, pursuant to a permit under Division 2, or
- (b) entering or doing things on a derelict mine site pursuant to section 249 (2).

Maximum penalty: 100 penalty units.

**[222] (Repealed)**

**[223] Section 261 Cancellation of permit**

Omit section 261 (3). Insert instead:

- (3) The Director-General may, for such reason as he or she thinks fit, cancel a permit.
- (4) The cancellation of a permit under this section cannot be challenged in any legal proceedings commenced later than 3 months after the cancellation.
- (5) This section has effect despite the provisions of any other Act, but does not apply so as to affect any appeal against the cancellation commenced not later than 3

months after the cancellation.

**[224] Part 12A**

Insert after Part 12:

## **Part 12A Security deposits**

### **261A Definitions**

In this Part:

**holder**, in relation to an authorisation that has ceased to have effect, means the person who was the holder of the authorisation immediately before it ceased to have effect.

**obligation under an authorisation:**

- (a) does not include an obligation with respect to the payment of royalty under this Act, and
- (b) includes any obligations of the holder of an authorisation under Part 11.

**security deposit condition** means:

- (a) a condition of an authorisation imposed under section 261B requiring the provision and maintenance of a security deposit, or
- (b) a condition applying to a mineral claim or opal prospecting licence requiring the provision and maintenance of a security deposit as referred to in section 175 (2) (f) or 223A (2) (d).

### **261B Security deposit conditions**

- (1) A condition may be imposed on an authorisation to require the holder of the authorisation to provide and maintain, or (where the holder is a body corporate) to ensure that a related corporation provides and maintains, a security deposit to secure funding for either or both of the following:
  - (a) the fulfilment of obligations under the authorisation,
  - (b) the fulfilment of obligations under a direction issued under section 240.
- (2) A condition may be imposed under this section:
  - (a) whether or not the land that is or may be affected by the activities or direction is or has at any time been an authorisation area, and
  - (b) whether or not the obligations relate to activities that were carried out by

the current holder of the authorisation, and

- (c) whether or not the obligations relate to activities that were authorised by the authorisation, and
  - (d) if the authorisation has been previously wholly or partly transferred, whether or not the obligations relate to activities carried out under the transferred authority.
- (3) A security deposit condition takes effect on the date written notice of the condition is served on the holder of the authorisation or on any later date specified in the notice.
- (4) A security deposit condition may be varied to change the required amount of the deposit (whether the deposit was provided by the holder of the authorisation or by another person) or any other requirement of the condition.
- (5) A condition of 2 or more mining leases held by the same holder, or within the same colliery holding, may require a single security deposit to be given and maintained.
- (6) This section does not affect the operation of section 75V (Approvals etc legislation that must be applied consistently) or 93 (Granting and modification of approval by approval body) of the *Environmental Planning and Assessment Act 1979*.

### **261C Content of security deposit condition**

- (1) A security deposit condition may include requirements with respect to any one or more of the following matters:
- (a) the amount of the deposit,
  - (b) the form of the deposit,
  - (c) the date by which the deposit is to be provided,
  - (d) the manner in which the deposit is to be provided and maintained,
  - (e) the provision of information or other material to the Director-General or the Minister that demonstrates that the condition is being complied with,
  - (f) the provision of progress reports on work (and associated costs and expenses) for which the deposit is intended to provide security,
  - (g) the independent auditing of any such work, costs and expenses,
  - (h) the circumstances in which the requirement to maintain the deposit lapses.

- (2) A security deposit condition may require the holder of the authorisation to cause a security deposit that has been provided and maintained in relation to another authorisation to be extended to the firstmentioned authorisation.
- (3) A security deposit condition may require one security deposit to be provided and maintained in respect of a number of authorisations held by one person or by a person and a related corporation.
- (4) Nothing in this section limits the matters that may be included in a security deposit condition.

**261D Form and amount of security deposit**

- (1) A security deposit may be in (but is not limited to) any of the following forms:
  - (a) a bank guarantee,
  - (b) cash,
  - (c) a bond,
  - (d) another form (such as an insurance policy) that the decision-maker considers appropriate and specifies in the security deposit condition.
- (2) The amount of the security deposit is to be determined having regard to any guidelines prepared by the Director-General for the purposes of this Part and any of the following that is relevant:
  - (a) the estimated cost of the rehabilitation concerned,
  - (b) the estimated cost of fulfilling the obligations concerned.

**261E Security deposit can be taken to be provided for consolidated mining lease or multiple authorisations**

- (1) A security deposit is taken to have been provided under a security deposit condition of a consolidated mining lease if:
  - (a) a security deposit was provided in compliance with the conditions of one or more of the leases that were consolidated, and
  - (b) the Minister notifies the holder of the consolidated mining lease that, because of the provision of the security deposit referred to in paragraph (a), a security deposit is taken to have been provided under the consolidated mining lease.
- (2) A security deposit is taken to have been provided under a security deposit condition of an authorisation (***the first authorisation***) held by a person if:



- (a) a security deposit was provided in compliance with the conditions of one or more other authorisations held by that person or by a related corporation, and
- (b) the Minister notifies that person that, because of the provision of the security deposit referred to in paragraph (a), a security deposit is taken to have been provided under the first authorisation.

**261F Claim on and use of security deposit**

- (1) The Minister may make a claim on or realise a security deposit provided under a security deposit condition if:
  - (a) the authorisation is cancelled or otherwise ceases to have effect and an obligation under the former authorisation remains unfulfilled, or
  - (b) the holder of the authorisation has failed to comply with a direction under section 240 that relates to the authorisation or to activities carried out under, or purportedly under, the authorisation.
- (2) Before making a claim on or realising a security deposit, the Minister must, if practicable, give written notice of the proposed action to the holder of the authorisation.
- (3) The Minister may use money obtained under a security deposit:
  - (a) in the circumstances to which subsection (1) (a) refers—to recover or fund the costs or expenses that the Crown reasonably incurs in causing any obligation under the former authorisation to be fulfilled, or
  - (b) in the circumstances to which subsection (1) (b) refers—to recover or fund the reasonable costs or expenses of the Crown in causing steps specified in the direction under section 240 to be taken.
- (4) The Minister may invest money obtained under a security deposit in interest-bearing deposits in a bank.
- (5) Any interest accruing on the money is to be paid into the Derelict Mine Sites Fund.
- (6) Money obtained under a security deposit and used under subsection (3) is taken, for all purposes, to be forfeited to the Crown when it is so used.
- (7) The functions of the Minister under this Part may be exercised with or without the benefit of a finding by a court or tribunal that the holder of the authorisation concerned has failed to comply with a direction under section 240 or failed to fulfil any obligation under the authorisation.

### **261G Lapsing of security deposit requirement and return of money**

- (1) Any money obtained under a security deposit that is not used under section 261F is to be paid (without interest) to the person who provided the deposit or, if that person is unable to be located despite reasonable endeavours, into the Derelict Mine Sites Fund.
- (2) The requirement to maintain a security deposit lapses:
  - (a) in accordance with the terms of the security deposit condition, or
  - (b) if the condition does not deal with the lapsing of the requirement, when the Minister has determined that any requirements of the direction under section 240 or under the authorisation (non-compliance with which would authorise a claim on or realisation of the deposit) have been fulfilled to a satisfactory extent and in a satisfactory manner.
- (3) The Minister must, if practicable, give written notice of that determination to the holder of the authorisation.

### **261H Security deposit not to affect other action**

Nothing in this Part affects:

- (a) the liability of a person to any penalty for an offence in relation to a direction under section 240 or an obligation under an authorisation or any contravention to which the security deposit relates, or
- (b) any other action that may be taken or is required to be taken in relation to any contravention or other circumstances to which the security deposit relates.

### **261I Regulations in relation to security deposits**

The regulations may make provision for or with respect to the administration of money or other securities obtained by the Minister under a security deposit.

### **[225] Section 263 Compensation arising under exploration licence**

Omit section 263 (4). Insert instead:

- (4) If the holder of an exploration licence does not have an agreement referred to in this section in relation to land, the holder must not exercise any right under the licence in relation to the land if its exercise will, or is likely to, result in a compensable loss.

### **[226] Section 264 Compensation arising under assessment lease**

Omit section 264 (4). Insert instead:

- (4) If the holder of an assessment lease does not have an agreement referred to in this section in relation to land, the holder must not exercise any right under the lease in relation to the land if its exercise will, or is likely to, result in a compensable loss.
- (5) If, immediately before the grant of an assessment lease any part of the assessment area was, or was in, an authorisation area and the subject of a valid agreement under this Division (an **existing agreement**), a valid agreement is taken to have been entered into in relation to that part for the purpose of this section, if the holder of the assessment lease:
  - (a) was the holder of the authorisation immediately before the grant of the assessment lease, or
  - (b) is the assignee of the rights under the existing agreement.
- (6) Subsection (5) ceases to apply to a part of an assessment area if a subsequent valid agreement is entered into, or the Land and Environment Court makes an assessment of compensation payable, in relation to that part.

**[227] Section 265 Compensation arising under mining lease**

Insert after section 265 (4):

- (5) If, immediately before the grant of a mining lease any part of the mining area was, or was in, an authorisation area and the subject of a valid agreement under this Division (an **existing agreement**), a valid agreement is taken to have been entered into in relation to that part for the purpose of this section, if the holder of the mining lease:
  - (a) was the holder of the authorisation immediately before the grant of the mining lease, or
  - (b) is the assignee of the rights under the existing agreement.
- (6) Subsection (5) ceases to apply to a part of a mining area if a subsequent valid agreement is entered into, or the Land and Environment Court makes an assessment of compensation payable, in relation to that part.

**[228] Sections 266-267**

Omit sections 266 and 267. Insert instead:

**266 Compensation arising under small-scale titles**

- (1) On the granting of a small-scale title, a landholder becomes entitled to be paid

compensation by the holder of the title concerned in respect of any compensable loss suffered, or likely to be suffered, by the landholder as a result of the exercise of rights under the title.

- (2) The compensation payable consists of such amount as the holder of the title and the landholder may agree or:
  - (a) if there is no agreement, such amount as may be declared by, or determined in accordance with, an order by the Minister under section 266A that applies to the authorisation area of the title, or
  - (b) if an order has been made under section 266B (2) (a), such amount as may be payable in accordance with an assessment by the Land and Environment Court under section 266B.
- (3) The holder of a small-scale title must not exercise any right under the title unless:
  - (a) the holder has served notice of the intention to do so on each person entitled to be paid compensation by the holder under this section, and
  - (b) the holder has paid to the Director-General all amounts payable by the holder under an order under section 266A or 266B that applies to the authorisation area or, if there is no such order, the requirements specified in subsection (4) have been complied with in relation to the claim.
- (4) For the purposes of subsection (3), the specified requirements are as follows:
  - (a) in respect of each landholder, that the holder of the title has an agreement, as referred to in subsection (2),
  - (b) that the holder of the title has paid to the Director-General an amount prescribed by or determined in accordance with the regulations for the purposes of section 267.

#### **266A Compensation payable under Minister's order**

- (1) The Minister may, by order published in the Gazette, declare:
  - (a) the amount of compensation that is payable under section 266 by the holders of small-scale titles in an area specified by the order, or
  - (b) the manner in which that amount must be determined,in accordance with the Land and Environment Court's assessment under this section or section 266B (2) (b).
- (2) Before making an order (other than an order in accordance with an assessment under section 266B), the Minister must request the Land and Environment Court

to assess the compensation that is payable or determine the manner in which the amount is to be determined.

- (3) The Minister may, by the order:
  - (a) declare amounts to be payable only on the grant of a claim or licence or, in the case of a mineral claim, also on any or every subsequent renewal of the claim, and
  - (b) specify the manner and circumstances in which compensation paid to the Director-General may be paid to the landholder.
- (4) A holder of a small-scale title who is required to make a payment under an order must make the payment to the Director-General, in accordance with the terms of the order.
- (5) An order takes effect on the day the order is published in the Gazette or on a later day specified in the order.
- (6) The regulations may make provision for or with respect to matters that are to be:
  - (a) considered by the Minister in making an order, or
  - (b) specified in the order, such as the manner and time for making payments under the order.

### **266B Individual assessments by Land and Environment Court**

- (1) If:
  - (a) the landholder and the holder of a small-scale title fail to agree on an amount of compensation under section 266 and an order is not made under section 266A for the amount of compensation, or
  - (b) the landholder or holder of a small-scale title is of the opinion that the amount of compensation specified in an order under section 266A is not appropriate in the circumstances,the landholder or holder may apply to the Land and Environment Court to assess the compensation that is payable.
- (2) On an application under this section, the Land and Environment Court may:
  - (a) assess the compensation payable in relation to the small-scale title and, by order, vary the amount of compensation payable under this Division in respect of the title, or
  - (b) with the consent of the Minister, assess the amount of compensation

payable by all or a group of holders of small-scale titles in the area concerned and recommend to the Minister that an order varying the amount of compensation payable under an order under section 266A be made in respect of the holders affected by the order.

- (3) An order by the Land and Environment Court under this section may specify the manner and circumstances in which compensation paid to the Director-General may be paid to the landholder.
- (4) If the Land and Environment Court makes an assessment under subsection (2), the Land and Environment Court may assess compensation as a fixed amount per small-scale title or as an amount per small-scale title to be calculated at a fixed rate.

**Note—**

See Division 3 (sections 271–278) for the procedure relating to the assessment of compensation by a warden.

## **267 Compensation for landholder not initially identified**

- (1) Any landholder who could not, when rights under a small-scale title started to be exercised, establish an entitlement to compensation under section 266 (whether because the landholder could not then be identified, or for any other reason), but who subsequently does so, may apply to the Land and Environment Court for an order requiring payment of the compensation.
- (2) If the court orders payment of compensation to the landholder, it is to be paid out of the Mineral Claims Districts Compensation Fund.
- (3) If, at least 5 years but not more than 5 years and 6 months after a small-scale title ceases to have effect, the whole or any part of any such compensation amount paid into the Fund by the holder of the title is not paid out, the Land and Environment Court may, on the application of the holder of the authorisation, order that the whole or any part of that amount be paid to the holder.
- (4) If, 5 years and 6 months after a small-scale title ceases to have effect, any amount of compensation paid into the Fund has not been paid out, the amount is to be paid into the Consolidated Fund.

### **[229] Section 267A Effect of determination and payment of compensation under Commonwealth Native Title Act**

Omit “to be validly agreed on or assessed for the purposes of whichever is relevant of section 263, 264, 265, 266 or 267” from section 267A (1) (a).

Insert instead “to be validly agreed on or assessed for the purposes of whichever is relevant of section 263, 264, 265, 266 or 267 or validly declared by, or determined in

accordance with, an order under section 266A or 266B”.

**[230] Section 271 Definition**

Omit the definition of *authorisation*.

**[231] Section 273 Payment into court or to Director-General**

Insert “(other than compensation in respect of a mineral claim)” after “Division”.

**[232] Section 273 (2)**

Insert at the end of section 273:

- (2) The total amount of compensation assessed under this Division in respect of a mineral claim is to be paid to the Director-General for payment into the Mineral Claims Districts Compensation Fund at such times, and in respect of such periods, as is specified in the order specifying the compensation.

**[233] Section 274 Payment out of court or Fund**

Insert “or the Mineral Claims Districts Compensation Fund” after “Land and Environment Court” wherever occurring in section 274 (1).

**[234] Sections 274 (2) and 276 (1) (a)**

Insert “or the Mineral Claims Districts Compensation Fund” after “court” wherever occurring.

**[235] Section 274 (2)**

Insert “or the Director-General” after “the Land and Environment Court” wherever occurring.

**[236] Section 276 Additional assessment**

Omit “section 140 (b)” from section 276 (3) (a).

Insert instead “section 140 (1) (b)”.

**[237], [238] (Repealed)**

**[239] Section 278 (2) and (3)**

Omit “, as referred to in section 266 (3) or 267 (3)” wherever occurring.

**[240] Part 13, Division 6**

Insert after Division 5 of Part 13:

## **Division 6 Mineral Claims Districts Compensation Fund**

### **281C Establishment of Fund**

- (1) There is established in the Special Deposits Account the Mineral Claims Districts Compensation Fund.
- (2) Money in the Fund is under the control of the Director-General and may be spent by the Director-General only for the purposes authorised by this section.
- (3) There is to be paid into the Fund:
  - (a) money received by the Director-General under this Part, and
  - (b) the proceeds of investment of money in the Fund, and
  - (c) money from such other sources, if any, as may be prescribed by the regulations, and
  - (d) any other money appropriated by Parliament for the purposes of the Fund or required by law to be paid into the Fund.
- (4) Subject to the regulations, there is to be paid to a landholder out of the Fund such compensation, if any, as the Director-General determines is payable to the landholder under an order under section 266A, 266B or 267.

### **281D Administration of, and review of payments from, Fund**

The regulations may make provision for or with respect to the administration of the Mineral Claims Districts Compensation Fund (including the making of claims for payments out of the Fund and the making of such payments and the review of such payments by the Land and Environment Court).

### **[241] Section 282 Liability to pay royalty—publicly owned minerals**

Omit section 282 (1). Insert instead:

- (1) The holder of a mining lease is liable to pay royalty to the Minister on publicly owned minerals recovered by the holder under the lease.
- (1A) The holder of a mining sublease is liable to pay royalty to the Minister on publicly owned minerals recovered from the sublease area.
- (1B) Despite subsection (1), the holder of a mining lease remains liable to pay royalty on publicly owned minerals recovered from a sublease area only to the extent that the royalty has not been paid by the holder of the sublease.



**[242] Section 284 Liability to pay royalty—privately owned minerals**

Omit section 284 (1). Insert instead:

- (1) The holder of a mining lease is liable to pay royalty to the Minister on privately owned minerals recovered from the mining area as if those minerals were publicly owned.
- (1A) The holder of a mining sublease is liable to pay royalty to the Minister on privately owned minerals recovered from the sublease area as if those minerals were publicly owned.
- (1B) Despite subsection (1), the holder of a mining lease remains liable to pay royalty on privately owned minerals recovered from a sublease area only to the extent that the royalty has not been paid by the sublessee.

**[243] Section 284 (3)**

Insert after section 284 (2):

- (3) This section does not apply to a mining (mineral owner) lease.

**[244] (Repealed)**

**[245] Section 290**

Omit the section.

**[246] (Repealed)**

**[246A] Section 293 Jurisdiction of Land and Environment Court**

Omit “the Minister or a mining registrar” wherever occurring in section 293 (1) (q) (ii) and (iii).

Insert instead “a decision-maker”.

**[246B] Section 293 (1) (u)**

Omit “a mining registrar’s”. Insert instead “the Director-General’s”.

**[246C] Section 293 (1) (v1) and (v2)**

Insert after section 293 (1) (v):

- (v1) the review of an order issued under section 246 (Forfeiture of mining plant),
- (v2) the review of payments out of the Mineral Claims Districts Compensation Fund in

accordance with any regulations under section 281D,

**[247]-[250] (Repealed)**

**[251] Section 360 Mining registrars, deputy mining registrars and other staff**

Omit the section.

**[252] (Repealed)**

**[253] Sections 361-361B**

Omit section 361. Insert instead:

**361 Appointment of inspectors**

- (1) The Director-General may appoint any person (including a member of a class of persons) as an inspector for the purposes of this Act.
- (2) An appointment may (but does not have to) be subject to conditions, limitations or restrictions or only for limited purposes.
- (3) If an appointment is subject to conditions, limitations or restrictions or only for limited purposes, nothing in this Act authorises or requires the inspector to act in contravention of the conditions, limitations or restrictions or for other purposes.

**361A Identification**

- (1) Every inspector is to be provided with a card identifying him or her as an inspector.
- (2) In the course of exercising the functions of an inspector under this Act, the inspector must, if requested to do so by any person affected by the exercise of any such function, produce his or her identification card to the person.

**361B Extraterritorial exercise of functions**

- (1) The Minister may enter into an arrangement with a Minister of another State or Territory providing for the exercise, in another State or Territory, by officers of that State or Territory of functions under this Act or the regulations.
- (2) An officer of another State or Territory may, in accordance with any such arrangement, exercise functions under this Act, but only to the extent that the matters concerned relate to the administration or enforcement of this Act or such other legislation, if any, as may be prescribed.

**[254] Section 362 Exclusion of personal liability**

Omit section 362 (d). Insert instead:

- (d) an authorised person within the meaning of Division 3 of Part 11, or
- (e) a person acting under the direction of a person or body referred to in paragraph (a), (b), (c) or (d),

**[255], [256] (Repealed)**

**[257] Section 370 Graticulation of the Earth's surface**

Omit the section.

**[258] Part 17A**

Omit Division 3 of Part 17. Insert instead after Part 17:

## **Part 17A Offences and enforcement**

### **Division 1 Offences**

#### **378A Obstruction**

A person must not, without reasonable excuse, obstruct, hinder or resist any person in the exercise of a function under this Act.

Maximum penalty: 1,000 penalty units.

#### **378B Obstruction of holder of authorisation**

A person must not, without reasonable excuse, obstruct or hinder the holder of an authorisation from doing any act that the holder is authorised by this Act to do.

Maximum penalty: 100 penalty units.

#### **378C False or misleading information**

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 (including a condition of an authorisation),

furnish information that the person knows to be false or misleading in a material particular.

Maximum penalty: 500 penalty units.

**378D Contravention of condition of authorisation—offence by holder**

- (1) If a condition of an authorisation is contravened by any person, each holder of the authorisation is guilty of an offence.

Maximum penalty if the condition is of a kind referred to in Part 1 of Schedule 7:

- (a) in the case of a corporation—1,000 penalty units and, in the case of a continuing offence, a further penalty of 100 penalty units for each day that the offence continues, or
- (b) in the case of a natural person—500 penalty units and, in the case of a continuing offence, a further penalty of 50 penalty units for each day that the offence continues.

Maximum penalty if the condition is not of a kind referred to in Part 1 of Schedule 7:

- (a) in the case of a corporation—200 penalty units and, in the case of a continuing offence, a further penalty of 20 penalty units for each day that the offence continues, or
- (b) in the case of a natural person—100 penalty units and, in the case of a continuing offence, a further penalty of 10 penalty units for each day that the offence continues.

- (2) If a condition of a mining lease, in its application to or in respect of a mining sublease area, is contravened by any person, the holder of the sublease is guilty of an offence.

Maximum penalty if the condition is of a kind referred to in Part 1 of Schedule 7:

- (a) in the case of a corporation—1,000 penalty units and, in the case of a continuing offence, a further penalty of 100 penalty units for each day that the offence continues, or
- (b) in the case of a natural person—500 penalty units and, in the case of a continuing offence, a further penalty of 50 penalty units for each day that the offence continues.

Maximum penalty if the condition is not of a kind referred to in Part 1 of Schedule 7:

- (a) in the case of a corporation—200 penalty units and, in the case of a continuing offence, a further penalty of 20 penalty units for each day that the offence continues, or
- (b) in the case of a natural person—100 penalty units and, in the case of a continuing offence, a further penalty of 10 penalty units for each day that

the offence continues.

### **378E Defences**

- (1) It is a defence to a prosecution of the holder of an authorisation for an offence against section 378D if the holder establishes that:
  - (a) the contravention of the condition was by, or caused by, another person, and
  - (b) the other person was not associated with the holder at the time the condition was contravened, and
  - (c) the holder took all reasonable steps to prevent the contravention of the condition.
- (2) A person is associated with the holder for the purposes of subsection (1) (b) (but without limiting any other circumstances of association) if the person is an employee, agent, licensee, contractor or subcontractor of the holder, or if the person holds a mining sublease granted by the holder under section 83A.
- (3) It is a defence to a prosecution for an offence against section 378D if the defendant satisfies the court that the act or omission constituting the contravention was reasonably necessary in order for the defendant to comply with:
  - (a) an order or direction (of which the Director-General was given notice before the acts or omissions occurred) issued under the mine safety legislation, the *Environmental Planning and Assessment Act 1979* or the *Protection of the Environment Operations Act 1997*, or
  - (b) a condition of an authorisation, or
  - (c) a direction under this Act.
- (4) In this section:

**mine safety legislation** means the *Coal Mine Health and Safety Act 2002*, *Mine Health and Safety Act 2004*, *Mines Inspection Act 1901*, *Occupational Health and Safety Act 2000* and any other legislation that is prescribed by the regulations.

### **378F Offences by corporations**

- (1) If a corporation contravenes, whether by act or omission, 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, unless the person satisfies the court that:

- (a) the person was not in a position to influence the conduct of the corporation in relation to its contravention of the provision, or
  - (b) the person, if in such a position, used all due diligence to prevent the contravention by the corporation.
- (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.

### **378G Continuing offences**

- (1) A person who is guilty of an offence because the person contravenes a requirement in or under this Act or the regulations (whether the requirement is imposed by a direction, notice or otherwise) to do or cease to do something (whether or not within a specified period or before a particular time):
- (a) continues, until the requirement is complied with and despite the fact that any specified period has expired or time has passed, to be liable to comply with the requirement, and
  - (b) is guilty of a continuing offence for each day the contravention continues.
- (2) However, this section does not apply to an offence if the relevant provision of this Act or the regulations does not provide for a penalty for a continuing offence.
- (3) This section does not apply to the extent that a requirement of a notice is revoked.

## **Division 2 Proceedings for offences**

### **378H Proceedings for offences**

- (1) Proceedings for an offence against this Act or the regulations are, except as provided by this section, to be dealt with summarily before:
- (a) the Land and Environment Court, in the case of an offence under Division 1 of Part 2 (committed by a corporation), section 239C, 240C, 246R, 248S, 378A, 378D (in the case of a contravention of a condition referred to in Part 1 of Schedule 7 or section 261B) or 378ZF, or
  - (b) the Local Court, in the case of any offence.
- (2) If proceedings for an offence under this Act or the regulations are brought in the

Local Court:

- (a) the maximum period of imprisonment that the Court may impose for the offence is 12 months, and
  - (b) the maximum monetary penalty that the Court may impose is 200 penalty units.
- (3) Proceedings for an offence specified in Part 2 of Schedule 7 are to be dealt with on indictment.

**Note—**

Chapter 5 of the *Criminal Procedure Act 1986* provides an alternative procedure for dealing with these offences summarily following an election by the prosecutor or defendant.

- (4) (Repealed)

**378I Time within which summary proceedings may be commenced**

- (1) Proceedings for an offence under this Act or the regulations may be commenced:
- (a) in the case of an offence listed in Part 3 of Schedule 7—within but not later than 3 years after the date on which the offence is alleged to have been committed, or
  - (b) in any other case—within but not later than 12 months after that date.
- (2) Proceedings for an offence under this Act or the regulations may also be commenced:
- (a) in the case of an offence listed in Part 3 of Schedule 7—within but not later than 3 years after the date on which evidence of the alleged offence first came to the attention of an inspector, or
  - (b) in any other case—within but not later than 12 months after that date.
- (3) If subsection (2) is relied on for the purpose of commencing proceedings for an offence, the court attendance notice or application must contain particulars of the date on which evidence of the offence first came to the attention of an inspector and need not contain particulars of the date on which the offence was committed.
- (4) The date on which evidence first came to the attention of an inspector is the date specified in the court attendance notice or application, unless the contrary is established.
- (5) This section applies only to proceedings that are to be dealt with summarily.

(6) This section applies despite anything in the *Criminal Procedure Act 1986* or any other Act.

(7) In this section:

**evidence** of an offence means evidence of any act or omission constituting the offence.

### **378J Penalty notices and related proceedings**

- (1) Section 378I does not affect the power to issue a penalty notice under section 378K or the taking of enforcement proceedings in relation to the penalty notice or in relation to the offence to which the penalty notice relates.
- (2) Enforcement proceedings include proceedings under Part 3 or 4 of the *Fines Act 1996*, including, in particular, proceedings taken under section 37 of that Act in respect of the offence to which the penalty notice relates, where the person concerned elects to have the matter dealt with by a court.

### **378K Penalty notices for offences**

- (1) A penalty notice officer may serve a penalty notice on a person if it appears to the officer that the person has committed an offence under this Act or the regulations, being an offence prescribed by the regulations.
- (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) The regulations may authorise a penalty notice also to be served by leaving the notice at premises in respect of which the offence was committed.
- (5) 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.
- (6) 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.
- (7) The regulations may:
  - (a) prescribe an offence for the purposes of this section by specifying the offence or by referring to the provision creating the offence, and
  - (b) prescribe the amount of penalty payable for the offence if dealt with under



this section, and

- (c) prescribe different amounts of penalties for different offences or classes of offences, and
  - (d) prescribe different amounts of penalties for the same offence, including, in the case of a continuing offence, different amounts of penalties for different periods during which the offence continues.
- (8) This section does not limit the operation of any provision of, or made under, this or any other Act relating to proceedings that may be taken in respect of offences.
- (9) In this section, **penalty notice officer** means a person who is declared by the regulations to be a penalty notice officer for the purpose of this section or belongs to a class of persons so declared.

### **Division 3 Restraining orders**

#### **378L Application of Division**

- (1) This Division applies where:
- (a) proceedings have been commenced against a person for an offence against this Act or the regulations and, as a result of those proceedings, the person may be required to pay an amount referred to in section 378ZA, or
  - (b) proceedings have been commenced against a person under section 378ZA.
- (2) In this Division:

**the defendant** means the person referred to in subsection (1) (a) or (b).

#### **378M Nature of restraining order**

A restraining order is an order of a court directing that any property of the defendant is not to be disposed of, or otherwise dealt with, by the defendant or by any other person, except in such manner and in such circumstances (if any) as are specified in the order.

#### **378N Application for restraining order**

- (1) A person bringing proceedings (as referred to in section 378L) may apply for a restraining order in relation to property of the defendant.
- (2) An application under this section may be made to the Land and Environment Court.
- (3) On an application under this section:

- (a) the court may, if it thinks fit, require the person making the application to give notice of the application to a person who the court has reason to believe has an interest in the property or part of the property, and
- (b) a person to whom the court requires notice be given under paragraph (a) is entitled to appear and to adduce evidence at the hearing of the application.

### **378O Making of restraining order**

On an application under section 378N, the court may make a restraining order in relation to the defendant's property, if it is satisfied (on the information contained in or accompanying the application) that:

- (a) the defendant has committed the relevant offence, and
- (b) amounts are or are likely to be payable under section 378ZA or 378ZB, and
- (c) it is appropriate to make an order under this section in the circumstances of the case.

### **378P Undertakings**

The court may refuse to make a restraining order if the person making the application refuses or fails to give to the court such undertakings as the court considers appropriate with respect to the payment of damages or costs, or both, in relation to the making or operation of the order.

### **378Q Ancillary orders**

- (1) A court that makes a restraining order may make any ancillary orders that the court considers appropriate.
- (2) Without limiting the generality of subsection (1), ancillary orders may include any one or more of the following:
  - (a) an order for the examination on oath of:
    - (i) the defendant, or
    - (ii) another person,before the court, or an officer of the court prescribed by rules of court, concerning the affairs of the defendant, including the nature and location of any property of the defendant,
  - (b) an order varying the restraining order in respect of the property to which it relates,
  - (c) an order varying any conditions to which the restraining order was subject.

- (3) An ancillary order may be made on application:
  - (a) by the applicant for the restraining order, or
  - (b) by the defendant, or
  - (c) with the leave of the court, by any other person.
- (4) Ancillary orders may be made when or at any time after the restraining order is made. An ancillary order referred to in subsection (2) (a) may be made in advance of the restraining order.

### **378R Charge on property subject to restraining orders**

- (1) If:
  - (a) a court has made a restraining order in respect of particular property or all of the property of the defendant, and
  - (b) the court orders the payment of an amount referred to in section 378ZA or 378ZB,there is created by force of this section, on the making of the order referred to in paragraph (b), a charge on all the property to which the restraining order applies to secure the payment to a public authority or person (which extends, for the purposes of this Division, to the Crown) of the amount referred to in section 378ZA or 378ZB.
- (2) Such a charge ceases to have effect in respect of the property:
  - (a) on payment by the defendant to the public authority or person of the amount concerned, or
  - (b) on the sale or other disposition of the property with the consent of the court, or
  - (c) on the sale of the property to a purchaser in good faith for value who, at the time of the sale, has no notice of the charge,whichever occurs first.
- (3) Such a charge is subject to every charge or encumbrance to which the property was subject immediately before the order referred to in subsection (1) (b) was made and, in the case of land under the provisions of the *Real Property Act 1900*, is subject to every mortgage, lease or other interest recorded in the Register kept under that Act.
- (4) Such a charge is not affected by any change of ownership of the property, except as provided by subsection (2).

(5) If:

- (a) such a charge is created on property of a particular kind and the provisions of any law of the State provide for the registration of title to, or charges over, property of that kind, and
- (b) the charge is so registered,

a person who purchases or otherwise acquires the property after the registration of the charge is, for the purposes of subsection (2), taken to have notice of the charge.

(6) If such a charge relates to land under the provisions of the *Real Property Act 1900*, the charge has no effect until it is registered under that Act.

### **378S Registration of restraining orders**

- (1) If a restraining order applies to property of a particular kind and the provisions of any law of the State provide for the registration of title to, or charges over, property of that kind, the authority responsible for administering the provisions is required, on application by any person, to record the particulars of the order in the register kept under those provisions.
- (2) If the particulars of a restraining order are so recorded, a person who afterwards deals with the property is, for the purposes of section 378R (2), taken to have notice of the charge created by this Act on the making of the order.
- (3) If a restraining order applies to land under the provisions of the *Real Property Act 1900*, a caveat may be lodged under that Act in relation to the order.

### **378T Recovery of costs of registering charge on land**

- (1) A person or public authority who registers a charge on land to which a restraining order applies under section 378R may, by written notice, require the defendant to pay all or any of the reasonable costs and expenses incurred by the person or authority in respect of the lodgment and registration of the charge (including the costs of discharging the charge).
- (2) The person or public authority may recover from the defendant any unpaid amounts specified in the notice as a debt in a court of competent jurisdiction.

### **378U Recovery of costs of lodging caveat**

- (1) A person or public authority who lodges a caveat in respect of land to which a restraining order applies under section 378S may, by written notice, require the defendant to pay all or any of the reasonable costs and expenses incurred by the person or authority in respect of the lodgment and registration of the caveat (including the costs of withdrawal of the caveat).

- (2) The person or public authority may recover from the defendant any unpaid amounts specified in the notice as a debt in a court of competent jurisdiction.

**378V Contravention of restraining orders**

- (1) A person who knowingly contravenes a restraining order by disposing of, or otherwise dealing with, property that is subject to the order is guilty of an offence.

Maximum penalty: A fine equivalent to the value of the property (as determined by the court) or imprisonment for 12 months, or both.

- (2) If:

- (a) a restraining order is made against property, and
- (b) the property is disposed of, or otherwise dealt with, in contravention of the restraining order, and
- (c) the disposition or dealing was either not for sufficient consideration or not in favour of a person who acted in good faith,

the person who applied for the restraining order may apply to the court that made the restraining order for an order that the disposition or dealing with the property be set aside.

- (3) If an application is made under subsection (2), the court may make an order:

- (a) setting aside the disposition or dealing as from the day on which the disposition or dealing took place or as from the day of the order under this subsection, and
- (b) (if appropriate) declaring the respective rights of any persons who acquired interests in the property on or after the day on which the disposition or dealing took place and before the day of the order.

**378W Court may revoke restraining order**

- (1) The court that made a restraining order may revoke the order, on application made to it by the person in relation to whose property it was made.
- (2) The court may refuse to revoke the order if the person does not:
- (a) give security satisfactory to the court for the payment of any amount referred to in section 378ZA or 378ZB that may be imposed on or ordered to be paid by the person under this Act in respect of the person's conviction for the offence, or
  - (b) give undertakings satisfactory to the court concerning the person's property.

- (3) Subsection (2) does not limit the discretion of the court to revoke or refuse to revoke a restraining order.

### **378X Time when restraining order ceases to be in force**

If, after a restraining order was made in reliance on the charging of a person with an offence against this Act or the regulations:

- (a) the charge is withdrawn and the person is not charged with a related offence by the time of the withdrawal—the restraining order ceases to be in force when the charge is withdrawn, or
- (b) the person is acquitted of the charge and the person is not charged with a related offence by the time of the acquittal—the restraining order ceases to be in force when the acquittal occurs.

## **Division 4 Court orders in connection with offences**

### **378Y Operation of Division**

- (1) This Division applies where a court finds an offence against this Act or the regulations proved.
- (2) Without limiting the generality of subsection (1), a court finds an offence proved if:
- (a) the court convicts the offender of the offence, or
- (b) the court makes an order under section 10 of the *Crimes (Sentencing Procedure) Act 1999* against the offender in relation to the offence (in which case the order is not a punishment for the purposes of that section).

- (3) In this Division:

**the court** means the court that finds the offence proved.

**the offender** means the person who is found to have committed the offence.

### **378Z Orders generally**

- (1) One or more orders may be made under this Division against the offender.
- (2) Orders may be made under this Division in addition to any penalty that may be imposed or any other action that may be taken in relation to the offence.
- (3) Orders may be made under this Division regardless of whether any penalty is imposed, or other action taken, in relation to the offence.

### **378ZA Orders for costs, expenses and compensation at time offence proved**

- (1) The court may, if it appears to the court that:
  - (a) the Crown or a public authority has incurred costs and expenses in connection with:
    - (i) the prevention, control, abatement or mitigation of any harm to the environment caused by the commission of the offence, or
    - (ii) making good any resulting environmental damage, or
  - (b) the Crown or another person or a public authority has, because of the commission of the offence, suffered loss of or damage to property or has incurred costs and expenses in preventing or mitigating, or in attempting to prevent or mitigate, any such loss or damage,

order the offender to pay to the Crown, public authority or person the costs and expenses so incurred, or compensation for the loss or damage so suffered, as the case may be, in such amount as is fixed by the order.
- (2) However, a court is not to make an order for payment to a person under subsection (1) to the extent that the payment would represent the value of minerals owned by that person that the offender had obtained by fossicking, prospecting operations or mining operations carried out with the consent of that person and in or in connection with the offence.
- (3) An order made by the Local Court under subsection (1) is enforceable as if it were an order made by the court when exercising jurisdiction under the [Civil Procedure Act 2005](#).
- (4) An order made by the Land and Environment Court under subsection (1) is enforceable as if it were an order made by the Court in Class 4 proceedings under the [Land and Environment Court Act 1979](#).
- (5) The Local Court is not to make an order under subsection (1) for the payment of an amount that exceeds the amount for which an order may be made by the court when exercising jurisdiction under the [Civil Procedure Act 2005](#).

### **378ZB Recovery of costs, expenses and compensation after offence proved**

- (1) If, after the court finds the offence proved:
  - (a) the Crown or a public authority has incurred costs and expenses in connection with:
    - (i) the prevention, control, abatement or mitigation of any harm to the environment caused by the commission of the offence, or

- (ii) making good any resulting environmental damage, or
- (b) a person (including the Crown and a public authority) has, because of the commission of the offence, suffered loss of or damage to property or has incurred costs and expenses in preventing or mitigating, or in attempting to prevent or mitigate, any such loss or damage,

the Crown, public authority or person may recover from the offender the costs and expenses incurred or the amount of the loss or damage in the Land and Environment Court.

- (2) The amount of any such costs and expenses (but not the amount of any such loss or damage) may be recovered as a debt in a court of competent jurisdiction.
- (3) However, a person may not recover an amount that would represent the value of minerals owned by that person that the offender had obtained by fossicking, prospecting operations or mining operations carried out with the consent of that person and in or in connection with the offence.

### **378ZC Orders regarding costs and expenses of investigation**

- (1) The court may, if it appears to the court that the Crown or a public authority has reasonably incurred costs and expenses during the investigation of the offence, order the offender to pay to the Crown or the authority the costs and expenses so incurred in such amount as is fixed by the order.
- (2) An order made by the Land and Environment Court under subsection (1) is enforceable as if it were an order made by the Court in Class 4 proceedings under the *Land and Environment Court Act 1979*.
- (3) An order made by the Local Court under subsection (1) is enforceable as if it were an order made by the court when exercising jurisdiction under the *Civil Procedure Act 2005*.
- (4) In this section:
  - costs and expenses**, in relation to the investigation of an offence, means the costs and expenses:
    - (a) in taking any sample or conducting any inspection, test, measurement or analysis, or
    - (b) of transporting, storing or disposing of evidence,during the investigation of the offence.



### **378ZD Orders regarding other monetary benefits**

- (1) The court may order the offender to pay, as an additional penalty for committing the offence, an amount that the court is satisfied, on the balance of probabilities, represents the amount of any monetary benefits acquired by the offender, or accrued or accruing to the offender, as a result of the commission of the offence.
- (2) However, in calculating the amount of these monetary benefits, the court is to exclude any monetary benefits acquired in connection with the fossicking or prospecting for, or the mining of, privately owned minerals.
- (3) The amount of an additional penalty for an offence is not subject to any maximum amount of penalty provided elsewhere by or under this Act.

- (4) In this section:

**monetary benefits** means monetary, financial or economic benefits.

**the court** does not include the Local Court.

### **378ZE Additional orders**

- (1) The court may do any one or more of the following:
  - (a) order the offender to take specified action to publicise the offence (including the circumstances of the offence) and its consequences and any other orders made against the person,
  - (b) order the offender to take specified action to notify specified persons or classes of persons of the offence (including the circumstances of the offence) and its consequences and of any orders made against the person (including, for example, the publication in an annual report or any other notice to shareholders of a company or the notification of persons aggrieved or affected by the offender's conduct),
  - (c) order the offender to carry out a specified project for the rehabilitation of a current or former authorisation area,
  - (d) order the offender to carry out an audit of activities carried on by the offender,
  - (e) order the offender to pay a specified amount to the Derelict Mine Sites Fund for the purposes of a specified project for the rehabilitation of a current or former authorisation area,
  - (f) order the offender to attend, or to cause an employee or employees or a contractor or contractors of the offender to attend, a training or other course specified by the court,

- (g) order the offender to establish, for employees or contractors of the offender, a training course of a kind specified by the court,
- (h) order the offender to pay any royalty that is due and payable by the offender under this Act,
- (i) if the Director-General is a party to proceedings, order the offender to provide to the Director-General and maintain a security deposit, in a form and amount, and on such terms (if any), specified by the court, if the court orders the offender to carry out a specified work or program for the restoration or enhancement of the environment.

However, the Local Court is not authorised to make an order referred to in paragraph (c), (d), (e) or (i).

- (2) The court may, in an order under this section, fix a period for compliance and impose any other requirements the court considers necessary or expedient for enforcement of the order.
- (3) If the offender contravenes an order under subsection (1) (a) or (b), the prosecutor or a person authorised by the prosecutor may take action to carry out the order as far as may be practicable, including action to publicise or notify:
  - (a) the original contravention, its environmental and other consequences, and any other penalties imposed on the offender, and
  - (b) the contravention of the order.
- (4) The reasonable cost of taking action referred to in subsection (3) is recoverable by the prosecutor or person taking the action, in a court of competent jurisdiction, as a debt from the offender.
- (5) Sections 242C, 261F and 261G apply with respect to a security deposit provided under an order referred to in subsection (1) (i) as if it were provided under a security deposit condition.

### **378ZF Offence**

A person who fails to comply with an order under this Division (except an order under section 378ZA, 378ZB or 378ZC) is guilty of an offence.

Maximum penalty:

- (a) in the case of a corporation—1,000 penalty units for each day the offence continues, or
- (b) in the case of a natural person—500 penalty units for each day the offence continues.

## **Division 5 Evidentiary provisions**

### **378ZG Certificate evidence of certain matters**

- (1) A document signed by the Director-General, or by an officer designated by the Director-General for the purposes of this section, and certifying any one or more of the matters specified in subsection (2) is admissible in any proceedings under this Act and is prima facie evidence of the matters so certified.
- (2) The following matters are specified for the purposes of subsection (1):
  - (a) that an instrument, a copy of which is set out in or annexed to the document, being an instrument purporting:
    - (i) to be issued, made or given for the purposes of this Act, and
    - (ii) to have been signed by the person authorised to issue, make or give the instrument, or by another person acting as delegate or on behalf of the person,  
  
was issued, made or given on a specified day,
  - (b) that a person was or was not, at a specified time or during a specified period, the holder of a specified authorisation or an authorisation of a specified kind,
  - (c) that specified land was or was not, at a specified time or during a specified period, the subject of a specified authorisation or an authorisation of a specified kind,
  - (d) that specified land was or was not, at a specified time or during a specified period, a specified authorisation area or part of a specified authorisation area,
  - (e) that an authorisation was or was not, at a specified time or during a specified period, subject to specified conditions,
  - (f) that an authorisation was, at a specified time, cancelled or suspended for a specified period or was cancelled or suspended subject to specified conditions,
  - (g) that a condition was, at a specified time, revoked or varied in a specified manner or that a new condition was, at a specified time, imposed on an authorisation or on the suspension of an authorisation,
  - (h) that a person was or was not, at a specified time or during a specified period, an inspector or a royalty officer,

- (i) that a person was or was not, at a specified time or during a specified period, a member of staff of the Department or a council,
  - (j) that information required to be furnished pursuant to this Act or the regulations was or was not received,
  - (k) that a document is a copy of part of, or an extract from, a register kept under this Act,
  - (l) that a specified amount is payable under this Act or the regulations by a specified person and has not been paid,
  - (m) that minerals of a specified value were recovered by a specified person or from specified land, at a specified time or during a specified period,
  - (n) that a specified legal or equitable interest (being a legal or equitable interest of a kind referred to in section 161), mining sublease or colliery holding was or was not registered under this Act,
  - (o) that the Crown or a public authority has incurred costs or expenses of a specified amount under section 241 or 242B,
  - (p) that the Crown or a public authority has incurred costs or expenses of a specified amount in connection with the investigation of a specified offence under this Act,
  - (q) that a specified function under this Act was delegated to a specified person under section 363 during a specified period.
- (3) For the purposes of the certification of a matter referred to in subsection (2) (h), the person who appointed the inspector or royalty officer concerned is taken to be an officer designated by the Director-General (as referred to in subsection (1)).
- (4) In the absence of information that would enable the accurate determination of an amount payable, as referred to in subsection (2) (l), or the value of minerals, as referred to in subsection (2) (m), the following provisions have effect:
- (a) the amount or value certified may be an estimate of that amount or value (based on the information available to the person making the certification),
  - (b) the estimate is presumed to be accurate and cannot be challenged on the basis that insufficient information was available to enable the making of an accurate determination, but can be challenged by the provision of information that enables a more accurate estimate to be made,
  - (c) if the estimate is successfully challenged and as a result a more accurate estimate is substituted, no proceedings are open to challenge merely

because of the less accurate estimate and proceedings may continue to be heard and be determined on the basis of the substituted estimate.

**[259] Section 382A**

Omit the section. Insert instead:

**382A Waiver or refund of fees and extension of time for payment**

The Director-General may refund or waive payment of the whole or any part of a fee that this Act requires to be paid, on his or her own initiative or on the application of the person who is required to pay the fee, if the Director-General is satisfied that there is good cause for doing so.

**[260]-[262] (Repealed)**

**[263] Section 383B Consent of landholders and others**

Omit “operations” from section 383B (1) (b). Insert instead “activities”.

**[264] Section 383B (1) (c)**

Omit “section 140 (b)”. Insert instead “section 140 (1) (b)”.

**[265], [266] (Repealed)**

**[267] Schedule 1 Public consultation with respect to the granting of assessment leases and mining leases**

Omit “each exempted area” wherever occurring.

Insert instead “any reserved land”.

**[268], [269] (Repealed)**

**[270] Schedule 1, clause 24**

Omit clause 24 (3)-(5).

**[271] Schedule 4 Regulation making powers**

Omit “mining registrars,” from clause 4.

**[272] Schedule 6 Savings, transitional and other provisions**

Insert at the end of clause 1 (1):

*Mining Amendment Act 2008*

**[273] Schedule 6**

Insert at the end of the Schedule with appropriate Part and clause numbers:

**Part Provisions consequent on enactment of [Mining Amendment Act 2008](#)**

**Definition**

In this Part:

**the 2008 Act** means the [Mining Amendment Act 2008](#).

**Existing private mining**

- (1) Sections 6, 8, and 9, as in force immediately before their repeal by the 2008 Act, continue to apply to a person who, immediately before the repeal, was entitled under section 8 or 9 to prospect for or mine any privately owned minerals or coal.
- (2) Sections 20, 39, 60 and 185, as in force immediately before their repeal by the 2008 Act, continue to apply to applications for authorisations over land if, immediately before the repeal of those sections, a person was entitled under section 8 to prospect for or mine any privately owned minerals.
- (3) Sections 240 and 240A, as inserted by the 2008 Act, apply to or in respect of activities carried out under section 8 (as continued in force by this clause) in the same way that they apply to or in respect of activities carried out under an authorisation.
- (4) Sections 261F–261I, as inserted by the 2008 Act, apply to a security lodged or required to be lodged under section 8 (as continued in force by this clause) in the same way that they apply to or in respect of a security deposit provided under a security deposit condition.
- (5) Sections 5 and 6, as inserted by the 2008 Act, do not apply to or in respect of the prospecting, mining or carrying out of mining purposes in the course of prospecting for or mining privately owned minerals by a person referred to in subclause (1).
- (6) This clause ceases to apply in respect of a person 12 months after it commences or if the person becomes the holder of an authorisation in respect of the land on which the privately owned minerals or coal are located before the expiry of that period.

### **Existing mining purposes**

- (1) Section 6, as inserted by the 2008 Act, does not apply to or in respect of a mining purpose that was carried out, or in the course of construction, immediately before the commencement of that section.
- (2) This clause ceases to have effect in relation to a mining purpose on the earlier of the following events:
  - (a) the end of the period of 5 years following the commencement of section 6,
  - (b) if the mining purpose is abandoned for a continuous period of 12 months (other than for repair or maintenance).

### **Declarations that activities are not prospecting or mining**

A regulation in force under section 11A (1) immediately before its substitution by the 2008 Act continues in force and is taken to have been made under that subsection as substituted by the 2008 Act.

### **Existing applications relating to authorisations**

- (1) An application for an authorisation, or for the transfer or renewal of an authorisation, that was not determined before the commencement of this clause and that complied with this Act, as in force before its amendment by the 2008 Act, is taken to have been duly made under this Act, as amended by the 2008 Act.
- (2) Notice is not required to be given of an application referred to in subclause (1) if such notice was not required to be given before the amendment of this Act by the 2008 Act.

### **Term of existing authorisations**

Sections 27, 45 and 71, as in force before the substitution of those sections by the 2008 Act, continue to apply to an authority in force immediately before that substitution.

### **Prospecting activities under authorisations**

Regulations may be made for or with respect to the following:

- (a) the prospecting operations that may be carried out under an authorisation in force immediately before the substitution of section 29 by the 2008 Act,
- (b) deeming particular prospecting operations, permitted under existing authorisations, to be the subject of an order by the Minister under section 29, as substituted by the 2008 Act.

### **Existing disputes subject to a warden's inquiry**

- (1) This clause applies to a dispute referred to a warden for determination under section 31, 49, 62, 165, 170, 188, 212 or 217 and not determined before the commencement of this clause.
- (2) A dispute to which this clause applies is to continue to be dealt with as if the provision of this Act under which it is being dealt with had not been amended by the 2008 Act.

### **Mining subleases**

- (1) A mining sublease that was registered, or taken to be registered, under section 161 of this Act, and in force, immediately before the commencement of section 163A of this Act must be registered by the sublessee under section 163A not later than 3 months after the commencement of that section.
- (2) A mining sublease referred to in subclause (1) ceases to be registered under section 161 on being registered under section 163A or 3 months after the commencement of that section, whichever is the earlier.

### **Existing mineral claims outside mineral claims districts**

- (1) A mineral claim over land that is outside a mineral claims district, and that was in force immediately before the commencement of this clause, is taken to be a mining lease over that land.
- (2) An application for a mineral claim over land that is outside a mineral claims district that was not determined before the commencement of this clause is taken to be an application for a mining lease under this Act.
- (3) The regulations may make provision for or with respect to the application of this Act to a mining lease referred to in subclause (1), and may, for that purpose, modify the application of this Act or the regulations.

### **Restrictions on grant of opal prospecting licence**

Section 227, as amended by the 2008 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 on or after that commencement.

### **Assessment of compensation in relation to mineral claims and opal prospecting licences**

Sections 266–267, as inserted by the 2008 Act, apply to and in respect of a mineral claim or opal prospecting licence granted before the commencement of those sections 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 or payable before that commencement in respect of any such mineral claim or opal prospecting licence.

### **Compensation arising under mineral claim or opal prospecting licence**

The holder of a mineral claim or opal prospecting licence who, before the commencement of section 266 as substituted by the 2008 Act, had met the requirements of section 266 or 267 (as in force before the substitution) that had to be met in order to be entitled to exercise the rights conferred by the claim or licence is taken, with respect to that claim or licence, to have met the requirements imposed on the holder of an authorisation under section 266.

### **Suspended authorisations**

The provisions of this Act applying to the suspension of an authorisation, as in force before the commencement of this clause, continue to apply to or in respect of an authorisation that was the subject of a suspension immediately before that commencement.

### **Limitation of challenges to decisions with respect to authorities and opal prospecting licences**

Sections 137, 210B and 234A, as substituted or inserted by the 2008 Act, apply to an authority, mineral claim or opal prospecting licence in force immediately before the section commenced but do not apply to any decision made before that commencement.

### **Access arrangements**

Section 140 (4), as inserted by the 2008 Act, does not apply to or in respect of a prospecting title in force before the commencement of that subsection.

### **Existing directions**

- (1) A direction given under section 240, and having effect immediately before the substitution of that section by the 2008 Act, continues in force and may be enforced under sections 241 and 242 of this Act, as in force before that substitution.
- (2) A direction given under section 245, and having effect immediately before the substitution of that section by the 2008 Act, continues in force and may be enforced under section 246 of this Act, as in force before that substitution.

### **Security deposits**

- (1) A condition of an authorisation in force immediately before the commencement of Part 12A of this Act that required a security deposit to be provided is taken to

be a condition imposed under that Part and is taken to comply with that Part.

- (2) Part 12A applies to a security deposit provided, and not released, under this Act immediately before the commencement of that Part and any such security deposit is taken to comply with that Part.

### **Environmental management conditions and directions**

- (1) A condition imposed on an authority under Division 2 of Part 11 of this Act, and in force immediately before the commencement of this clause, continues to have effect and may be revoked or varied by the decision-maker.
- (2) For the purposes of this Act, any such condition is taken to be a condition listed in Part 1 of Schedule 7.
- (3) A condition imposed under section 70 (1) (b), as inserted by the 2008 Act, applies to a mining lease in force immediately before the commencement of that provision.
- (4) The regulations may provide for the period within which the holder of any such mining lease is required to comply with the condition and may deem existing agreements or arrangements to be rehabilitation and environmental management plans for the purposes of section 70 (1) (b).
- (5) Except as provided by this clause and the regulations, a condition imposed on an authority by an amendment made to this Act by the 2008 Act does not apply to an authority in force on the commencement of this clause.

### **Addition or variation of conditions as a consequence of planning approval**

Section 168A, as inserted by the 2008 Act, applies to an authorisation in force immediately before the commencement of that section.

### **Evidentiary certificates**

An evidentiary certificate given under section 172 of the Act before its repeal by the 2008 Act is taken to have been given under section 378ZG.

### **Lodgment fees**

A fee that, immediately before the substitution of section 382A of this Act by the 2008 Act, was a fee determined by the Minister under that section is taken to be the lodgment or application fee prescribed by the regulations for the purposes of the relevant provision of the Act or regulations, until a fee is prescribed by the regulations.

### **Matters referred to mining registrars**

Any decision or other matter referred to a mining registrar before the commencement of this clause and not finally made or otherwise finally dealt with before that commencement is to be made or otherwise dealt with by the Director-General.

### **Enforcement provisions**

Divisions 3 and 4 of Part 17A, as inserted by the 2008 Act, apply to or in respect of offences committed before the commencement of those Divisions but do not apply to or in respect of any proceedings commenced before that commencement.

### **[274] Schedule 7**

Insert after Schedule 6:

## **Schedule 7 Offences**

(Sections 378D, 378H and 378I)

### **Part 1 Conditions for which contravention carries higher maximum penalty**

A condition imposed by or under section 70 (1) (b), 168A, 239B, 239C, 246G or 246P.

### **Part 2 Offences that may be dealt with on indictment**

An offence by a natural person under Division 1 or 2 of Part 2 or section 291.

### **Part 3 Offences for purposes of section 378I**

An offence under Division 1 or 2 of Part 2 or section 239C, 240C, 246R, 248S, 291, 378A or 378D (but only if it involves a contravention of a condition referred to in Part 1 of this Schedule or imposed under section 261B).

### **[275] Dictionary, definition of “block”**

Omit the definition.

### **[276] Dictionary, definition of “controlling body”**

Omit “an exempted area” and “*exempted area*”.

Insert instead “reserved land” and “*reserved land*” respectively.

**[277], [278] (Repealed)**

**[279] Dictionary, definition of “exempted area”**

Omit the definition.

**[280] (Repealed)**

**[281] Dictionary, definition of “mine”**

Omit paragraph (b) from the definition. Insert instead:

- (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 (other than a derelict mine site) from which material has been extracted, but does not include any activity declared not to be mining by a regulation under section 11A or by an order made under such a regulation.

**[281A] Dictionary, definition of “mining registrar”**

Omit the definition.

**[282] Dictionary, definition of “prospect”**

Insert “or by a declaration made under such a regulation” after “section 11A”.

**[283] Dictionary, definition of “royalty officer”**

Omit the definition.

**[284] Dictionary, definition of “unit”**

Omit the definition.

**[285] Dictionary**

Insert in alphabetical order:

***assessment (mineral owner) lease*** means an assessment lease granted to the owner of privately owned minerals with respect to those minerals.

***authorisation*** means an authority, a small-scale title or an environmental assessment permit granted under section 252.

***authorisation area*** means land that is the subject of an authorisation.

***authority area*** means land the subject of an authority.

***decision-maker*** means:

- (a) in relation to a mineral claim or an opal prospecting licence, or an application for or with respect to such a claim or licence—the Director-General, or
- (b) in relation to a mineral owner authority, or an application for or with respect to such an authority—the Director-General, or
- (c) in relation to any other type of authority or an application for or with respect to any other type of authority—the Minister.

**derelict mine site** means land declared as a derelict mine site under section 242A.

**Derelict Mine Sites Fund** means the fund established by section 242C.

**ecologically sustainable development** has the same meaning as it has in section 6 (2) of the [Protection of the Environment Administration Act 1991](#).

**environment** includes all aspects of the surroundings of humans, whether affecting any human as an individual or in his or her social grouping.

**environment protection legislation** has the same meaning as in the [Protection of the Environment Administration Act 1991](#).

**exploration (mineral owner) licence** means an exploration licence granted to the owner of privately owned minerals with respect to those minerals.

**full transfer**, in relation to an authority, means a transfer of the authority that relates to the whole authority area.

**head lease** means a mining lease in relation to which a mining sublease has effect under section 83A.

**land** includes land covered by water.

**Mineral Claims Districts Compensation Fund** means the fund established by section 281C.

**mineral owner authority** means an exploration (mineral owner) licence, an assessment (mineral owner) lease or a mining (mineral owner) lease.

**mining (mineral owner) lease** means a mining lease granted to the owner of privately owned minerals with respect to those minerals.

**mining sublease** means an assignment, or purported assignment, by the holder of a mining lease to another person of rights and obligations conferred by the lease, for a limited period.

**mining sublease area** or **sublease area** means land that is the subject of a mining sublease.

**mining sublease register** means the register of mining subleases kept under section 163A.

**new authority** means the authority that is taken by section 122 (5) (b) to have been granted on a partial transfer.

**occupational health and safety legislation** means:

- (a) the [Occupational Health and Safety Act 1983](#) and the regulations made under that Act, and
- (b) the [Occupational Health and Safety Act 2000](#) and the regulations made under that Act, and
- (c) the [Coal Mines Regulation Act 1982](#) and the regulations made under that Act, and
- (d) the [Coal Mine Health and Safety Act 2002](#) and the regulations made under that Act, and
- (e) the [Mines Inspection Act 1901](#) and the regulations and any rules made under that Act.

**original authority** means the authority the partial transfer of which results in a new authority being taken, by section 122 (5) (b), to have been granted.

**partial transfer**, in relation to an authority, means a transfer of an authority only in so far as part of the authority area is concerned.

**premises** includes:

- (a) a building or structure, or
- (b) land or a place (whether enclosed or built on or not), or
- (c) a mobile plant, vehicle, vessel or aircraft.

**public authority** means a public authority constituted by or under an Act, and includes:

- (a) a Government Department, and
- (b) a statutory body representing the Crown, a State owned corporation within the meaning of the [State Owned Corporations Act 1989](#) and a subsidiary (within the meaning of that Act), and
- (c) a council, and
- (d) a member of staff or other person who exercises functions on behalf of a public authority.

**record** includes a plan, specifications, map, report, book and other document (whether in writing, in electronic form or otherwise).

**rehabilitation** means the treatment or management of disturbed land or water for the purpose of establishing a safe and stable environment.

**related corporation**, in relation to the holder of, or applicant or tenderer for or with respect to, an authorisation that is a corporation, means a corporation that is, with respect to that holder, applicant or tenderer, a related body corporate within the meaning of the [Corporations Act 2001](#) of the Commonwealth.

**reserved land** 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.

**transfer**, in relation to an authority, means a full or partial transfer of the authority.

**transferee**, in relation to a partial transfer of an authority, means the holder of the new authority.

## Schedule 2 Amendment of other Acts and instrument

(Section 4)

### 2.1 Coal Mine Health and Safety Act 2002 No 129

#### Section 3 Definitions

Omit the definition of **colliery holder**. Insert instead:

**colliery holder** means the person identified in the register of colliery holdings kept by the Director-General under section 163 of the [Mining Act 1992](#) as the colliery holder for the holding.

## 2.2 Criminal Procedure Act 1986 No 209

### [1] Schedule 1 Indictable offences triable summarily

Insert “or carrying out a mining purpose” after “offence of mining” in clause 31 (1) of Table 1.

### [2] (Repealed)

### [3] Schedule 1, Table 2

Omit clause 17 (1) and (3).

## 2.3 Environmental Planning and Assessment Regulation 2000

### Schedule 3 Designated development

Omit “or subject to a notice under section 8 of” wherever occurring in Part 1.

Insert instead “under”.

## 2.4 Fines Act 1996 No 99

### Schedule 1 Statutory provisions under which penalty notices issued

Omit “Mining Act 1992, section 375A”.

Insert instead “Mining Act 1992, section 378K”.

## 2.4A Land and Environment Court Act 1979 No 204

### Section 21 Class 5—environmental planning and protection summary enforcement

Insert after section 21 (hc):

(hd) proceedings referred to in section 378H (1) (a) of the *Mining Act 1992* in relation to offences arising under that Act,

## 2.5, 2.6

(Repealed)

## 2.7 National Parks and Wildlife Act 1974 No 80

### Section 47J Provisions relating to mining

Insert “or an authorisation” after “consent” wherever occurring in section 47J (7).



## **2.8 Petroleum (Onshore) Act 1991 No 84**

### **[1] (Repealed)**

### **[2] Sections 29 and 29A**

Omit section 29. Insert instead:

#### **29 Rights of holders of exploration licence**

- (1) An exploration licence authorises only:
  - (a) the conduct, on the land comprised in the licence and in accordance with the conditions of the licence, of prospecting of a kind determined by the Minister for the purposes of this section by order published in the Gazette, and
  - (b) any other kinds of prospecting authorised by the Minister on or after granting the licence.
- (2) The holder of an exploration licence may apply in writing to the Minister for a variation of the licence to authorise other kinds of prospecting to be carried out.
- (3) An application must:
  - (a) be made in the approved form and manner (if any), and
  - (b) contain any information that is prescribed by the regulations, and
  - (c) be accompanied by the fee (if any) prescribed by the regulations.
- (4) The Minister may:
  - (a) vary the licence in accordance with the application and make any variations to the conditions of the licence that the Minister considers appropriate (including a condition referred to in section 75 or 76), or
  - (b) refuse the application.
- (5) The Minister is to give the applicant written notice of the outcome of the application.
- (6) Any variation to the conditions of the licence takes effect on the date on which written notice of the variation is served on the applicant or any later date that is specified in the notice.
- (7) Section 74 applies to the Minister's determination of an application under this section in the same way as it applies to a decision about whether or not to grant a petroleum title.

## **29A Review of determinations under section 29**

- (1) An applicant for a variation of a licence under section 29 may, within 30 days (or such longer period as may be prescribed) after being served with written notice of the determination of the application, apply to the Minister for a review of the determination.
- (2) The making of an application for review of a determination does not operate to stay the determination.
- (3) On a review the Minister may confirm or change the determination.
- (4) If the Minister changes a determination, the changed determination replaces the earlier determination as from the date of the review.
- (5) An application under this section must:
  - (a) be made in the approved form and manner (if any), and
  - (b) contain any information prescribed by the regulations, and
  - (c) be accompanied by the fee (if any) prescribed by the regulations.
- (6) The Minister is to give the applicant written notice of the outcome of any application under this section.
- (7) A decision on a review may not be further reviewed under this section.

## **2.9 Protection of the Environment Operations Act 1997 No 156**

### **Schedule 1 Schedule of EPA-licensed activities**

Omit “or subject to a section 8 notice” from the item relating to mines in Part 1.