

# Mining Act 1992 No 29

[1992-29]



New South Wales

## Status Information

### Currency of version

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

### Provisions in force

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

### Notes—

- **Does not include amendments by**

[Mining Amendment Act 2008 No 19](#), Sch 1 [21] to the extent that it inserts sec 22 (2) (c) (including the note to that paragraph), Sch 1 [22] to the extent that it inserts sec 23 (3) (c) (including the note to that paragraph), Sch 1 [27], Sch 1 [38] to the extent that it inserts sec 41 (2) (c) (including the note to that paragraph), Sch 1 [41], Sch 1 [58] to the extent that it inserts sec 63 (2) (c) (including the note to that paragraph), Sch 1 [61] to the extent that it inserts sec 64 (3) (c) (including the note to that paragraph), Sch 1 [64], Sch 1 [69] to the extent that it inserts sec 73 (3)-(8), Sch 1 [70], Sch 1 [82] to the extent that it inserts sec 114 (2) (d) (including the note to that paragraph), Sch 1 [85] to the extent that it inserts sec 121 (2) (c) (including the note to that paragraph), Sch 1 [88] to the extent that it inserts sec 125 (1) (b3), Sch 1 [125] [127] and [133], Sch 1 [143] to the extent that it inserts sec 190 (2) (c) (including the note to that paragraph), Sch 1 [152] to the extent that it inserts sec 198 (2) (d) (including the note to that paragraph), Sch 1 [155] to the extent that it inserts sec 201 (2) (c) (including the note to that paragraph), Sch 1 [159] to the extent that it inserts sec 203 (1) (c3), Sch 1 [183], Sch 1 [191] to the extent that it inserts sec 228 (2) (c) (including the note to that paragraph), Sch 1 [194] to the extent that it inserts sec 233 (1) (b3), Sch 1 [204], Sch 1 [213] to the extent that it substitutes sec 245 and 246 and inserts sec 246A-246L, Sch 1 [215] to the extent that it inserts sec 248K, Sch 1 [217] [228] [229] [231]-[235] [240] and [246C], Sch 1 [258] to the extent that it inserts sec 378], Sch 1 [267], Sch 1 [273] to the extent that it inserts the cl titled “Environmental management conditions and directions”, Sch 1 [276] and [279] and Sch 1 [285] to the extent that it inserts the definition of **Mineral Claims Districts Compensation Fund** (amended by [Courts and Crimes Legislation Further Amendment Act 2008 No 107](#)) (not commenced)

[Coal Mine Health and Safety Amendment Act 2010 No 23](#) (not commenced)

[Personal Property Securities Legislation Amendment Act 2010 No 57](#) (not commenced)

- **See also**

[Miscellaneous Acts Amendment \(Directors’ Liability\) Bill 2011](#)

## **Authorisation**

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File last modified 4 May 2011

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# Mining Act 1992 No 29



New South Wales

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

## Part 1 Preliminary

### 1 Name of Act

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

### 2 Commencement

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

### 3 Act binds Crown

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

### 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.

#### **4 Definitions**

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

#### **4A Application of Act**

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

#### **4B Notes**

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

## **Part 2 Prospecting and mining generally**

### **Division 1 General**

#### **5 Mining 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.

## **7-9 (Repealed)**

## **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.

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

- (1) For the purposes of this or any other Act or law, it is declared that any mineral that is lawfully mined becomes the property of the person by or on behalf of whom it is mined at the time the material from which it is recovered is severed from the land from which it is mined.
- (2) For the purposes of this or any other Act or law, it is declared that any mineral contained in:
  - (a) a stockpile of material that has been lawfully mined for the purpose of enabling the mineral to be recovered, or
  - (b) a pile of tailings arising from the recovery of a mineral from material that has been so mined,remains the property of the person by or on behalf of whom the material was mined and does not become part of the land on which it is situated.
- (3) However, any mineral that has been mined pursuant to a mining lease or mineral claim but is still contained in such a stockpile or pile of tailings when the lease or claim ceases to have effect:
  - (a) ceases to be the property of the person by or on behalf of whom the material in the stockpile or pile of tailings was mined, and
  - (b) becomes part of the land on which the stockpile or pile of tailings is situated, at the time the mining lease or mineral claim ceases to have effect.
- (4) This section is subject to the provisions of any private agreement.

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

- (1) The regulations may declare that, 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.
- (2) A declaration referred to in subsection (1):
  - (a) may require a person who proposes to carry out any such activity to give notice of intention to do so to the Director-General, and
  - (b) may require a person who carries out any such activity to pay royalty to the Minister in respect of any publicly owned minerals recovered as a consequence of

the carrying out of that activity.

- (3) Part 14 applies, 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.

## 12 Fossicking

- (1) For the purposes of this or any other Act or law, it is declared that fossicking is a lawful activity.
- (2) Subsection (1):
- (a) does not affect any other Act or law that prohibits, regulates or restricts fossicking or that has the effect of prohibiting, regulating or restricting fossicking and, in particular, does not make fossicking a lawful authority or lawful excuse for the purposes of any such Act or law, and
  - (b) does not confer on any person a right of entry on to land (other than land prescribed by subsection (2A)) for fossicking purposes.
- (2A) For the purposes of subsection (2) (b), the prescribed land is Crown land (within the meaning of the [Crown Lands Act 1989](#)):
- (a) that is not held under a lease, licence or permissive occupancy under the [Crown Lands Act 1989](#), the [Crown Lands \(Continued Tenures\) Act 1989](#) or the [Western Lands Act 1901](#), and
  - (b) that is not under the management or control of a trustee or a public or local authority.
- (3) Any publicly owned mineral that is recovered in the course of lawful fossicking becomes the property of the person by whom it is found at the time it is severed from the land on which it is found.
- (4) A person must not carry out fossicking on any land the subject of an authority, mineral claim or opal prospecting licence except with the consent of the holder of the authority, claim or licence.

Maximum penalty: 50 penalty units.

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

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

Maximum penalty: 50 penalty units.

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

### **12A Definitions**

In this Division:

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

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

- (a) who is authorised (whether under a mining lease or mineral claim or otherwise) to mine for minerals in or on the mine or mining land, or
- (b) who is entitled to receive any minerals recovered from the mine or mining land.

### **12B Stealing minerals**

A person who:

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

is guilty of an offence.

Maximum penalty:

- (a) 1,000 penalty units, 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.

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

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

Maximum penalty:

- (a) 1,000 penalty units, 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.

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

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

Maximum penalty:

- (a) 1,000 penalty units, 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.

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

## **Part 3 Exploration licences**

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

#### **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.

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

- (1) This section applies only in relation to allocated minerals in land within a mineral allocation area.
- (2) The Minister may, by notice published:
  - (a) in a newspaper circulating generally throughout the State, and
  - (b) in one or more newspapers circulating in the locality in which the land concerned is situated,invite tenders for an exploration licence (other than an exploration (mineral owner) licence) for an allocated mineral.
- (3) An invitation:
  - (a) must describe the land to which it relates, and
  - (b) must identify the allocated mineral to which it relates, and
  - (c) must specify the place at which, and the date on or before which, tenders for the exploration licence should be lodged.

#### **15 Tenders**

- (1) A tender for an exploration licence:
  - (a) must be lodged with the Director-General in accordance with the invitation for the tender, and
  - (b) must be accompanied by the required information, and
  - (c) must be accompanied by the lodgment fee prescribed by the regulations.
- (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.



- (3) A tender may specify that, in the event that the tender is successful, the tenderer will pay a specified amount in addition to the cash reserve price (if any) specified in the invitation for the tender.
- (4) A tender may be made in respect of the whole or any part of the land described in the invitation for the tender.

#### **16 Decision-maker may require further information**

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

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

#### **17 Exclusion of land from application or tender**

- (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.
- (2) A direction takes effect on the date on which written notice of the direction is served on the applicant or tenderer.
- (3) A tenderer affected by any such direction may amend the tender by written notice lodged with the Director-General on or before such date as may be specified in the direction.
- (4) This section does not apply to an application for an exploration (mineral owner) licence.

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

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

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

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

## **19 Land subject to authority**

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

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

- (2) A written consent given under this section is irrevocable.
- (3) If, as a result of such a consent, an exploration licence is granted over any such land, that land:
- (a) ceases to be subject to the exploration licence, assessment lease, mining lease or mineral claim concerned, or
  - (b) is excluded from the application for the exploration licence, assessment lease, mining lease or mineral claim concerned,
- as the case requires, unless the decision-maker makes a determination under subsection (4).
- (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.

## **20 (Repealed)**

## **21 Colliery holdings**

An exploration licence may not be granted over land within a colliery holding unless the Chief Inspector appointed under the *Coal Mine Health and Safety Act 2002* is satisfied that

prospecting operations may be carried out under the licence without any adverse effect on, and without any risk to the safety of the persons engaged in, the carrying out of coal mining operations in the exploration area.

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

#### **22 Power of decision-maker in relation to applications**

- (1) After considering an application for an exploration licence, the decision-maker:
  - (a) may grant to the applicant an exploration licence over all or part of the land over which a licence was sought, or
  - (b) may 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 the application.
- (3) The decision-maker may grant a single exploration licence in respect of 2 or more applications or 2 or more exploration licences in respect of a single application.

#### **23 Power of decision-maker in relation to tenders**

- (1) After considering a tender in respect of land in respect of which one tender only is lodged, the decision-maker:
  - (a) may grant an exploration licence to the tenderer, or
  - (b) may refuse the tender.
- (2) After considering all tenders in respect of land in respect of which more than one tender is lodged, the decision-maker:
  - (a) may grant an exploration licence to any one of the tenderers and refuse the other tenders, or
  - (b) may refuse all of the tenders.
- (3) Without limiting the generality of subsections (1) and (2) 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.
- (4) For the purposes of this section, only one tender is lodged in respect of land if no other tender is lodged in respect of the land or any part of the land.

#### **24 Land and minerals for which exploration licence may be granted**

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

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

- (1) The land over which an exploration licence is granted must comply with the regulations in relation to shape and size.
- (2) The land over which an exploration licence is granted may differ in size or shape from, but may not include land other than, the land over which the licence was sought.
- (3) Subsections (1) and (2) do not apply with respect to an exploration (mineral owner) licence.
- (4) (Repealed)

#### **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.

## **28 Form of exploration licence**

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

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

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

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

- (1) The holder of an exploration licence may, in accordance with the conditions of the licence, prospect on the land specified in the licence for the group or groups of minerals so specified.
- (2) If an application for an assessment lease, mining lease or mineral claim made by the

holder of an exploration licence is not finally dealt with before the date on which the licence would otherwise cease to have effect, the licence continues to have effect, in relation only to the land to which the application relates, until the application is finally dealt with.

- (3) Subsection (2) does not operate to extend an exploration licence for more than 2 years, or such further period as the Minister may approve in a particular case, after the date on which it would otherwise expire.

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

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

### **30 Exempted areas**

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

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

- (1) The holder of an exploration licence may not exercise any of the rights conferred by the licence over the surface of land:
  - (a) on which, or within the prescribed distance of which, is situated a dwelling-house that is the principal place of residence of the person occupying it, or
  - (b) on which, or within the prescribed distance of which, is situated any garden, or
  - (c) on which is situated any significant improvement other than an improvement constructed or used for mining purposes only,

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

- (2) The prescribed distance is:
  - (a) 200 metres (or, if a greater distance is prescribed by the regulations, the greater distance) for the purposes of subsection (1) (a), and
  - (b) 50 metres (or, if a greater distance is prescribed by the regulations, the greater distance) for the purposes of subsection (1) (b).
- (3) A written consent given under this section is irrevocable.
- (4) This section does not apply with respect to a dwelling-house, garden or significant improvement owned by the holder of the exploration licence or, if the holder is a corporation, by a related corporation.
- (5) If a dispute arises as to whether or not subsection (1) applies in a particular case, any party to the dispute may apply to the Land and Environment Court for a determination of the matter.

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

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

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

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

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

**Note—**

See clause 14 (3) of Part 5 of Schedule 5 to the [Native Title Amendment Act 1998](#) of the Commonwealth for preservation of approvals previously granted by the Commonwealth.

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

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

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

- (1) The Minister may, by order published in the Gazette, determine the kind of

prospecting operations that may be authorised by a low-impact exploration licence, being operations that the Minister is satisfied are unlikely to have a significant impact on the land over which the licence may be granted.

**Editorial note—**

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

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

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

- (1) A person may not be granted a low-impact exploration licence unless notice of the application for the licence has been served on all:
  - (a) registered native title bodies corporate, and
  - (b) registered native title claimants, and
  - (c) representative Aboriginal/Torres Strait Islander bodies,in relation to any of the land that will be affected by the proposed prospecting operations to be authorised by the licence.
- (2) The notice must contain a map or other description of the land over which the exploration licence is sought and a description of the kind of prospecting operations that may be authorised by the licence.
- (3) An applicant may request the Minister to grant a low-impact exploration licence either at the time the application for a licence is made or at any later time before the grant of the licence.
- (4) The regulations may make other provision for or with respect to the making and grant of applications for low-impact exploration licences.
- (5) In this section, **application** includes tender.

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

- (1) The holder of a low-impact exploration licence may apply to the Minister for a variation of the prospecting operations authorised by the licence.
- (2) After considering the application, the Minister may vary the licence or may refuse the application.



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

**Note—**

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

**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.

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

- (1) In this section, **relevant land** means land in relation to which there are registered native title bodies corporate or registered native title claimants.
- (2) A low-impact exploration licence is subject to the condition that the holder of the licence is not authorised to carry out prospecting operations on any relevant land

otherwise than in accordance with an access arrangement under Division 2 of Part 8 between the holder of the licence and each registered native title body corporate or each registered native title claimant, being an access arrangement:

- (a) that is agreed between them in accordance with that Division, or that is determined for them by an arbitrator in accordance with that Division, and
  - (b) that has involved consultation by the holder of the licence that satisfies the requirements of section 26A of the Commonwealth Native Title Act.
- (3) This section does not apply in any case in which Division 2 of Part 8 is excluded because of section 138 (2) (which relates to prospecting title granted after compliance with the full native title right to negotiate procedure or an indigenous land use agreement).
- (4) This section does not limit the operation of Division 2 of Part 8 with respect to landholders who are not native title holders.

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

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

## **Part 4 Assessment leases**

### **Division 1 Applications**

#### **33 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.

### **34 Decision-maker may require further information**

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

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

### **35 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.

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

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

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

- (a) an opal prospecting area, or

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

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

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

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

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

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

- (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.

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

- (1) If an application for an assessment lease is made in respect of land that is wholly or partly subject to one or more exploration licences (other than exploration licences that

include any mineral or minerals in respect of which the assessment lease is sought), the decision-maker must cause notice of the application to be served on the holder of every such exploration licence.

- (2) The holder of an exploration licence served with such a notice may object to the granting of the assessment lease by lodging with the Director-General, on or before the date specified in the notice, a written notice stating the grounds of the objection.
- (3) Any such objection is to be taken into consideration by the decision-maker when determining the application.
- (4) This section does not apply to an application that is made with the written consent of the holder of every exploration licence over the land concerned.
- (5) A written consent given under this section is irrevocable.

### **39 (Repealed)**

### **40 Colliery holdings**

An assessment lease may not be granted over land within a colliery holding unless the Chief Inspector appointed under the [Coal Mine Health and Safety Act 2002](#) is satisfied that prospecting operations may be carried out under the lease without any adverse effect on, and without any risk to the safety of the persons engaged in, the carrying out of coal mining operations in the assessment area.

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

### **41 Power of decision-maker in relation to applications**

- (1) After considering an application for an assessment lease, the decision-maker:
  - (a) may grant to the applicant an assessment lease over all or part of the land over which a lease was sought, or
  - (b) may 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 the application.

- (3) The decision-maker may not grant an assessment lease under this section otherwise than in accordance with Part 1 of Schedule 1.
- (4) Part 1 of Schedule 1 does not, however, apply to an application for an assessment lease made by the holder of a mining lease over the same land as that over which the assessment lease is sought.

#### **42 Land and minerals for which assessment lease may be granted**

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

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

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

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

- (1) An assessment lease 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.

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

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

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

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

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

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

**Note—**

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



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

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

#### **48 Exempted areas**

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

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

- (1) The holder of an assessment lease may not exercise any of the rights conferred by the lease over the surface of land:
  - (a) on which, or within the prescribed distance of which, is situated a dwelling-house that is the principal place of residence of the person occupying it, or
  - (b) on which, or within the prescribed distance of which, is situated any garden, or
  - (c) on which is situated any significant improvement other than an improvement constructed or used for mining purposes only,except with the written consent of the owner of the dwelling-house, garden or improvement (and, in the case of the dwelling-house, the written consent of its occupant).
- (2) The prescribed distance is:
  - (a) 200 metres (or, if a greater distance is prescribed by the regulations, the greater distance) for the purposes of subsection (1) (a), and
  - (b) 50 metres (or, if a greater distance is prescribed by the regulations, the greater distance) for the purposes of subsection (1) (b).

- (3) A written consent given under this section is irrevocable.
- (4) This section does not apply with respect to a dwelling-house, garden or significant improvement owned by the holder of the assessment lease or, if the holder is a corporation, by a related corporation.
- (5) If a dispute arises as to whether or not subsection (1) applies in a particular case, any party to the dispute may apply to the Land and Environment Court for a determination of the matter.

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

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

### **Part 5 Mining leases**

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

##### **51 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.

## **52 Invitations for tenders**

- (1) This section applies only to allocated minerals in land within a mineral allocation area.
- (2) The Minister may, by notice published:
  - (a) in a newspaper circulating generally throughout the State, and
  - (b) in one or more newspapers circulating in the locality in which the land concerned is situated,invite tenders for a mining lease (other than a mining (mineral owner) lease) for an allocated mineral.
- (3) An invitation:
  - (a) must describe the land to which it relates, and
  - (b) must identify the allocated mineral to which it relates, and
  - (c) must specify the place at which, and the date on or before which, tenders for the mining lease should be lodged.
- (4) Tenders may not be invited under this section otherwise than in accordance with Part 2 of Schedule 1.

## **53 Tenders**

- (1) A tender for a mining lease:
  - (a) must be lodged with the Director-General in accordance with the invitation for the tender, and
  - (b) must be accompanied by the required information, and
  - (c) must be accompanied by the lodgment fee prescribed by the regulations.
- (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.
- (3) A tender may specify that, in the event that the tender is successful, the tenderer will

pay:

(a) a specified amount, or

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

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

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

(4) A tender may also specify:

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

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

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

#### **54 Decision-maker may require further information**

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

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

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

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

#### **55 Exclusion of land from application or tender**

(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.

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

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

direction.

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

## **56 (Repealed)**

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

### **57 Land in reserve**

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

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

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

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

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

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

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

(3) If, as a result of such a consent, a mining lease is granted over any such land, that land:

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

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

- (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.

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

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

#### **60 (Repealed)**

#### **61 Colliery holdings**

A mining lease may not be granted over land within a colliery holding unless the Chief Inspector appointed under the *Coal Mine Health and Safety Act 2002* is satisfied that prospecting or mining operations may be carried out under the lease without any adverse effect on, and without any risk to the safety of the persons engaged in, the carrying out of coal mining operations in the mining area.

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

- (1) A mining lease may not be granted over the surface of any land:
  - (a) on which, or within the prescribed distance of which, is situated a dwelling-house that is the principal place of residence of the person occupying it, or
  - (b) on which, or within the prescribed distance of which, is situated any garden, or
  - (c) on which is situated anything that is taken to be a significant improvement under

clause 23A of Schedule 1,

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

- (2) The prescribed distance is:
  - (a) 200 metres (or, if a greater distance is prescribed by the regulations, the greater distance) for the purposes of subsection (1) (a), and
  - (b) 50 metres (or, if a greater distance is prescribed by the regulations, the greater distance) for the purposes of subsection (1) (b).
- (3) A written consent given under this section is irrevocable.
- (4) Subsection (1) does not apply in respect of a dwelling-house, garden or significant improvement that was not in existence at the relevant date.
- (5) The relevant date is:
  - (a) in the case of a mining lease the subject of a tender under section 53, the date on which notice of the invitation for tenders for the mining lease was published in the Gazette under section 136, or
  - (b) in the case of a mining lease the subject of an application made by the holder of an exploration licence granted as a result of a tender under section 15 in respect of the same land, or of an assessment lease granted over the same land to the holder of such an exploration licence, the date on which notice of the invitation for tenders for the exploration licence was published in the Gazette under section 136, or
  - (c) in the case of a mining lease for coal the subject of an application made by the holder of an exploration licence for coal in respect of the same land, or of an assessment lease for coal granted over the same land to the holder of such an exploration licence, the date on which the application for the exploration licence was lodged, or
  - (d) in the case of a mining lease the subject of an application made by the holder of an assessment lease or mineral claim over the same land, the date on which the lease or claim was granted, or
  - (e) in the case of a mining lease the subject of an application made otherwise than by a person referred to in paragraph (a), (b), (c) or (d), the date on which the application for the mining lease was lodged.
- (6) This section does not apply with respect to a dwelling-house, garden or significant improvement owned by the applicant for the mining lease or, if the applicant is a



corporation, by a related corporation.

- (6A) If a dispute arises as to whether or not subsection (1) applies in a particular case, any party to the dispute may apply to the Land and Environment Court for a determination of the matter.
- (7) A mining lease must not be granted over land below the surface of land referred to in subsection (1) except at such depths, and subject to such conditions, as the decision-maker considers sufficient to minimise damage to that surface.
- (8) (Repealed)

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

#### **63 Power of decision-maker in relation to applications**

- (1) After considering an application for a mining lease, the decision-maker:
  - (a) may grant to the applicant a mining lease over all or part of the land over which a lease was sought, or
  - (b) may 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 the application or any report provided under this Act for or with respect to the lease.
- (3) The decision-maker may grant a single mining lease in respect of more than one application.
- (3A) A mining lease may not be granted until the mining lease fee prescribed by the regulations has been paid for the grant of the lease.
- (4) A mining lease may not be granted under this section otherwise than in accordance with Part 2 of Schedule 1.
- (5) A mining lease may not be granted, in respect of a mining purpose or mining purposes only, unless the decision-maker is satisfied that the mining purpose or mining purposes is or are to be carried out in connection with and in the immediate

vicinity of:

- (a) a mining lease in respect of a mineral or minerals, or
- (b) a mineral claim,

being a mining lease or mineral claim that has been or is proposed to be granted.

- (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.

#### **64 Power of decision-maker in relation to tenders**

- (1) After considering a tender in respect of which one tender only is lodged, the Minister:
  - (a) may grant a mining lease to the tenderer, or
  - (b) may refuse the tender.
- (2) After considering all tenders in respect of land in respect of which more than one tender is lodged, the Minister:
  - (a) may grant a mining lease to any one of the tenderers, or
  - (b) may refuse all of the tenders.
- (3) Without limiting the generality of subsections (1) and (2) 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.
- (4) For the purposes of this section, only one tender is lodged in respect of land if no other tender is lodged in respect of the land or any part of the land.
- (5) A mining lease may not be granted under this section otherwise than in accordance with Part 2 of Schedule 1.

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

- (1) This section applies:
  - (a) in relation to a mining lease for a mineral or minerals, to land for which

development consent is required before the land may be used for the purpose of obtaining minerals, and

(b) in relation to a mining lease for a mining purpose or mining purposes only, to land for which development consent is required before the land may be used for that purpose or those purposes.

(2) The Minister must not grant a mining lease over land to which this section applies unless an appropriate development consent is in force in respect of the land.

(3) If a mining lease is granted over land for which an appropriate development consent has been given (being a mining lease granted and a development consent given before the commencement of Schedule 7.11 to the *Environmental Planning and Assessment Amendment (Infrastructure and Other Planning Reform) Act 2005*):

(a) any condition (being a special purpose condition within the meaning of Division 2 of Part 2 of Schedule 1, as in force immediately before that commencement) imposed on the development consent by a consent authority, or by a body hearing an appeal from a consent authority, is void, and

(b) the development consent (to the extent only to which it relates to the use of the land concerned for the purpose of obtaining minerals) is taken to have been given free of the condition.

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

(1) Before a mining lease is granted, the Director-General must be satisfied that the land over which the mining lease is to be granted has been properly surveyed.

(2) For the purpose of doing so, the Director-General may direct the applicant for the mining lease to cause a survey to be prepared in accordance with such requirements as may be specified in the direction.

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

(1) If public money has been expended:

(a) in the course of testing any land (by way of drilling or otherwise) for the mineral bearing capacity of the land, or

(b) in the course of conducting an environmental impact study or other research program in connection with the proper assessment of any application for a mining lease that has been or may be made in respect of any land,

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

- (2) The applicant may elect to pay:
  - (a) a lump sum of the amount specified in the notice as being the proportion of the cost (at current market rates) of carrying out the testing, impact study or research program that the Minister determines should be paid by the applicant, or
  - (b) instalments (of such amounts and paid at such times as may be specified in the notice) totalling the amount referred to in paragraph (a).
- (3) It is a condition of any mining lease granted to an applicant who has been required to reimburse the Government under this section that any amount that remains unpaid as at the time the lease takes effect is to be paid to the Minister in accordance with the election made by the applicant.
- (4) If public money has been expended in connection with several parcels of land, the amount so expended is to be apportioned among them in such manner as the Minister thinks fit.

#### **68 Land and minerals for which mining lease may be granted**

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

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

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

#### **70 Conditions of mining lease**

- (1) A mining lease is subject to:
  - (a) a condition that the holder of the lease will not suspend mining operations in the mining area otherwise than in accordance with the written consent of the Minister, and

(b) such other conditions as the Minister may, when granting the lease, impose.

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

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

(a) conditions requiring the holder of the mining lease to give and maintain security, in such amount and form as the decision-maker may determine, for the fulfilment of the obligations arising under this Act in respect of the lease,

(b) conditions relating to mining or mining operations,

(c) conditions relating to the transporting of any mineral or other thing for the purpose of mining,

(d) conditions relating to the treatment or preparation for sale of any mineral,

(e) conditions relating to the disposal or retention of material discarded from mining operations or from the treatment or preparation for sale of any mineral,

(f) conditions relating to the use to which any mineral may be put,

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

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

(2A), (3) (Repealed)

(4) A mining lease granted on the basis of a tender lodged under section 53 is taken to include a condition in the terms specified in the tender for the purposes of subsection (3) of that section.

## **71 Term of mining lease**

A mining lease:

(a) takes effect on the date on which it is granted or on such later date as the 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.

## **72 Form of mining lease**

A mining lease is to include the following particulars:

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

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

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

- (1) The holder of a mining lease granted in respect of a mineral or minerals may, in accordance with the conditions of the lease:
  - (a) prospect on the land specified in the lease for, and mine on that land, the mineral or minerals so specified, and
  - (b) carry out on that land such primary treatment operations (such as crushing, sizing, grading, washing and leaching) as are necessary to separate the mineral or minerals from the material from which they are recovered, and
  - (c) carry out on that land any mining purpose.
- (1A) The holder of a mining lease granted in respect of a mining purpose or mining purposes only may, in accordance with the conditions of the lease, carry out the mining purpose or mining purposes specified in the lease.
- (2) 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.
- (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.

### **74 (Repealed)**

### **75 Mining purposes**

- (1) The Minister may, by order in writing, direct that:
  - (a) a specified mining purpose be carried out in accordance with any condition

specified in the order, or

(b) the carrying out of a specified mining purpose be discontinued for such period as is specified in the order.

(1A) Subsection (1) (b) does not apply to a mining purpose specified in a mining lease granted in respect of a mining purpose or mining purposes only.

(2) An order takes effect on the date on which written notice of the order is served on the holder of the mining lease concerned or on such later date as may be specified in the notice.

(3) A person on whom an order is served must not contravene the order.

Maximum penalty: 100 penalty units.

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

(1) The holder of a mining lease may fence the whole or any part of the mining area.

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

(a) given by the landholder of the land concerned, or

(b) in the case of Crown land (within the meaning of the [Crown Lands Act 1989](#)) for which there is no landholder other than the Crown—given by the Minister.

Maximum penalty: 100 penalty units.

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

(1) The holder of a mining lease granted in respect of a mineral or minerals may apply for the inclusion in the lease of a mineral additional to the mineral or minerals to which the lease relates.

(2) The application must be lodged with the Director-General.

(3) The holder of a mining lease over any land must, within 21 days after lodging the application, serve a copy of the application on each landholder.

(4) After considering the application, the decision-maker:

(a) may, by order in writing served on the applicant, direct that the mining lease apply to the additional mineral specified in the direction, or

(b) may refuse the application.

(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.

- (5) A direction may be given unconditionally or subject to such conditions as are specified in the direction.
- (6) While a direction is in force, the mining lease concerned is taken to extend to the mineral the subject of the direction.

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

- (1) The holder of a mining lease for coal may apply for the inclusion in the lease of petroleum.
- (2) The application must be lodged with the Director-General.
- (3) After considering the application, the Minister:
  - (a) may, by order in writing served on the applicant, direct that the mining lease apply to petroleum, or
  - (b) may refuse the application.
- (4) Without limiting the generality of subsection (3), the Minister must refuse an application if the land to which the application relates:
  - (a) is within the New South Wales adjacent area, within the meaning of the *Petroleum (Offshore) Act 1982*, or
  - (b) is subject to a petroleum exploration licence or a petroleum mining lease granted under the *Petroleum (Onshore) Act 1991*.
- (5) A direction may be given unconditionally or subject to such conditions as are specified in the direction.
- (6) Without limiting the generality of subsection (5), the Minister may direct that a mining lease is to apply to petroleum subject to a condition relating to any one or more of the following matters:
  - (a) the limitation of the right to prospect or drill for petroleum to part only of the mining area,
  - (b) the limitation of that right to prospecting or drilling for some specified type or form of petroleum only,
  - (c) the working practices and methods of extraction to be used when prospecting or drilling for petroleum,
  - (d) the use to which any petroleum recovered may be put,
  - (e) the joint mining and development of petroleum with the holder of a mining lease,



or with the holder of a petroleum mining lease under the *Petroleum (Onshore) Act 1991*, over land adjoining the mining area.

#### **79 Amendment of mining lease in respect of 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.

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

- (1) The Dams Safety Committee may recommend to the Minister that a mining lease (being a mining lease over land within a notification area) be amended, by the variation of the conditions of the lease or by the inclusion of additional conditions in the lease, so as to prevent or mitigate any damage to a prescribed dam.
- (2) If the Minister does not accept the recommendations of the Dams Safety Committee, the matter must be dealt with in consultation with the Minister administering the *Dams Safety Act 1978*.
- (3) The Minister may cause to be taken such steps as the Minister considers appropriate in connection with the matter to which such a recommendation relates and if, as a result of the steps so taken, agreement is not reached as to the acceptance, modification or withdrawal of the recommendation, the matter is to be referred to the Premier.
- (4) If any matter is so referred, the Premier may give such decision as the Premier considers appropriate.
- (5) The amendment of a mining lease takes effect on the date on which written notice of the amendment is served on the holder of the mining lease or on such later date as may be specified in the notice.

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

- (1) The holder of a mining lease over any land (being a lease that does not include the surface of the land) may, with the consent of:
  - (a) the landholder, and
  - (b) the holder of any authority or mineral claim in force over the surface of the land,carry out on the surface of the land any activities that are prescribed by the regulations.
- (2) (Repealed)

- (3) Part 11 applies to the land over which the holder of a mining lease carries out such prescribed activities as if that land were land the subject of the mining lease.

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

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

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

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

# **Division 5 Subleasing of mining leases**

## **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.

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

### **Division 1 Preliminary**

#### **84 Definitions**

(1) In this Part:

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

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

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

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

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

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

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

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

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

(2) A proposed lease must specify:

(a) the existing leases to be consolidated, and

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

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

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

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

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

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

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

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

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

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

- (1) Before granting a proposed lease in respect of land within a notification area, the Minister must cause notice of the proposal to be served on the Dams Safety Committee.
- (2) Such a notice:
  - (a) must include a copy of the proposed lease, and
  - (b) must state that objections to the granting of the proposed lease on grounds relating to the safety of a prescribed dam, or proposals for the inclusion in the proposed lease of any condition relating to the safety of a prescribed dam, may be made to the Minister on or before the date specified in the notice.

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

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

- (1) If:

- (a) the Minister amends a proposed lease (otherwise than as a consequence of an objection or proposal made by the agency) after a copy has been served on a Government agency, and
- (b) the Minister is of the opinion that the agency's attitude to the proposed lease might be materially affected were the agency given a copy of the proposed lease as amended,

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

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

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

- (1) The Director of Planning:

- (a) may object to the granting of a proposed mining lease, or
- (b) may propose that specified conditions be included in a proposed mining lease.

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

- (a) may object (on grounds relating to the safety of a prescribed dam) to the granting of a proposed mining lease, or
- (b) may propose that specified conditions relating to the safety of a prescribed dam be included in a proposed mining lease.

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

- (4) If the Minister does not accept the objections or proposals of the Dams Safety Committee, or if the Dams Safety Committee fails to make any proposals or to inform the Minister that it does not propose to make any proposals, the matter must be dealt with in consultation with the Minister administering the [Dams Safety Act 1978](#).

## **92 Resolution of objections**

- (1) The Minister may cause to be taken such steps as the Minister considers appropriate in connection with any objection or proposal made under this Division and, if

agreement is not reached concerning the acceptance, modification or withdrawal of the objection or proposal, the matter is to be referred to the Premier.

- (2) The Premier may give such decision as the Premier considers appropriate in relation to any matter that is so referred.
- (3) (Repealed)

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

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

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

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

- (1) Before granting a proposed lease, the Minister must cause notice of the proposal to be served on the holder of the existing leases.
- (2) Such a notice:
  - (a) must include a copy of the proposed lease, and
  - (b) must state that representations with respect to the granting of the proposed lease, or the conditions on which the proposed lease is to be granted, may be made to the Minister on or before the date specified in the notice.
- (3) The date specified in a notice under this section must be a date occurring not less than 28 days after the date of service of the notice.

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

If:

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

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

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

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

### **97 Consideration of objections**

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

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

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

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

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

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

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

A consolidated mining lease is subject to:

- (a) a condition that the holder of the lease will not suspend mining operations in the mining area otherwise than in accordance with the written consent of the Minister, and
- (b) such conditions as section 93 requires to be included in the lease, and
- (c) such other conditions as the Minister, when granting the lease, may impose.

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

A consolidated mining lease:

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

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

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

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

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

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



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

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

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

### **Division 6**

#### **105-107 (Repealed)**

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

#### **108 Liability generally preserved**

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

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

- (1) Any interest (whether legal or equitable) in, or affecting, an existing lease continues to have the same effect in respect of the consolidated mining lease as it had in respect of the existing lease immediately before the existing lease was consolidated.
- (2) (Repealed)

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

- (1) Any development consent granted with respect to development authorised by an existing lease is taken to have been granted with respect to development authorised by the consolidated mining lease, but in relation only to that part of the land that was subject to the existing lease.
- (2) (Repealed)

#### **111 (Repealed)**

#### **112 Rights of way**

Any right of way indicated or described as referred to in section 164 in respect of an existing lease continues to have effect in respect of a consolidated mining lease in the

same way as it had effect in respect of the existing lease.

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

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

#### **113 Applications for renewal**

- (1) The holder of an authority may, from time to time, apply for the renewal of the authority.
- (2) An application for the renewal of an 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.
- (4) (Repealed)
- (5) If an application for the renewal of an authority is in respect of part only of the land subject to the authority, the application must be accompanied by a description, prepared in the manner prescribed by the regulations, of the land over which renewal of the authority is sought.
- (6) An application for the renewal of an exploration licence may be made in respect of one or more parts (but not more than such number of parts as may be prescribed by the regulations) of the exploration area.
- (7) An application for the renewal of an assessment lease or a mining lease may be made in respect of the whole, or of any single part, of the assessment area or mining area.
- (8) To avoid doubt, the holder of an exploration licence may apply for and be granted a renewal of the licence even if the holder is an applicant for or is granted an assessment lease or a mining lease with respect to some or all of the land in the exploration area.

**114 Power of decision-maker in relation to renewal applications**

- (1) After considering an application for the renewal of an authority, the decision-maker:
  - (a) may renew the authority, or
  - (b) may 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 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.
- (3) The period for which an authority is renewed may not on any one occasion exceed:
  - (a) 5 years in the case of an exploration licence or assessment lease, or
  - (b) 21 years (or such longer period as the decision-maker may, with the concurrence of the Premier, determine) in the case of a mining lease.
- (4) On renewing an authority, the decision-maker may amend any of the conditions of the authority and may include further conditions in the authority.
- (5) The area of land over which an authority is renewed may differ from the area of land over which the renewal of the authority is sought, but not so as to include any land that was not subject to the authority immediately before the renewal.
- (6) The 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.
- (7) The decision-maker may defer dealing with an application for the renewal of a mining lease over any land if the mining lease is the subject of action being taken under Part 6 in connection with the granting of a consolidated mining lease over that land.

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

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

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

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

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

- (1) If an application for the renewal of an authority is not finally dealt with before the date on which the authority would otherwise cease to have effect, the authority continues to have effect, in relation only to the land to which the application relates, until the application is finally disposed of.
- (2) While an authority has effect under this section, the decision-maker may amend any of the conditions of the authority (other than a condition relating to royalty).
- (3) An amendment takes effect on the date on which written notice of the amendment is served on the holder of the authority or on such later date as may be specified in the notice.

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

- (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.
- (2) Any amendment of the conditions of an authority takes effect on the date on which the renewal of the authority takes effect.

### **119 Partial renewals**

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

## **Division 2 Transfer of authorities**

### **120 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.

(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.

**123 (Repealed)**

**124 Caveats**

- (1) A person claiming a legal or equitable interest in an authority may lodge with the Director-General a caveat, accompanied by the lodgment fee prescribed by the regulations, directing the Director-General not to register any transfer of the authority otherwise than in accordance with the provisions of the caveat.
- (2) Unless sooner withdrawn, a caveat remains in force for the period of 3 months from the date on which it is lodged.
- (3) While a caveat remains in force, a transfer of the authority to which it relates may not be registered in contravention of the provisions of the caveat otherwise than pursuant to an order of the Supreme Court directing the Director-General to register the transfer.
- (4) At the expiration of the period for which a caveat is in force, a transfer of the authority to which it relates is to be registered unless, before the expiration of that period, the

Director-General is served with an order of the Supreme Court prohibiting the Director-General from registering the transfer.

## **Division 3 Cancellation of authorities**

### **125 Grounds of cancellation of authority**

- (1) The decision-maker may cancel an authority as to the whole or any part of the land to which it relates:
  - (a) if the holder of the authority requests the decision-maker to cancel the authority, or
  - (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
  - (c) if the holder of the authority fails to comply with the requirements of any agreement or assessment under Part 13 in relation to the payment of compensation, or
  - (d) if the holder of the authority is convicted of any offence relating to mining or minerals, or
  - (e) if the land is required for a public purpose, or
  - (f) if the holder of the authority fails to use the land comprised in the authority in good faith for the purposes for which the authority has been granted, or uses the land for a purpose other than that for which the authority has been granted.
- (2) A request referred to in subsection (1) (a):
  - (a) must be lodged with the Director-General, and
  - (b) if the application is for the cancellation of the authority as to part only of the land to which it relates—must be accompanied by a description, prepared in the manner prescribed by the regulations, of the land in respect of which the authority is to be cancelled.
- (3) Action may be taken under this section whether or not any other action has been taken in respect of the authority under this Act.



### **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.

### **127 Compensation for cancellation**

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

### **128 Appeals against decisions concerning cancellations**

- (1) Any person who is aggrieved by the decision of the decision-maker to cancel an authority held by the person, or of the decision of the decision-maker as to the amount of compensation payable as a consequence of its cancellation, may appeal to the Land and Environment Court against the decision.
  - (1A) Such an appeal is to be made:
    - (a) within 14 days after written notice of the cancellation or of the decision with respect to compensation, is served on the holder of the authority, or
    - (b) within such further period as the Land and Environment Court may allow.
  - (1B) In deciding whether or not to allow a further period for appeal, the Land and Environment Court is to have regard to:
    - (a) the circumstances that have prevented the appellant from making the appeal

within the 14 days referred to in subsection (1A) (a), and

- (b) the consequences to the appellant, and to persons other than the appellant, of a decision allowing a further period for appeal, and
- (c) the consequences to the appellant, and to persons other than the appellant, of a decision refusing a further period for appeal, and
- (d) the public interest.

- (2) An appeal is to be heard by way of a new hearing, and fresh evidence, or evidence additional to the evidence available to the decision-maker when the decision was made, may be admitted in the hearing.
- (3) Subject to any order made by the Land and Environment Court, the lodging of an appeal does not operate to stay the decision appealed against.
- (4) The decision of the Land and Environment Court on an appeal is final and is to be given effect to as if it were the decision of the decision-maker.

## **Part 8 Authorities generally**

### **Division 1 General procedures**

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

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

#### **130 Withdrawal of application**

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

#### **131 Pending applications**

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

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

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

### **133 Nomination of authority holder by applicant or tenderer**

- (1) An applicant or tenderer for an authority may, by notice in writing lodged with the Director-General, nominate a person to whom the authority is to be granted.
- (2) The person nominated in an application or tender as the person to whom an authority is to be granted is, for the purposes of this Act, taken to be the applicant or tenderer for the authority.
- (3) (Repealed)

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

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

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

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

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

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

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

As soon as practicable after:

- (a) an invitation for tenders for an authority is made or withdrawn, or

- (b) an application for an authority, for the renewal of an authority or for approval of the transfer of an authority is made, withdrawn or refused, or
  - (b1) a request for the cancellation of an authority is made, or
  - (c) an authority is granted, renewed, transferred or cancelled,
- the Director-General is to cause notice of that fact to be published in the Gazette.

### **137 Limitation of challenges to decisions with respect to authorities**

- (1) The cancellation of an authority, or the grant or refusal of an application for an authority or the renewal or approval of the transfer of an authority, cannot be challenged in any legal proceedings commenced later than 3 months after the date on which notice of the cancellation, grant or refusal is published in the Gazette.
- (2) A notice lodged under section 130 cannot be challenged in any legal proceedings commenced later than one month after the date on which notice of its lodgment is published in the Gazette.
- (3) This section has effect despite 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, in the case of proceedings relating to a notice referred to in subsection (2), the month referred to in subsection (2), or
  - (b) the operation of section 128.

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

### **138 Application of Division**

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

- (a) any registered native title body corporate, and
  - (b) any registered native title claimant,
- in relation to the land over which the licence is granted.

**Note—**

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

**139 Arbitration Panel**

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

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

- (1) The holder of a prospecting title must not carry out prospecting operations on any particular area of land except in accordance with an access arrangement or arrangements applying to that area of land:
  - (a) agreed (in writing) between the holder of the prospecting title and each landholder of that area of land, or
  - (b) determined by an arbitrator in accordance with this Division.
- (2) Separate access arrangements may (but need not) be agreed or determined with different landholders of the same area of land, for different areas of the same landholding or with respect to the different matters to which access arrangements relate.
- (3) Separate access arrangements may be made to preserve the confidentiality of provisions of the arrangements, to deal with persons becoming landholders at different times or for any other reason.

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

- (1) An access arrangement may make provision for or with respect to the following matters:
  - (a) the periods during which the holder of the prospecting title is to be permitted

access to the land,

- (b) the parts of the land in or on which the holder of the prospecting title may prospect and the means by which the holder may gain access to those parts of the land,
- (c) the kinds of prospecting operations that may be carried out in or on the land,
- (d) the conditions to be observed by the holder of the prospecting title when prospecting in or on the land,
- (e) (Repealed)
- (f) the compensation to be paid to any landholder of the land as a consequence of the holder of the prospecting title carrying out prospecting operations in or on the land,
- (g) the manner of resolving any dispute arising in connection with the arrangement,
- (h) the manner of varying the arrangement,
- (i) the notification to the holder of the prospecting title of particulars of any person who becomes an additional landholder.

- (1A) The Director-General may, with the concurrence of the NSW Farmers Association and the NSW Minerals Council, publish templates for use for standard access arrangements. The use of any such template is not mandatory.
- (2) An access arrangement that is determined by an arbitrator must specify the compensation, as assessed by the arbitrator, to which each landholder of the land concerned is entitled under Division 1 of Part 13.
- (2A) An access arrangement must (if the landholder so requests) specify that the holder of the prospecting title is required to pay the reasonable legal costs of the landholder in obtaining initial advice about the making of the arrangement. Those costs are not to exceed the maximum amount set by the Director-General, with the concurrence of the NSW Farmers Association and the NSW Minerals Council, by order published in the Gazette.
- (3) In the event of an inconsistency between:
  - (a) a provision of an access arrangement, and
  - (b) a provision of this Act, of the regulations or of a condition of a prospecting title,the provision referred to in paragraph (b) prevails.
- (4) If the holder of a prospecting title contravenes an access arrangement, a landholder of the land concerned may deny the holder access to the land until:

- (a) the holder ceases the contravention, or
- (b) the contravention is remedied to the reasonable satisfaction of, or in the manner directed by, an arbitrator appointed by the Director-General.

The Director-General is to make such an appointment within 48 hours after being requested to do so by the landholder and the arbitrator is to deal with the matter within 5 business days of the appointment. If the arbitrator does not deal with the matter within that time, the landholder may deny the holder of the prospecting title access to the land until such time as the matter is determined by the arbitrator.

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

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

- (1) The holder of a prospecting title may, by written notice served on each landholder of the land concerned, give notice of the holder's intention to obtain an access arrangement in respect of the land.
- (2) The notice of the holder's intention to obtain an access arrangement must, in addition to stating the holder's intention, contain:
  - (a) a plan and description of the area of land over which the access is sought sufficient to enable the ready identification of that area, and
  - (b) a description of the prospecting methods intended to be used in that area.
- (3) The holder of a prospecting title and a landholder of the land concerned may agree in writing (either before or after the prospecting title is granted) on an access arrangement.
- (4) If some but not all of the landholders of any particular land have agreed to an access arrangement, a reference in sections 143–156 to each landholder of the land or to a party to the hearing before an arbitrator does not include a reference to any of those landholders who has agreed to an access arrangement. However, the arbitrator may allow a landholder who has agreed to an access arrangement to become a party to the hearing of the matter in order to ensure consistency in the access arrangements over the same land, and may, for that purpose, replace the agreed access arrangement with the access arrangement determined by the arbitrator.
- (5) In this section, a reference to the holder of a prospecting title includes a reference to the proposed holder of a prospecting title.

#### **142A Notice to mortgagees of making of access arrangements**

- (1) Within 14 days after an access arrangement is agreed between a landholder and the

holder of a prospecting title, the holder is to serve notice of the making of the arrangement on each person (other than that landholder) who is identified in any register or record kept by the Registrar-General as a person having an interest as mortgagee in the land concerned.

- (2) Notice is not required to be served on a mortgagee under this section:
  - (a) if the mortgagee has been given a copy of the written notice referred to in section 142 to the landholder of the intention to obtain the access arrangement, or
  - (b) if the landholder with whom the access arrangement was made is not the mortgagor.
- (3) If notice is required to be served on a mortgagee under this section, the access arrangement does not come into force until the end of the period of 14 days after the notice is served, unless the holder of the prospecting title has reasonable cause to believe that the mortgagee is not a mortgagee in possession of the land concerned.
- (4) The requirement imposed by this section on the holder of a prospecting title is taken to be a condition of the prospecting title.
- (5) This section applies only to access arrangements made after the commencement of this section.

**Note—**

If the person is a mortgagee in possession of the land, an access arrangement with that person is also required under section 140 before prospecting operations may be carried out on the land.

**143 Appointment of arbitrator by agreement**

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

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

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



regulations.

- (3) The Director-General is to appoint a member of the Arbitration Panel as an arbitrator.

#### **145 Arbitration**

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

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

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

#### **147 Conciliation**

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

#### **148 Procedure**

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

hearing fails to attend the hearing.

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

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

#### **150 Further arbitration**

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

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

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

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

#### **152 Costs**

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

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

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

#### **154 Liability**

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

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

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

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

### **155 Review of determination**

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

- (7) The decision of the Land and Environment Court on a review of a determination is final and is to be given effect to as if it were the determination of an arbitrator.

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

An access arrangement determined by an arbitrator:

- (a) takes effect:
- (i) in the case of a draft access arrangement that is taken to be a final access arrangement—at the end of the period of 14 days after a copy of the draft access arrangement has been served on each of the parties, or
  - (ii) in the case of a final access arrangement prepared under section 151—when a copy of the arrangement has been served on each of the parties, or on such later date as may be specified in the arrangement, and
- (b) subject to section 141 (3), has effect as if its terms were embodied in a deed that had been duly executed by each of the parties.

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

- (1) An access arrangement may be varied in accordance with the terms of the arrangement relating to its variation.
- (2) An access arrangement may also be varied:
- (a) by the agreement of the parties to the arrangement, or
  - (b) with the consent of all the parties to the arrangement, by the arbitrator who determined the arrangement, or
  - (c) on application by any of the parties to the arrangement, by order of the Land and Environment Court if the arrangement was determined by a court or an arbitrator.
- (3) In this section, **vary** includes terminate.

### **158 Change in landholders etc**

- (1) An access arrangement with 2 or more landholders does not terminate because one of those landholders ceases to be a landholder of the land concerned.
- (2) An access arrangement does not terminate because a person becomes a landholder of all or any part of the land concerned after the arrangement was agreed or determined.
- (3) An access arrangement does not run with the land, and accordingly a person does not (except as provided by this section) become a party to the access arrangement merely because the person becomes a landholder of any of the land after the access

arrangement was agreed or determined.

- (4) If, after an access arrangement has been agreed or determined, a person becomes a landholder of any of the land to which the arrangement applies in addition to another landholder who continues to be a party to the arrangement, the provisions of the arrangement (other than those relating to the payment of compensation) apply to the new landholder as if the new landholder were a party to the arrangement, but only if the holder of the prospecting title concerned has given the new landholder a copy of the access arrangement.
- (5) If the new landholder objects to the access arrangement within 28 days after being given a copy of the arrangement, the access arrangement ceases to apply to the new landholder when whichever of the following first happens:
  - (a) the new landholder agrees to an access arrangement with the holder of the prospecting title concerned in accordance with this Division,
  - (b) an arbitrator is appointed and determines an access arrangement in relation to the new landholder in accordance with this Division,
  - (c) at the end of the period of 60 days after the new landholder objects, an access arrangement has not been so agreed or determined.

However, if an arbitrator is appointed or an application for review of a determination of the arbitrator is made, the arbitrator or the Land and Environment Court (as the case requires) may continue the existing access arrangement (with or without variation) until the determination of the arbitration or review.

- (6) Nothing in this section prevents an access arrangement being agreed or determined in respect of a proposed new landholder.

## **Division 3 Records, registration and reports**

### **159 Records**

- (1) The Director-General is to cause a record to be kept of:
  - (a) every application for an authority that is duly made under this Act, and
  - (b) every authority that is granted, renewed, transferred or cancelled under this Act.
- (2) The record must be kept in the approved form (if any) and must contain the particulars prescribed by the regulations.
- (3) The record must be kept available at such offices of the Department as may be prescribed by the regulations for inspection, free of charge, by members of the public.

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

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

**161 Registration of certain interests**

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

purposes of this section.

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

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

### **163 Colliery holdings**

- (1) The Director-General is to cause to be kept a register of colliery holdings (referred to in this section as **the register**) in such form as may be prescribed by the regulations.
- (2) The Director-General is to cause to be recorded in the register:
  - (a) such particulars as are necessary to give effect to a direction given under this section, and
    - (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
  - (b) such other particulars as may be prescribed by the regulations.
- (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.

- (3A) (Repealed)
- (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.

- (7) The Minister may, by order in writing, direct that the registration of a colliery holding be cancelled or amended so as to exclude specified land from the colliery holding.
- (8) A direction may be given under subsection (6C) or (7) whether or not an application has been made under subsection (4) or (6) in respect of the same land.
- (9) The Director-General is to cause copies of any order under subsection (6C) or (7) to be served on such persons as, in the Director-General's opinion, have a right to mine coal or to carry out mining purposes in connection with mining for coal in the land or colliery holding to which the order relates.
- (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.

#### **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.

## **Division 4 Miscellaneous**

### **164 Rights of way**

- (1) The holder of an authority (other than a mineral owner authority) is entitled to a right of way (to be indicated or described in the manner prescribed by the regulations) between the land subject to the authority and a public road.
- (2) The route of a right of way should, wherever practicable, follow the route of existing roads or tracks (particularly, in the case of land in the Western Division, those the subject of special easements under section 35S of the [Western Lands Act 1901](#)).
- (3) The holder of the authority:
  - (a) must ensure that substantial gates or grids (or, if the landholder of the land so requires, gates and grids), that comply with subsection (4), are placed wherever fences are intersected by the right of way, or
  - (b) if those fences are rabbit-proof, marsupial-proof or dog-proof fences, must ensure that rabbit-proof, marsupial-proof or dog-proof gates are placed at all such intersections.

Maximum penalty (subsection (3)): 50 penalty units.

- (4) Any such gate or grid must be of a design and construction that is adequate to prevent stock from straying.
- (5) The costs of installing and maintaining any gates or grids required by this section are to be borne by the holder of the authority.
- (6) Subject to any determination by the Land and Environment Court, a right of way is subject to such conditions as to its exercise, and to such exceptions as to the land over which it may be exercised, as may be prescribed by the regulations.
- (7) If a dispute arises as to the exercise of a right of way, any party to the dispute may apply to the Land and Environment Court for a determination of the matter.
- (8) (Repealed)

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

- (1) If land subject to an authority includes the surface of any land, a landholder who is entitled to use the land for stock watering or water drainage purposes is entitled to free and uninterrupted access, for those purposes, to the water in any stream (whether perennial or intermittent) or any lagoon or swamp (whether permanent or temporary) on or adjacent to the land.
- (2) If a dispute arises between the holder of an authority and any such landholder

concerning the right of access, the holder or the landholder may apply to the Land and Environment Court for a determination on the matter.

(3), (4) (Repealed)

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

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

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

otherwise than in accordance with the consent of any landholder of the surface of the land or, if such a landholder refuses consent or attaches unreasonable conditions to the consent, in accordance with a determination of the Land and Environment Court.

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

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

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

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

### **168 Suspension of conditions**

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

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

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

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

### **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.

### **169 (Repealed)**

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

If any dispute arises between the holders of 2 or more authorities concerning their respective rights in relation to any land or minerals, any one or more of them may apply to the Land and Environment Court for a determination on the matter.

### **171 Certain claims for damages prohibited**

- (1) No action lies against the Crown, the Minister or any person administering this Act in respect of any injury or loss suffered or incurred in relation to the exercise of any right conferred by an authority.
- (2) Subsection (1) does not affect any liability of the Crown in respect of any injury or loss suffered or incurred in relation to the exercise of any right conferred by an exploration licence held by the Director-General on behalf of the Crown.

**Note—**

The Director-General may hold an exploration licence on behalf of the Crown—see section 364.

### **172 (Repealed)**

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

- (1) If:
  - (a) an area is covered by an authority, and

(b) there is a change to the inner limit of the coastal waters of the State as defined in the *Offshore Minerals Act 1999*, and

(c) as a result of the change, the area covered by the authority comes within those coastal waters,

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

(2) If:

(a) a mining lease takes effect immediately after an exploration licence expires, and

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

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

(3) If:

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

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

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

(4) If:

(a) a mining lease takes effect immediately after an assessment lease expires, and

(b) the assessment lease took effect immediately after an exploration licence expired, and

(c) the holder of the mining lease immediately after it takes effect was the holder of the assessment lease immediately before it expired, and

(d) the holder of the assessment lease immediately after it took effect was the holder of the exploration licence immediately before it expired,

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

## **Part 9 Mineral claims**

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

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

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

**Editorial note—**

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

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

#### **173A Ancillary orders**

- (1) The Director-General may, by order published in the Gazette, prohibit, either indefinitely or until a specified date, the lodging of applications for mineral claims over specified land in a mineral claims district.
- (2) The Director-General may, by order published in the Gazette, constitute any land in a mineral claims district as a preserved mining field and may, by the same or a subsequent order so published, name the preserved mining field and fix its boundaries.
- (3) An order under this section may not be made with respect to land that is within an area for which a board of management is constituted under section 359 unless the Director-General:
  - (a) has notified the board of the proposed order, and
  - (b) has taken into consideration any submission made by the board in relation to the proposed order.

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

- (1) The Minister must cause notice of any proposed recommendation to constitute a mineral claims district to be served on:
  - (a) each Government agency that, in the opinion of the Minister, would be materially affected by the recommendation, and



(b) each council within whose area is situated the land to which the proposed recommendation relates.

(2) Such a notice:

(a) must identify the proposed boundaries of the mineral claims district, and

(b) must specify proposed conditions for inclusion in the order to be made under section 175 with respect to the mineral claims district.

### **175 Special conditions**

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

#### **Editorial note—**

For orders under this subsection see Gazettes No 101 of 20.8.1992, pp 5950, 5954; No 56 of 8.4.1994, p 1556; No 97 of 23.8.1996, p 4889; No 28 of 21.3.1997, p 1601; No 67 of 28.3.2002, p 2065; No 59 of 7.3.2003, p 4038; No 87 of 21.5.2004, p 3116; No 58 of 3.4.2009, p 1588 and No 207 of 18.12.2009, p 6149.

(2) Without limiting the generality of subsection (1), the conditions that may be specified in an order under this section include conditions as to the following matters:

(a) the shape and size of mineral claims that may be granted,

(b) the minerals in respect of which mineral claims may be granted,

(c) the maximum number of mineral claims that may be held by any one person,

(d) the nature and extent of prospecting and mining operations that may be carried out in respect of mineral claims,

(e) the period for which a mineral claim is to have effect,

(f) the security deposits to be provided and maintained, in accordance with Part 12A, in respect of the granting of mineral claims,

(g) the compensation payable in respect of the carrying out of prospecting and mining operations,

(h) the royalties payable in respect of minerals recovered under mineral claims,

(h1) the levies payable in respect of mineral claims and the purposes for which those levies may be applied,

(i) the depth below the surface of the land to which prospecting or mining operations may be carried out,

(j) the obligations of the holders of mineral claims as to the rehabilitation of land on

which prospecting or mining operations have been carried out.

- (2A) The conditions may vary by reference to specified matters including, in particular, by reference to whether or not the proposed claim area is within a preserved mining field.
- (3) The Minister must have regard to, but (except as provided by subsection (4)) is not bound by, any representations made by a person or body to whom notice has been given under section 174.
- (4) To the extent to which an order under this section applies to land within an exempted area, the order must include any conditions required by the controlling body for that area to be included in the order.
- (5) This section does not authorise the making of conditions that permit a mineral claim to be granted over land having an area of more than 2 hectares or that permit a mineral claim to have a term of more than 5 years.
- (6) A condition limiting the maximum number of mineral claims that may be held by any one person does not prevent a person from becoming the holder of further mineral claims that devolve on the person by operation of law.

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

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

Maximum penalty:

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

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

- (1) This section applies to:
  - (a) an offence referred to in section 12B, 12C or 12D, or
  - (b) an offence referred to in section 175A in connection with which the accused was found in possession of tools or equipment of a kind generally used for the purposes of prospecting or mining,

being an offence occurring within a mineral claims district.

- (2) A court that convicts a person of an offence to which this section applies may make an order (an **exclusion order**) prohibiting the person from entering the whole or any part of the mineral claims district concerned, or any other mineral claims district, for such period (not exceeding 2 years) as may be specified in the order.
- (3) An exclusion order may be made:
  - (a) at any time within 6 months after the person's conviction, and
  - (b) whether or not the person has a legal or equitable interest in, or is the holder of an authority, mineral claim or opal prospecting licence over, any of the land to which the order relates.
- (4) Before making an exclusion order against a person, a court:
  - (a) must cause written notice of the fact that it proposes to make such an order, and of the terms of the proposed order, to be served on the person, and
  - (b) must give the person a reasonable opportunity to make representations to the court with respect to the proposed order, and
  - (c) must take any such representations into consideration.
- (5) An exclusion order takes effect:
  - (a) if the person to whom it relates is present in court when it is made, at the time it is made, or
  - (b) in any other case, when it is served on the person to whom it relates.
- (6) A copy of an exclusion order must be sent to the Commissioner of Police as soon as practicable after the order is made.

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

- (1) An appeal against an exclusion order made by the Local Court may be made to the Land and Environment Court under Part 4 of the *Crimes (Appeal and Review) Act 2001* as if that order were a sentence arising from a court attendance notice dealt with under Part 2 of Chapter 4 of the *Criminal Procedure Act 1986*.
- (1A) The *Crimes (Local Courts Appeal and Review) Act 2001* applies to an appeal arising under subsection (1) with such modifications as are made by or in accordance with the regulations under that Act.
- (2) For the purposes of the *Criminal Appeal Act 1912*, an exclusion order made by a court other than the Local Court is taken to be a sentence within the meaning of that Act.

- (3) If an appeal (or an application for leave to appeal) is made against the conviction from which an exclusion order arises, the operation of the exclusion order is suspended until the appeal or application is finally determined.
- (4) Unless the appeal court orders otherwise, the exclusion order is annulled if the conviction is quashed.
- (5) The appeal court may, by order, annul or vary the exclusion order even if the conviction is not quashed.
- (6) In this section, **appeal court** means the court to which an appeal (or an application for leave to appeal) is made as referred to in subsection (3).

#### **175D Offence of contravening exclusion order**

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

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

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

## **Division 2 Applications**

#### **176 Marking out of proposed claim area**

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

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

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

#### **178 Application for granting of mineral claim**

- (1) Any person may apply for a mineral claim.
- (2) An application:
  - (a) must identify, in the manner prescribed by the regulations, the land to which it relates, and

- (b) must specify the mineral or minerals, or the mining purpose or mining purposes, in respect of which the mineral claim is sought, and
  - (c) must be accompanied by the 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
  - (f) must be accompanied by a copy of the notice served on the landholder of the land concerned under section 177 and a statutory declaration to the effect that the notice was so served.
- (3) An application for a mineral claim may not be lodged with respect to land over which the lodging of such an application is prohibited by an order in force under section 173A (1).

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

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

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

#### **180 General restrictions**

- (1) A mineral claim may not be granted over land having an area of more than 2 hectares.
- (2) A mineral claim may not be granted over land that is not situated within a mineral claims district.
- (3) (Repealed)
- (4) A mineral claim may not be granted in respect of coal.
- (5) (Repealed)

#### **181 Exempted areas**

- (1) A mineral claim may not be granted over land within an exempted area (other than

land within a mineral claims district) except with the written consent of the controlling body of that area.

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

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

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

- (a) an opal prospecting block that is the subject of an opal prospecting licence held by a person other than the applicant for the mineral claim, or
- (b) a reserve in respect of which an order prohibiting the granting of mineral claims is in force under section 367.
- (c) (Repealed)

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

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

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

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

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

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

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

- (a) ceases to be subject to the exploration licence, assessment lease, mining lease or

mineral claim referred to in that subsection, or

(b) is excluded from the application for the exploration licence, assessment lease, mining lease or mineral claim so referred to,

as the case requires, unless the Director-General makes a determination under subsection (4).

(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.

#### **184 Land subject to exploration licence**

- (1) If an application for a mineral claim is lodged in respect of land that is subject wholly or partly to one or more exploration licences (other than exploration licences that include any mineral or minerals in respect of which the claim is sought), the Director-General must cause notice of the application to be served on the holder of every such exploration licence.
- (2) A person served with such a notice may object to the granting of the mineral claim by lodging with the Director-General, on or before the date specified in the notice, a written notice stating the grounds of the objection.
- (3) Any such objection is to be taken into consideration by the Minister when determining the application.
- (4) This section does not apply to an application that is made with the written consent of the holder of every exploration licence over the land concerned.
- (5) A written consent given under this section is irrevocable.
- (6) If a mineral claim is granted over land that is subject to an exploration licence, that land ceases to be subject to the exploration licence when the mineral claim is granted.

#### **185 (Repealed)**

#### **186 Colliery holdings**

A mineral claim may not be granted over land within a colliery holding unless the Chief Inspector appointed under the [Coal Mine Health and Safety Act 2002](#) is satisfied that prospecting or mining operations may be carried out under the claim without any adverse effect on, and without any risk to the safety of the persons engaged in, the carrying out of coal mining operations in the claim area.

### **187 Agricultural land**

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

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

- (1) A mineral claim may not be granted over the surface of any land:
  - (a) on which, or within the prescribed distance of which, is situated a dwelling-house that is the principal place of residence of the person occupying it or a woolshed or shearing shed which is in use as such, or
  - (b) on which, or within the prescribed distance of which, is situated any garden, or
  - (c) on which is situated any significant improvement other than an improvement constructed or used for mining purposes only,

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

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

- (2A) A mineral claim may not be granted over land:
  - (a) which is within a preserved mining field, and
  - (b) which is privately owned land (that is, land that is not Crown land) or is Crown land held under a lease for residential purposes under the [Western Lands Act 1901](#), and
  - (c) within which is situated a dwelling-house that is the principal place of residence of its occupier,

except with the written consent of both the owner and the occupier of the dwelling-house.



- (2B) Subsection (1) does not apply to land referred to in subsection (2A).
- (3) A written consent given under this section is irrevocable.
- (4) Subsections (1) and (2A) do not apply in respect of a dwelling-house, woolshed, shearing shed, garden or significant improvement that was not in existence when the application for the mineral claim was lodged.
- (5) If a dispute arises as to whether or not subsection (1) or (2A) applies in a particular case, any party to the dispute may apply to the Land and Environment Court for a determination of the matter.
- (6) A mineral claim may not be granted over land below the surface of land referred to in subsection (1) except at such depths, and subject to such conditions, as the mining registrar considers sufficient to minimise damage to that surface.

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

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

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

#### **190 Power of Director-General in relation to applications**

- (1) After considering an application for a mineral claim, the Director-General:
  - (a) may grant to the applicant a mineral claim over all or only part of the land over which a claim was sought, or
  - (b) may 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 Director-General reasonably considers that the applicant provided false or misleading information in or in connection with the application.
- (3) If an objection to the granting of the mineral claim on the basis that the land

concerned is agricultural land has been lodged with the Director-General before the application is determined, the Director-General may defer consideration of the application until the objection has been determined.

(4)-(4B) (Repealed)

(5) If the Director-General refuses to grant a mineral claim, the Director-General is to cause notice of the decision, and of the reasons for the decision, to be served on the applicant.

(6) If more than one application is made for a mineral claim over the same area of land, the applications are to be dealt with in the order in which they are lodged or, if they are lodged simultaneously, in such order as may be prescribed by the regulations.

(7) (Repealed)

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

(1) A mineral claim may be granted in respect of any mineral or minerals, regardless of whether the mineral or minerals are publicly owned, privately owned or partly publicly and partly privately owned.

(2) A mineral claim may be granted over the surface of land, over the surface of land and the subsoil below the surface, over the surface of land and the subsoil down to a specified depth below the surface or over the subsoil between or below any specified depth or depths below the surface of land.

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

(1) A mineral claim is subject to:

(a) 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.

(2) Without limiting the generality of subsection (1), a condition may be imposed on a mineral claim requiring the holder of the claim to pay royalty to the Minister on any minerals recovered under the claim.

(3) Part 14 applies to royalty payable under such a condition in the same way as it applies to royalty payable on a mineral recovered under a mining lease.

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

A mineral claim:

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

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

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

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

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

- (1) The holder of a mineral claim granted in respect of a mineral or minerals may, in accordance with the conditions of the claim, prospect for that mineral or those minerals and mine that mineral or those minerals.
- (1A) The holder of a mineral claim may, subject to the conditions of the claim, also do any of the following in connection with any prospecting or mining authorised by subsection (1):
  - (a) erect any buildings and structures,
  - (b) exercise any rights in the nature of easements,
  - (c) remove from the claim area any timber, stone or gravel,
  - (d) carry out any mining purpose.
- (1B) The holder of a mineral claim granted in respect of a mining purpose or mining purposes only may, in accordance with the conditions of the claim, carry out the

mining purpose or mining purposes specified in the certificate relating to the claim.

(2) (Repealed)

**195A (Repealed)**

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

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

**Division 6 Renewal, transfer and cancellation of mineral claims**

**197 Application for renewal of mineral claim**

- (1) The holder of a mineral claim may, from time to time, apply for renewal of the claim.
- (2) An application for renewal of a mineral claim:
  - (a) must be accompanied by the 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.

**198 Determination of application for renewal of mineral claim**

- (1) After considering an application for renewal of a mineral claim, the Director-General:
  - (a) may renew the mineral claim, or
  - (b) may 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 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.

(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.

### **199 Partial renewal**

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

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

(1) A mineral claim that is renewed:

(a) takes effect on the date on which it is renewed or on such later date as the Director-General may determine, and

(b) ceases to have effect at the expiration of such period (not exceeding 5 years or such shorter period as the special conditions may specify) as the Director-General may determine.

(2) Any amendment of the conditions of a mineral claim takes effect on the date on which the renewal of the mineral claim takes effect.

### **200 Application for transfer of mineral claim**

(1) The holder of a mineral claim may apply for the transfer of the claim to some other person.

(2) An application for the transfer of a mineral claim:

(a) must be accompanied by the 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).

(2A) Notice of an intention to make an application under this section must be given by the applicant to the landholder of the land to which the mineral claim relates.

(3) The Director-General may defer consideration of an application that is the subject of

legal proceedings, or of an inquiry under this Act, pending the outcome of those proceedings or that inquiry.

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

- (1) After considering an application for transfer of a mineral claim, the Director-General:
  - (a) may transfer the mineral claim, or
  - (b) may 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 Director-General reasonably considers that the applicant provided false or misleading information in or in connection with an application.
- (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.
- (4) A mineral claim may not be transferred to a person if the person would consequently become the holder of more mineral claims than the maximum number allowed by this Act.

### **202 Devolution 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.

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

- (1) The Director-General may cancel a mineral claim, as to the whole or any part of the land to which it relates:
  - (a) if the holder of the claim requests the Director-General to cancel the claim, or
  - (b) if, as a result of an objection made under section 179, it is determined in accordance with Schedule 2 that the land is agricultural land, or
  - (c) if the holder of the claim contravenes 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
- (d) if the holder of the claim fails to comply with the requirements of any agreement or assessment under Part 13 in relation to the payment of compensation, or
- (e) if the holder of the claim is convicted of any offence relating to mining or minerals, or
- (f) if the land is required for a public purpose, or
- (g) if the mining registrar is ordered by the Land and Environment Court to cancel the claim, or
- (h) if the holder of the claim fails to use the land comprised in the claim in good faith for the purposes for which the claim has been granted, or uses the land for a purpose other than that for which the claim has been granted.

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

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

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

(4) (Repealed)

#### **204 Cancellations of mineral claims**

- (1) Before cancelling a mineral claim on a ground referred to in section 203 (1) (b)–(e) or (h), the Director-General:
  - (a) must cause written notice of the proposed cancellation, and of the grounds of the proposed cancellation, to be served on the holder of the claim, and
  - (b) must give the holder of the claim a reasonable opportunity to make

representations with respect to the proposed cancellation, and

(c) must take any such representations into consideration.

(2) Cancellation of a mineral claim takes effect on the date on which written notice of the cancellation is served on the holder of the claim or on such later date as is specified in the notice.

(3) Cancellation of a mineral claim does not affect any liability incurred by the holder of the claim before the cancellation took effect.

(4), (5) (Repealed)

### **205 Compensation for cancellation of mineral claims**

(1) The holder of a mineral claim is not entitled to compensation merely because the claim is cancelled.

(2) However, if a mineral claim is cancelled on the ground that the whole or any part of the land concerned is required for a public purpose, the holder of the claim is entitled to compensation, of an amount to be determined by the Director-General, for any mining improvements made to the land.

### **206 Review of decisions concerning cancellation of mineral claims**

(1) Any person who is aggrieved by the decision of the Director-General to cancel a mineral claim held by the person, or as to the amount of compensation payable as a consequence of its cancellation, may apply to the Land and Environment Court for a review of the decision.

(2) An application must be filed in the Land and Environment Court within 14 days after written notice of the decision is served on the person.

(3) Subject to any order made by the Land and Environment Court, an application for a review does not operate to stay the decision to which the application relates.

(4) The decision of the Land and Environment Court is to be given effect to as if it were the decision of the Director-General.

## **Division 7 Miscellaneous**

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

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

### **208 Withdrawal of application**

(1) An application or objection in relation to the grant, renewal, transfer or cancellation of



a mineral claim may be withdrawn by means of a notice of withdrawal lodged by the applicant or objector with the Director-General and ceases to have effect when the notice is lodged.

(2) The withdrawal of an application or objection under this section is irrevocable.

### **209 Pending applications**

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

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

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

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

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

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

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

### **210B Limitation of challenges to decisions relating to mineral claims**

- (1) The cancellation of a mineral claim, or the grant or refusal of an application for a

mineral claim or for the renewal or transfer of a mineral claim, cannot be challenged in any legal proceedings commenced later than 3 months after the date of the cancellation, grant or refusal.

- (2) A notice lodged under section 208 cannot be challenged in any legal proceedings commenced later than one month after the date of its lodgment.
- (3) This section has effect despite 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, in the case of proceedings relating to a notice referred to in subsection (2), the month referred to in subsection (2), or
  - (b) the operation of section 206.

## **211 Rights of way**

- (1) The holder of a mineral claim is entitled to a right of way (to be indicated or described in the manner prescribed by the regulations) between the claim area and a public road.
- (2) The route of a right of way:
  - (a) should, wherever practicable, follow the route of existing roads or tracks (particularly, in the case of land in the Western Division, those the subject of special easements under section 35S of the [Western Lands Act 1901](#)), and
  - (b) must accord with the provisions of any registered access management plan applying to the land.
- (3) The holder of the mineral claim:
  - (a) must ensure that substantial gates or grids (or, if the landholder of the land so requires, gates and grids), that comply with subsection (4), are placed wherever fences are intersected by the right of way, or
  - (b) if those fences are rabbit-proof, marsupial-proof or dog-proof fences, must ensure that rabbit-proof, marsupial-proof or dog-proof gates are placed at all such intersections.
- (4) Any such gate or grid must be of a design and construction that is adequate to prevent stock from straying.
- (5) The costs of installing and maintaining any gates or grids required by this section are to be borne by the holder of the mineral claim.
- (6) Subject to any determination by the Land and Environment Court, a right of way is subject to such conditions as to its exercise, and to such exceptions as to the land over which it may be exercised:

- (a) as may be prescribed by the regulations, or
  - (b) as may be specified in any registered access management plan applying to the land.
- (7) If a dispute arises as to the exercise of a right of way, any party to the dispute may apply to the Land and Environment Court for a determination of the matter.
- (8) In the case of land within a mineral claims district, the conditions imposed by the Land and Environment Court under subsection (7) must not be inconsistent with the conditions specified in any registered access management plan applying to the land.
- (9) (Repealed)

Maximum penalty (subsection (3)): 50 penalty units.

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

- (1) If land subject to a mineral claim includes the surface of any land, a landholder who is entitled to use the land for stock watering or water drainage purposes is entitled to free and uninterrupted access, for those purposes, to the water in any stream (whether perennial or intermittent) or any lagoon or swamp (whether permanent or temporary) on or adjacent to the land.
- (2) If a dispute arises between the holder of the mineral claim and any such landholder concerning the right of access, the holder of the mineral claim or the landholder may apply to the Land and Environment Court for a determination on the matter.
- (3), (4) (Repealed)

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

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

- (b) remove rock or earth from the land, except in connection with mining operations, otherwise than with the consent of the landholder of the surface of the land.

Maximum penalty: 100 penalty units.

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

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

#### **215 Suspension of conditions**

- (1) The Director-General may (whether on the application of the holder of the claim or otherwise) suspend any of the conditions of a mineral claim (other than conditions of the kind referred to in section 175 (4)) for such period, or until the happening of such event, as the Director-General may determine.
- (2) The suspension of conditions of a mineral claim may be granted unconditionally or subject to such alternative conditions as the Director-General may consider appropriate.
- (3) The suspension of conditions of a mineral claim takes effect on the date on which written notice of the suspension is served on the holder of the mineral claim or on such later date as may be specified in the notice.
- (4) A condition of a mineral claim that is suspended on the application of the holder of the claim may not be suspended for more than 3 months at a time.
- (5) Section 208 applies to an application under this section in the same way as it applies to an application referred to in section 208 (1).

#### **216 (Repealed)**

#### **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 the Land and Environment Court for a determination on the matter.

#### **218 Certain claims for damages prohibited**

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

#### **218A Records**

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

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

## **219 (Repealed)**

### **219A Mineral claims district management fund**

- (1) For each mineral claims district there is to be established a district management fund into which are to be paid:
- (a) all levies paid in accordance with a condition referred to in section 175 (2) (h1) in respect of mineral claims granted or renewed over land within the district, and
  - (b) the proceeds of investment of money in the fund, and
  - (c) such other money as is required or permitted to be paid into the fund.
- (2) Money in any such fund may be used:
- (a) for any purpose specified in a condition referred to in section 175 (2) (h1) as a purpose for which levies referred to in that paragraph may be applied, and
  - (b) to cover the costs of administering the fund.
- (3) Money received for payment into a fund established under this section is to be paid into an account kept, for the purposes of the fund, in an authorised deposit-taking institution.
- (4) A fund established under this section in relation to a mineral claims district is to be administered by the Director-General.

## **Part 10 Opal prospecting licences**

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

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

- (1) The Minister may, by order published in the Gazette, constitute any prescribed land as an opal prospecting area and may, by the same or a subsequent order so published, name the area and fix its boundaries.
- (2) For the purposes of this section, **prescribed land** is:

- (a) any land held under a lease or licence for grazing purposes under the *Crown Lands Act 1989*, the *Crown Lands (Continued Tenures) Act 1989* or the *Western Lands Act 1901*, or
- (b) Crown land, or land within a reserve, other than:
  - (i) land that is held under a lease or licence (not being a lease or licence referred to in paragraph (a)) under the *Crown Lands Act 1989*, the *Crown Lands (Continued Tenures) Act 1989* or the *Western Lands Act 1901*, or
  - (ii) land that has been sold or lawfully contracted to be sold, or
  - (iii) land in respect of which a reserve trust has been established under Division 4 of Part 5 of the *Crown Lands Act 1989* or that is under the control of a council pursuant to section 48 of the *Local Government Act 1993*, or
  - (iv) land that is subject to an easement, or
  - (v) any land of a class or description prescribed by the regulations.

(3) In subsection (2):

**Crown land** has the same meaning as in the *Crown Lands Act 1989*.

**licence** includes a permissive occupancy.

**reserve** has the same meaning as in Part 5 of the *Crown Lands Act 1989*.

## 221 Notification of landholders

Before constituting any land as an opal prospecting area or adding any land to an existing opal prospecting area, the Minister must cause written notice to be served on the landholder:

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

## 222 Objections

- (1) A landholder of any land who has been served with a notice of the Minister's proposal to constitute the land as an opal prospecting area, or to add the land to an existing opal prospecting area, may, within 28 days after being so served, make an objection to the proposal on any of the following grounds:
  - (a) on the ground that the land the subject of the proposal is agricultural land, if the landholder is a person who is entitled to use the land for agricultural purposes,

- (b) on one or more grounds of the kind prescribed by the regulations.
- (2) Such an objection:
  - (a) must be lodged with the Director-General, and
  - (b) must be in the approved form.
- (3) If an objection is made on the ground referred to in subsection (1) (a), the Director-General is to determine the question of whether the land concerned is agricultural land in accordance with Schedule 2.
- (4) Unless it is earlier withdrawn, the Director-General must refer any objection made on the ground referred to in subsection (1) (b) for inquiry and report by a person having such qualifications or experience as may be prescribed by the regulations.
- (5) At the conclusion of the inquiry into the objection, the person to whom the objection has been referred must furnish the Minister with a report as to his or her findings.
- (6) An objection made on the ground referred to in subsection (1) (b) is to be determined by the Minister on the basis of the report so furnished.

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

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

### **223A Special conditions**

- (1) The Minister may, by order published in the Gazette, specify special conditions that are to apply to opal prospecting licences granted over land within any specified opal prospecting area.

- (2) Without limiting the generality of subsection (1), the conditions that may be specified in an order under this section include conditions as to the following matters:
- (a) the areas in which prospecting operations in respect of an opal prospecting block are prohibited,
  - (b) the nature and extent of prospecting operations that may be carried out in respect of opal prospecting blocks,
  - (c) the levies payable in respect of opal prospecting licences and the purposes for which those levies may be applied,
  - (d) the security deposits to be provided and maintained, in accordance with Part 12A, in respect of the granting of opal prospecting licences,
  - (e) the compensation payable in respect of the carrying out of prospecting operations under opal prospecting licences,
  - (f) the obligations of holders of opal prospecting licences as to the rehabilitation of land on which prospecting operations have been carried out,
  - (g) the program of work to be carried out under an opal prospecting licence,
  - (h) the amount of money to be expended on prospecting,
  - (i) such other matters as the Minister considers appropriate.

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

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

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

- (1) As soon as practicable after land within an opal prospecting area has been constituted as an opal prospecting block, the Minister:
- (a) must cause a map to be prepared, on which the following particulars are to be



depicted:

- (i) the boundary of the opal prospecting area,
- (ii) the boundary of each opal prospecting block within the opal prospecting area,
- (iii) the name of the opal prospecting area,
- (iv) the designation of each opal prospecting block within the opal prospecting area,
- (v) the period (not exceeding 5 years) for which an opal prospecting licence over an opal prospecting block within the opal prospecting area may be granted, and
- (vi) (Repealed)

(b) must cause a copy of the map to be furnished to the Director-General.

(2) The Minister may from time to time cause such a map to be amended:

- (a) by varying the boundary of the opal prospecting area, or
- (b) by varying the boundary of one or more opal prospecting blocks within the opal prospecting area, or
- (c) by varying the period for which an opal prospecting licence over an opal prospecting block within the opal prospecting area may be granted.
- (d) (Repealed)

(3) As soon as practicable after a map is amended, the Minister must cause a copy of the amended map to be furnished to the Director-General.

(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.

## **Division 2 Opal prospecting licences**

### **226 Applications for opal prospecting licences**

- (1) Any person may apply for an opal prospecting licence over an opal prospecting block.
- (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.

- (3) If more than one application is lodged with the Director-General in respect of the same opal prospecting block, the applications are to be dealt with in the order in which they are lodged or, if they are lodged simultaneously, in such order as may be prescribed by the regulations.

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

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

#### **228 Power of Director-General in relation to applications**

- (1) After considering an application for an opal prospecting licence, the Director-General:
  - (a) may grant an opal prospecting licence to the applicant, or
  - (b) may 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 Director-General reasonably considers that the applicant provided false or misleading information in or in connection with the application.
- (3) If the Director-General refuses to grant an opal prospecting licence, the Director-General is to cause notice of the decision, and of the reasons for the decision, to be served on the applicant.

(4)-(6) (Repealed)

### **229 Conditions of licence**

An opal prospecting licence is subject to:

- (a) any special conditions that apply, pursuant to section 223A, to the opal prospecting block over which the licence is granted, and
- (b) the conditions imposed on the holder of the licence, pursuant to section 235C, as to his or her exercise of any right of way under that section in respect of the opal prospecting block over which the licence is granted, and
- (c) the conditions to which the holder of the licence is subject pursuant to any registered access management plan in force in respect of the opal prospecting block over which the licence is granted, and
- (d) such other conditions (not inconsistent with the conditions referred to in paragraphs (a), (b) and (c)) as the Director-General may impose.

### **230 Term of licence**

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

### **231 Form of licence**

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

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

### **232 Rights under licence**

- (1) The holder of an opal prospecting licence may, in accordance with the licence, prospect for opals in the opal prospecting block over which the licence is granted.
- (1A) Despite subsection (1), the holder of an opal prospecting licence may not prospect for opals in any part of an opal prospecting block in respect of which prospecting is prohibited under section 223A.
- (2) While an opal prospecting licence is in force, no person, other than the holder of the licence, may prospect for opals in any part of the opal prospecting block to which the licence relates.
- (3) Nothing in this section prevents the holder of a mineral claim from exercising, in relation to any land within an opal prospecting block, any right conferred by the claim.

- (4) An application for a mineral claim is a nullity to the extent to which it relates to any part of an opal prospecting block in respect of which any person other than the applicant holds an opal prospecting licence.

**232A (Repealed)**

**233 Grounds of cancellation of opal prospecting licence**

- (1) The Director-General may cancel an opal prospecting licence:
- (a) if the holder of the licence requests the Director-General to cancel the licence, or
  - (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
  - (c) if the holder of the licence fails to comply with the requirements of any agreement or assessment under Part 13 in relation to the payment of compensation, or
  - (d) if the holder of the licence is convicted of any offence relating to mining or minerals, or
  - (e) if the Director-General is ordered by the Land and Environment Court to cancel the licence.
- (2) A request referred to in subsection (1) (a) must be lodged with the Director-General.

**234 Cancellations**

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

as is specified in the notice.

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

#### **234A Limitation of challenges to decisions relating to opal prospecting licences**

- (1) The cancellation of an opal prospecting licence or the grant or refusal of an application for an opal prospecting licence cannot be challenged in any legal proceedings commenced later than 3 months after the cancellation, grant or refusal.
- (2) This section has effect despite any other Act, but does not apply so as to affect any appeal from proceedings commenced within the period of 3 months referred to in subsection (1).

### **Division 3 Miscellaneous**

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

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

#### **235A Records**

- (1) 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.

#### **235B (Repealed)**

#### **235C Rights of way**

- (1) The holder of an opal prospecting licence is entitled to a right of way (to be indicated or described in the manner prescribed by the regulations) between the opal prospecting block and a public road.
- (2) The route of a right of way:
  - (a) should, wherever practicable, follow the route of existing roads or tracks

(particularly, in the case of land in the Western Division, those the subject of special easements under section 35S of the *Western Lands Act 1901*), and

- (b) must accord with the provisions of any registered access management plan applying to the land.
- (3) The holder of the opal prospecting licence:
  - (a) must ensure that substantial gates or grids (or, if the landholder of the land so requires, gates and grids), that comply with subsection (4), are placed wherever fences are intersected by the right of way, or
  - (b) if those fences are rabbit-proof, marsupial-proof or dog-proof fences, must ensure that rabbit-proof, marsupial-proof or dog-proof gates are placed at all such intersections.
- (4) Any such gate or grid must be of a design and construction that is adequate to prevent stock from straying.
- (5) The costs of installing and maintaining any gates or grids required by this section are to be borne by the holder of the opal prospecting licence.
- (6) Subject to any determination by the Land and Environment Court, a right of way is subject to such conditions as to its exercise, and to such exceptions as to the land over which it may be exercised:
  - (a) as may be prescribed by the regulations, or
  - (b) as may be specified in any registered access management plan applying to the land.
- (7) If a dispute arises as to the exercise of a right of way, any party to the dispute may apply to the Land and Environment Court for a determination of the matter.
- (8) The conditions imposed by the Land and Environment Court under subsection (7) must not be inconsistent with the conditions specified in any registered access management plan applying to the land.
- (9) (Repealed)

Maximum penalty (subsection (3)): 50 penalty units.

### **235D Opal prospecting area management fund**

- (1) For each opal prospecting area there is to be established an area management fund into which are to be paid:
  - (a) all levies paid in accordance with a condition referred to in section 223A (2) (c) in respect of opal prospecting licences granted over land within the area, and

- (b) the proceeds of investment of money in the fund, and
  - (c) such other money as is required or permitted to be paid into the fund.
- (2) Money in any such fund may be used:
- (a) for any purpose specified in a condition referred to in section 223A (2) (c) as a purpose for which levies referred to in that paragraph may be applied, and
  - (b) to cover the costs of administering the fund.
- (3) Money received for payment into a fund established under this section is to be paid into an account kept, for the purposes of the fund, in an authorised deposit-taking institution.
- (4) A fund established under this section in relation to an opal prospecting area is to be administered by the Director-General.

### **235E Pending applications**

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

### **236 (Repealed)**

## **Part 10A Access management plans for small-scale titles**

### **236A Application of Part**

- (1) This Part applies to mineral claims and opal prospecting licences (referred to collectively as ***small-scale titles***) with respect to land within an access management area.
- (2) This Part does not require an access management plan in respect of a landholder who is a native title holder if:
  - (a) the small-scale title concerned was granted or renewed after compliance with Subdivision P of Division 3 of Part 2 of the Commonwealth Native Title Act, and
  - (b) the grant or renewal of the title was not an act that attracted the expedited procedure under and within the meaning of that Subdivision.
- (3) This Part does not apply if:
  - (a) the small-scale title concerned was granted or renewed after compliance with a registered indigenous land use agreement under the Commonwealth Native Title Act, and
  - (b) the agreement provides that an access management plan is not required under this Part in respect of a landholder who is a native title holder.

### **236B Declared areas**

The Director-General may, by order published in the Gazette, constitute any land within a mineral claims district or opal prospecting area as an access management area and may, by the same or a subsequent order so published, name the area and fix its boundaries.

### **236C Alternative procedures for making access management plan**

An access management plan for land within an access management area:

- (a) may be agreed between a miners' representative and the landholder, or
- (b) may be determined by the Director-General or the Land and Environment Court in accordance with this Part,

either before or after small-scale titles are granted in relation to the land.

### **236D Matters for which access management plan to provide**

- (1) An access management plan may make provision for or with respect to the following matters:
  - (a) the rights of access that the holder of a small-scale title has in relation to the land to which the plan applies, including rights in relation to:
    - (i) access points to the land, and
    - (ii) routes of access across the land, and
    - (iii) the manner in which, and the times at which, rights of access may be exercised,
  - (b) the conditions to which the holder of a small-scale title is subject in relation to his or her exercise of any such right of access, including conditions in relation to:
    - (i) maintaining routes of access, and
    - (ii) preserving the safety of persons and stock, and
    - (iii) avoiding interference with the land management practices being adopted in relation to the land affected by the right of way, and
    - (iv) environmental protection,
  - (c) the manner of resolving any dispute arising in connection with the plan,
  - (d) the manner of varying or replacing the plan,
  - (e) such other matters as the parties to the plan may agree to include in the plan.
- (2) In the event of an inconsistency between:



- (a) a provision of an access management plan, and
  - (b) a provision of this Act, the regulations or a condition of a small-scale title,
- the provision referred to in paragraph (b) prevails.

**236E Miners' representative to seek access management plan**

- (1) A miners' representative may, by written notice served on a landholder, give notice of his or her intention to negotiate an access management plan in respect of the land.
- (2) The notice of intention to negotiate an access management plan must, in addition to stating that intention, contain:
  - (a) a plan and description of the area of land over which the access is sought, sufficient to enable the ready identification of that area, and
  - (b) a description of the mining or prospecting methods intended to be used in that area.
- (3) The miners' representative and the landholder may agree in writing on an access management plan.
- (4) An access management plan so agreed must be lodged with the Director-General for registration.

**236F Determination of access management plan by Director-General**

- (1) If the miners' representative and the landholder are unable to agree on an access management plan within 60 days after notice of intention to negotiate such a plan is served under section 236E, either of them:
  - (a) may apply to the Director-General for a determination under this section, and
  - (b) in that event, must cause a copy of the application to be served on the other.
- (2) On receiving such an application, the Director-General may determine an access management plan for the land concerned.
- (3) Before making a determination under this section, the Director-General:
  - (a) must consult with the miners' representative and the landholder concerned, and
  - (b) must give full consideration to any submissions arising from the consultation process.
- (4) On making a determination under this section, the Director-General must cause copies of the determination to be served on the landholder and the miners' representative.

- (5) At any time after receiving an application for determination of an access management plan, the Director-General:
  - (a) may decline to make such a determination, either generally or in relation to any particular matter, and
  - (b) in that event, must cause written notice of that fact to be served on the miners' representative and the landholder.

**236G Determination of access management plan by Land and Environment Court**

- (1) If the Director-General has declined to make a determination under section 236F, either generally or in relation to a particular matter, either the landholder or the miners' representative:
  - (a) may apply to the Land and Environment Court for a determination under this section, either generally or in relation to that matter, as the case may be, and
  - (b) in that event, must cause copies of the application to be served on the landholder or miner's representative, as the case requires, and on the Director-General.
- (2) On receiving such an application, the Land and Environment Court is to determine an access management plan for the land concerned, as required by the application.
- (3) The Director-General is not a party to the proceedings before the Land and Environment Court, but may nevertheless make written submissions to the Court in relation to the proposed determination.
- (4) In making a decision under this section, the Land and Environment Court must give consideration to any submissions made by the Director-General under subsection (3).
- (5) On making a determination under this section, the Land and Environment Court is to cause copies of the determination to be served on the landholder and the miners' representative.
- (6) Each party to proceedings under this section is to bear his or her own costs in relation to the proceedings.

**236H Review of Director-General's determination**

- (1) An application for the review of an access management plan determined under section 236F may be made to the Land and Environment Court by either the landholder or the miners' representative (the **parties to the determination**).
- (2) An application:
  - (a) must be accompanied by a copy of the determination to which it relates, together with a copy of any access management plan forming part of the determination, and

- (b) must be filed in the Land and Environment Court within 14 days after a copy of the determination was served on the applicant.
- (3) The applicant must cause a copy of the application to be served on the Director-General and on each of the other parties to the determination.
- (4) The Director-General is not a party to the proceedings before the Land and Environment Court, but may nevertheless make written submissions to the Court in relation to the determination under review.
- (5) In making a decision under this section, the Land and Environment Court must give consideration to any submissions made by the Director-General under subsection (4).
- (6) The decision of the Land and Environment Court on a review of a determination is final and is to be given effect to as if it were the determination of the Director-General under section 236F.
- (7) Each party to proceedings under this section is to bear his or her own costs in relation to the proceedings.

### **236I Registration of access management plans**

- (1) An access management plan agreed under section 236E or determined under section 236G must be registered by the Director-General as soon as practicable after it is lodged for registration.
- (2) An access management plan determined under section 236F must be registered by the Director-General:
  - (a) as soon as practicable after the expiry of the 14-day period referred to in section 236H (2) (b), or
  - (b) if an application for a review of the determination is made to the Land and Environment Court within that period, as soon as practicable after the Court makes its decision on the application.

### **236J Public notice of access management plans**

- (1) As soon as practicable after registering an access management plan, the Director-General must cause notice of that fact to be published in a local newspaper circulating in the area in which the land is situated.
- (2) The notice must identify the land to which the access management plan relates and indicate where copies of the access management plan may be inspected or purchased.
- (3) Copies of each registered access management plan must be kept available for inspection or purchase at the place or places indicated in the notice.

### **236K Commencement and operation of access management plan**

- (1) An access management plan takes effect on the date on which notice of its registration is published under section 236J or on such later date as may be specified in the plan in that regard.
- (2) An access management plan does not apply to land within the claim area under a mineral claim, but does apply to land within an opal prospecting block.
- (3) An access management plan does not affect any right of way to which the holder of a small-scale title was entitled under section 211 or 235C immediately before the plan took effect, and does not affect any conditions imposed under section 211 or 235C on any such right of access.
- (4) Subsection (3) ceases to have effect in relation to a small-scale title when the small-scale title ceases to have effect, and is not continued by any renewal of the small-scale title.
- (5) A later registered access management plan prevails over an earlier registered access management plan to the extent to which they relate to the same land.

### **236L Replacement of access management plans**

- (1) An access management plan may, subject to its provisions, be replaced by a new access management plan with respect to the same land.
- (2) Despite subsection (1), an access management plan under section 236G or 236H may not be replaced by a new access management plan with respect to the same land except by leave of the Land and Environment Court.

### **236M Duration of access management plans**

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

- (a) if a landholder of the land to which it relates ceases to be a landholder of the land, or
- (b) on the death of a landholder of the land to which it relates.

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

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

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

- (1) In deciding whether or not to grant an authority or mineral claim, the Minister or mining registrar is to take into account the need to conserve and protect:

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

in or on the land over which the authority or claim is sought.

- (2) The Minister or mining registrar may cause such studies (including environmental impact studies) to be carried out as the Minister or mining registrar considers necessary to enable such a decision to be made.

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

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

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

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

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

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

- (1) The conditions subject to which an authority or mineral claim is granted or renewed may include such conditions relating to:
  - (a) the rehabilitation, levelling, regrassing, reforesting or contouring of such part of the land over which the authority or claim has effect as may have been damaged or adversely affected by prospecting operations or mining operations, and
  - (b) the filling in, sealing or fencing off of excavations, shafts and tunnels,as may be prescribed by the regulations or as the Minister or mining registrar may, in any particular case, determine.

- (1A) The Minister or mining registrar may, in any particular case, determine that an authority or mineral claim be granted or renewed subject to conditions relating to the afforestation (including for carbon sequestration within the meaning of section 87A of the [Conveyancing Act 1919](#) and related environmental purposes) of such part of the land over which the authority or claim has effect as may have been damaged or adversely affected by prospecting operations or mining operations.

- (1B) However, a condition referred to in subsection (1A) may only be imposed at the request of the applicant for, or holder of, the authority or claim.

- (2) The Minister or mining registrar may amend an authority or mineral claim:
- (a) that does not contain conditions of the kind that may be imposed under this Division, or
  - (b) that does contain such conditions, being conditions that the Minister or mining registrar considers are inadequate,
- so as to include conditions or further conditions of that kind or so as to alter any such conditions.
- (3) Any conditions of the kind referred to in subsection (1) (a) or (1A) are to be in a form approved by the Commissioner of the Soil Conservation Service and after consultation with the Director of National Parks and Wildlife.
- (4) An amendment takes effect on the date on which notice of the amendment is served on the holder of the authority or mineral claim or on such later date as may be specified in the notice.
- (5) This section has effect despite anything to the contrary in section 93 of the [Environmental Planning and Assessment Act 1979](#).

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

#### **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.

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

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

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

(1) In any proceedings for the recovery of a debt due to the Crown under this Division, a certificate that is signed by the Minister and that states that a specified amount is the amount of the debt so due is admissible in evidence in all courts and is evidence of that fact.

(2) A debt due to the Crown under this Division is recoverable whether or not the person by whom it is due is prosecuted or convicted of an offence under this Division.

## **Division 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.

**landholder** includes a secondary landholder.

### **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.

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

### **243 Application of Division**

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

### **244 Definitions**

In this Division:

**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.

**mining plant** means any building, plant, machinery, equipment, tools or other property that has been used for prospecting, mining or mining purposes, whether or not affixed to land, but does not include any timber or other material used or applied in the construction or support of any shaft, drive, gallery, adit, terrace, race, dam or other mining work.

**prescribed period**, in relation to land that has ceased to be subject to an 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.

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

(1) The holder of an authority or mineral claim over land that ceases to be subject to the authority or claim:

(a) may, within the prescribed period, and

(b) must, if directed to do so by the Minister by notice in writing, within the period specified in the notice,

cause to be removed from the land any mining plant brought onto, or erected on, that land in the course of mining operations carried out under the authority or claim.

(2) The Minister may give a direction under this section even though the prescribed period has not expired.

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

(1) If mining plant is not duly removed under this Division, the Minister may direct that the mining plant be sold by public auction.

(2) Any mining plant remaining unsold after the public auction held may be sold by private treaty.

(3) The following amounts are to be deducted from the proceeds of any such sale:

(a) the costs of the sale and of any matter incidental to or connected with the sale,

(b) the costs of removing from the land concerned any mining plant remaining unsold after the public auction,

(c) any amount owing in respect of compensation for compensable loss within the meaning of Division 1 of Part 13,

(d) any other amount that the Director-General certifies to be a deductible amount.

(4) Any balance remaining is to be paid to the Chief Commissioner of Unclaimed Money

as unclaimed money, and section 10 (2) and Part 4 of the *Unclaimed Money Act 1995* apply to the balance so paid as they would have applied had the balance been paid to the Chief Commissioner under section 10 of that Act.

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

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

### **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 by the regulations, 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.

## **Part 12 Powers of entry and inspection**

### **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.

#### **247A (Repealed)**

#### **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**

#### **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).

## **Division 2 Entry in other circumstances**

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

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

### **250 Surveys and ore sampling**

- (1) The Minister may grant a permit to any registered surveyor, or any officer of the Department, to enter any land for any of the following purposes:
  - (a) the carrying out of any geological, geophysical, geochemical or other survey of the land,
  - (b) the removal of soil, rock, mineral or ore samples from the land.
- (2) The holder of a permit under this section, and any employee, agent or assistant of the holder, may, in accordance with the permit:
  - (a) enter the land to which the permit relates, and
  - (b) do on that land all such things as are reasonably necessary to achieve the purpose for which the permit was granted.

### **251 (Repealed)**

## 252 Environmental assessment

- (1) The Minister may, on the application of a person who proposes to undertake an assessment (for the purposes of this Act or the *Environmental Planning and Assessment Act 1979*) of the likely effect on the environment of the activities to be carried out under an authority or a mineral claim, grant a permit to the applicant to enter any land so as to enable the person to undertake the assessment.
- (2) (Repealed)
- (3) The holder of a permit under this section, and any employee or agent of the holder, may, in accordance with the permit:
  - (a) enter the land to which the permit relates, and
  - (b) do on that land all such things as are reasonably necessary to carry out the assessment to which the permit relates.
- (4), (5) (Repealed)
- (6) A permit under this section may not be granted in respect of land within a national park, state conservation area, regional park, historic site, nature reserve, karst conservation reserve, Aboriginal area, wildlife refuge or Aboriginal place within the meaning of the *National Parks and Wildlife Act 1974* except with the concurrence of the Minister administering that Act.
- (7) A permit under this section may not be granted in respect of land within a marine park within the meaning of the *Marine Parks Act 1997* except with the concurrence of the relevant Ministers within the meaning of that Act.

## 253 Encroachments by mining works

- (1) The Minister may, on the application of a person having the care and management of a public road or railway, grant a permit to a registered surveyor or other person to enter and inspect any land the subject of an authority or a mineral claim so as to enable the person to ascertain whether any work carried out on that land:
  - (a) is encroaching on that road or railway, or
  - (b) is likely to cause injury or damage to that road or railway or to any building or structure adjacent to that road or railway.
- (2) The Minister may, on the application of a landholder of land adjoining land the subject of an authority or a mineral claim, grant a permit to a registered surveyor or other person to enter and inspect that land so as to enable the person to ascertain whether any work carried out on that land is encroaching on the adjoining land.
- (3) The holder of a permit under this section, and any employee or agent of the holder,

may, in accordance with the permit:

- (a) enter and inspect the land to which the permit relates, and
- (b) survey that land or any part of that land, and
- (c) make plans and sections of that land or any part of that land and of any buildings, structures or works situated on that land.

#### **254 Permit to enter land**

- (1) Subject to the regulations, the Director-General may grant a permit to any person to enter any land so as to enable the person to inspect or mark out a proposed mineral claim, to inspect an opal prospecting block or to comply with the conditions of a mineral claim or opal prospecting licence.
- (2) Subject to the regulations, the holder of a permit under this section, and any employee or agent of the holder, may, in accordance with the permit:
  - (a) enter the land to which the permit relates, and
  - (b) do all such things as are reasonably necessary for the purpose of inspecting or marking out a proposed mineral claim, inspecting an opal prospecting block or complying with the conditions of any mineral claim or opal prospecting licence.
- (3) A permit under this section may not be granted over any land:
  - (a) on which, or within the prescribed distance of which, is situated a dwelling-house that is the principal place of residence of the person occupying it or a woolshed or shearing shed that is in use as such, or
  - (b) on which, or within the prescribed distance of which, is situated any garden, or
  - (c) on which is situated any significant improvement other than an improvement constructed or used for mining purposes only.
- (4) The **prescribed distance** is:
  - (a) 200 metres (or, if a greater distance is prescribed by the regulations, the greater distance) for the purposes of subsection (3) (a), and
  - (b) 50 metres (or, if a greater distance is prescribed by the regulations, the greater distance) for the purposes of subsection (3) (b).

### **Division 3 Exercise of power of entry**

#### **255 (Repealed)**

### **255A Restriction of power of entry: permit holders**

- (1) A power conferred by this Act to enter any land, or to do anything on any land, pursuant to a permit may not be exercised by any person or persons unless he or she (or, if more than one, one of them):
  - (a) is in possession of the permit, and
  - (b) gives reasonable notice to the landholder of his or her intention to exercise the power, and
  - (c) exercises the power at a reasonable time, and
  - (d) produces the permit if required to do so by the landholder.
- (2) If damage is caused by the holder of a permit exercising a power of entry under the permit, the landholder is entitled to payment from the holder of the permit of a reasonable amount of compensation unless the landholder obstructed, hindered or restricted the holder of the permit in the exercise of the power.
- (3) In this section, **landholder** includes a secondary landholder.

### **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.

## **Division 4 Miscellaneous**

### **258 Conditions of permit**

- (1) A permit is subject to such conditions as are specified in the permit.
- (2) A holder of a permit who contravenes any condition of the permit is guilty of an offence.

Maximum penalty: 5 penalty units.

### **259 Term of permit**

Unless sooner cancelled, a permit remains in force for such period not exceeding:

- (a) except as provided by paragraph (b), 12 months from the date it is granted, or
- (b) in the case of a permit under section 254, 28 days from the date it is granted, as is specified in the permit.

### **260 Form of permit**

A permit must be in the form prescribed by the regulations, must be signed by the person by whom it is granted and must include the following particulars:

- (a) a statement to the effect that it has been granted under this Act,
- (b) the name of the person to whom it has been granted,
- (c) the nature of the powers it confers,
- (d) a description of the land over which it is granted,
- (e) the conditions to which it is subject,
- (f) the period for which it is to have effect.

### **261 Cancellation of permit**

- (1) The Minister may, for such reason as the Minister thinks fit, cancel a permit that has been granted by the Minister.
- (2) (Repealed)
- (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.

## **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.

## **Part 13 Compensation**

### **Division 1 Prospecting and mining**

#### **262 Definition**

In this Division:

**compensable loss** means loss caused, or likely to be caused, by:

- (a) damage to the surface of land, to crops, trees, grasses or other vegetation (including fruit and vegetables) or to buildings, structures or works, being damage which has been caused by or which may arise from prospecting or mining operations, or
- (b) deprivation of the possession or of the use of the surface of land or any part of the surface, or
- (c) severance of land from other land of the landholder, or
- (d) surface rights of way and easements, or
- (e) destruction or loss of, or injury to, disturbance of or interference with, stock, or
- (f) damage consequential on any matter referred to in paragraph (a)-(e),

but does not include loss that is compensable under the [Mine Subsidence Compensation Act 1961](#).

**landholder** includes a secondary landholder.

#### **263 Compensation arising under exploration licence**

- (1) On the granting of an exploration licence, a landholder of any land (whether or not subject to the licence) becomes entitled to compensation for any compensable loss suffered, or likely to be suffered, by the landholder as a result of the exercise of the rights conferred by the licence or by an access arrangement in respect of the licence.
- (2) The holder of an exploration licence may agree with a landholder as to the amount of compensation payable, but an agreement reached is not valid unless it is in writing, signed by or on behalf of the parties to the agreement.
- (3) Such of the provisions of an access arrangement (whether or not in writing) as relate

to compensation have effect as an agreement for the purposes of this section.

- (4) Payment of compensation under this section (other than compensation payable under an access arrangement agreed on as referred to in section 140 (a)) is taken, for the purposes of any security given by the licensee, to be an obligation under the licence.

#### **264 Compensation arising under assessment lease**

- (1) On the granting of an assessment lease, a landholder of any land (whether or not subject to the lease) becomes entitled to compensation for any compensable loss suffered, or likely to be suffered, by the landholder as a result of the exercise of the rights conferred by the lease or by an access arrangement in respect of the lease.
- (2) The holder of an assessment lease may agree with a landholder as to the amount of compensation payable, but an agreement reached is not valid unless it is in writing, signed by or on behalf of the parties to the agreement.
- (3) Such of the provisions of an access arrangement (whether or not in writing) as relate to compensation have effect as an agreement for the purposes of this section.
- (4) Payment of compensation under this section (other than compensation payable under an access arrangement agreed on as referred to in section 140 (a)) is taken, for the purposes of any security given by the lessee, to be an obligation under the lease.
- (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.

#### **265 Compensation arising under mining lease**

- (1) On the granting of a mining lease, a landholder of any land (whether or not subject to the lease) becomes entitled to compensation for any compensable loss suffered, or likely to be suffered, by the landholder as a result of the exercise of the rights conferred by the lease.
- (2) The holder of a mining lease may agree with a landholder as to the amount of compensation payable, but an agreement reached is not valid unless it is in writing,

signed by or on behalf of the parties to the agreement.

- (3) If a valid agreement is not entered into under this section within such period as may be prescribed by the regulations, the holder of a mining lease, or a landholder of land, may apply to the Land and Environment Court to assess the amount of compensation payable, and the Court is to assess the compensation payable.
- (4) The holder of a mining lease is not authorised to exercise any rights under the lease on the surface of any part of the mining area unless the amount of any compensation payable to a landholder under subsection (1) in respect of that part of the mining area is the subject of a valid agreement or of an assessment made by the Land and Environment Court.
- (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.

## **266 Compensation arising under mineral claim**

- (1) On the granting of a mineral claim, a landholder becomes entitled to compensation for any compensable loss suffered, or likely to be suffered, by the landholder as a result of the exercise of the rights conferred by the claim.
- (2) The compensation payable under this section consists of:
  - (a) such amounts as may be determined by agreement between the holder of the mineral claim and any landholder (other than a landholder referred to in subsection (5)), and
  - (b) such amounts as, in default of such an agreement, may be assessed by the Land and Environment Court on application made by the holder of the mineral claim or any landholder (other than a landholder referred to in subsection (5)), and
  - (c) such amounts as may be payable according to an order referred to in subsection (5).
- (3) Instead of assessing compensation in relation to a particular mineral claim, the Land and Environment Court may assess compensation in relation to:

(a) all mineral claims within a mining division, or

(b) any particular group of mineral claims within a mining division,

and, in that event, may assess compensation as a fixed amount per mineral claim or as an amount per mineral claim to be calculated at a fixed rate.

(4) The holder of a mineral claim must not exercise any right conferred by the claim unless:

(a) the holder has served notice of the holder's intention to exercise such rights on any person entitled to compensation under this section, and

(b) in respect of every landholder (other than a landholder referred to in subsection (5)):

(i) there is in place an agreement referred to in subsection (2) (a), or

(ii) any amounts referred to in subsection (2) (a) and (b) have been paid into the Land and Environment Court or to the person entitled to them, and

(c) the holder has paid into the Land and Environment Court the amount (if any) prescribed by or determined in accordance with the regulations.

(5) An amount paid into court as referred to in subsection (4) (c) is to be held by the court for payment of compensation, at the order of the court, to any landholder who (whether because he or she could not then be identified, or for any other reason) could not, at the time the holder of the mineral claim began to exercise any rights under the claim, establish an entitlement to compensation under this section, but who subsequently does so.

(6) Section 274 applies to an amount paid as referred to in subsection (4) (c):

(a) as if it were an amount assessed by the Land and Environment Court, and

(b) as if the reference, in section 274 (2), to the expiration of 6 months were a reference to the expiration of 5 years, and

(c) as if a reference, in section 274 (2) or (3), to the expiration of 12 months were a reference to the expiration of 5 years and 6 months.

### **267 Compensation arising under opal prospecting licence**

(1) On the granting of an opal prospecting licence, a landholder becomes entitled to compensation for any compensable loss suffered, or likely to be suffered, by the landholder as a result of the exercise of the rights conferred by the licence.

(2) The compensation payable under this section consists of:

- (a) such amounts as may be determined by agreement between the holder of the opal prospecting licence and any landholder (other than a landholder referred to in subsection (5)), and
  - (b) such amounts as, in default of such an agreement, may be assessed by the Land and Environment Court on application made by the holder of the opal prospecting licence or any landholder (other than a landholder referred to in subsection (5)), and
  - (c) such amounts as may be payable according to an order referred to in subsection (5).
- (3) Instead of assessing compensation in relation to a particular opal prospecting licence, the Land and Environment Court may assess compensation in relation to:
- (a) all opal prospecting licences within a mining division, or
  - (b) any particular group of opal prospecting licences within a mining division,
- and, in that event, may assess compensation as a fixed amount per licence or as an amount per licence to be calculated at a fixed rate.
- (4) The holder of an opal prospecting licence must not exercise any right conferred by the licence unless:
- (a) the holder has served notice of the holder's intention to exercise such rights on any person entitled to compensation under this section, and
  - (b) in respect of every landholder (other than a landholder referred to in subsection (5)):
    - (i) there is in place an agreement referred to in subsection (2) (a), or
    - (ii) any amounts referred to in subsection (2) (a) and (b) have been paid into the Land and Environment Court or to the person entitled to them, and
  - (c) the holder has paid into the Land and Environment Court the amount (if any) prescribed by or determined in accordance with the regulations.
- (5) An amount paid into court as referred to in subsection (4) (c) is to be held by the court for payment of compensation, at the order of the court, to any landholder who (whether because he or she could not then be identified, or for any other reason) could not, at the time the holder of the opal prospecting licence began to exercise any rights under the licence, establish an entitlement to compensation under this section, but who subsequently does so.
- (6) Section 274 applies to an amount paid as referred to in subsection (4) (c):
- (a) as if it were an amount assessed by the Land and Environment Court, and

(b) as if the reference, in section 274 (2), to the expiration of 6 months were a reference to the expiration of 5 years, and

(c) as if a reference, in section 274 (2) or (3), to the expiration of 12 months were a reference to the expiration of 5 years and 6 months.

**267A Effect of determination and payment of compensation under provisions of Commonwealth Native Title Act**

(1) If, between the Government party, an applicant for an exploration licence, assessment lease, mining lease, mineral claim or opal prospecting licence as a grantee party and a native title party, compensation is agreed on or determined under Subdivision M or P of Division 3 of Part 2 of the Commonwealth Native Title Act, the compensation so agreed on or determined is taken:

(a) to be validly agreed on or assessed for the purposes of whichever is relevant of section 263, 264, 265, 266 or 267 as if the applicant for the exploration licence, assessment lease, mining lease, mineral claim or opal prospecting licence as the grantee party was the holder under this Act of the licence, lease or claim concerned and the native title party was the landholder of the land concerned, and

(b) to be paid under and for the purposes of whichever is relevant of those sections when it is paid in accordance with section 52 of the Commonwealth Native Title Act.

(2) In this section, **Government party**, **grantee party** and **native title party** have the same meanings as they have in the Commonwealth Native Title Act.

**268 Compensation payable on transfer of certain authorities etc**

If an authority or mineral claim over any land is transferred from a person who is a landholder of the land to a person who is not a landholder of the land, the provisions of this Act relating to compensation apply to the person to whom the authority or claim is transferred.

**Division 2 Environmental assessment**

**269 Definitions**

In this Division:

**compensable loss** means loss caused, or likely to be caused, by:

(a) interference with the use of land, or

(b) damage to land, to any crops, trees, grasses or other vegetation on the land or to any buildings, structures and works on the land, or

(c) damage consequential on any matter referred to in paragraph (a) or (b),



but does not include loss that is compensable under the [Mine Subsidence Compensation Act 1961](#).

**environmental assessment permit** means a permit granted under section 252.

**landholder** includes a secondary landholder.

### **270 Compensation arising under environmental assessment permit**

- (1) If the holder of an environmental assessment permit enters any land under the authority of the permit, landholders become entitled to compensation from the holder of the permit for any compensable loss they suffer as a result of the exercise of the rights conferred by the permit.
- (2) The amount of compensation payable under this section is such amount as may be assessed by the Land and Environment Court on the application of the holder of the environmental assessment permit, the Crown or the landholder concerned.
- (3) Nothing in this section affects any remedy available to any person whose lands are entered pursuant to a power conferred by or under Part 12.

## **Division 3 Procedure for assessing compensation**

### **271 Definitions**

In this Division:

**compensable loss**, in relation to the assessment of compensation payable under Division 1 or 2, has the same meaning as it has in that Division.

**landholder** includes a secondary landholder.

### **272 Assessment of compensation**

- (1) The assessment of compensation payable under this Part:
  - (a) must be made in the manner prescribed by the regulations, and
  - (b) must not be made until notice in the approved form:
    - (i) has been published in a newspaper circulating generally in the State and in one or more newspapers circulating in the locality in which the land concerned is situated, or
    - (ii) has been served on each person who appears to the Land and Environment Court to be interested in the assessment, and
  - (c) must not exceed in amount the market value (for other than mining purposes) of the land and the buildings, structures and works situated on the land.

- (2) Any compensation agreed on or determined under Subdivision M or P of Division 3 or Division 5 of Part 2 of the Commonwealth Native Title Act for essentially the same act as an act in respect of which compensation is to be assessed under this Part must be taken into account in the assessment of compensation for the act under this Part.

### **273 Payment into court**

The total amount of compensation assessed under this Division is to be paid into the Land and Environment Court at such times, and in respect of such periods, as is specified in the order of assessment.

### **274 Payment out of court**

- (1) As compensable loss occurs, money held in the Land and Environment Court by way of compensation is to be paid out of court, on the application of any person entitled to the compensation, in accordance with the agreement or order under which it is payable.
- (2) If, after the expiration of 6 months, and before the expiration of 12 months, from the date on which the authorisation concerned ceases to have effect, the whole or any part of an amount paid into court under this section has neither been paid out nor ordered to be paid out, the person who paid the amount into court may apply to the Land and Environment Court for payment out to that person of the whole or any part of that amount, and the Court may order the payment to be made.
- (3) If, after the expiration of 12 months from the date on which the authorisation concerned ceases to have effect, the whole or any part of an amount paid into court under this section has neither been paid out nor ordered to be paid out, the Land and Environment Court may cause the whole or any part of that amount to be paid into the Treasury for payment into the Consolidated Fund.

### **275 Procedure for making assessment**

In making an assessment of compensation under this Division, the Land and Environment Court:

- (a) may make the assessment at any time and at any place, and
- (b) may make the assessment in the absence of any person who appears to be interested in the assessment, if the Court is satisfied that the person has been served with a notice in accordance with this Part, and
- (c) may adjourn the hearing of the matter to any time and any place, subject to such terms as to costs or otherwise as the Court thinks fit.

### **276 Additional assessment**

- (1) If, after an assessment of compensation has been made, it is proved to the

satisfaction of the Land and Environment Court:

- (a) that the whole of the amount paid into court under this Part has been duly paid out, and
- (b) that further compensable loss has been caused, or is likely to be caused, in respect of the land to which the assessment relates, or to other land,

the Court must, on the application of any of the parties concerned, assess that loss and order that the amount so assessed be paid by the holder of the authorisation to which the assessment relates, within the time and to the persons specified in the order.

(2) If it is proved to the satisfaction of the Land and Environment Court:

- (a) that an access arrangement does not make provision for or with respect to compensation, and
- (b) that compensable loss has been caused, or is likely to be caused, in respect of the land to which the arrangement relates,

the Court must, on the application of any of the parties concerned, assess that loss and order that the amount so assessed be paid by the holder of the authorisation to which the assessment relates, within the time and to the persons specified in the order.

(3) If it is proved to the satisfaction of the Land and Environment Court:

- (a) that the whole of the amount assessed by or in accordance with an access arrangement determined by an arbitrator as referred to in section 140 (1) (b) has been paid in accordance with the arrangement, and
- (b) that further compensable loss has been caused, or is likely to be caused, in respect of the land to which the assessment relates or to other land,

the Court must, on the application of any of the parties concerned, assess that loss and order that the amount so assessed be paid by the holder of the authorisation to which the assessment relates, within the time and to the persons specified in the order.

(4) The Land and Environment Court's decision on such an application has effect as an assessment of compensation under this Division.

(5) In making an assessment of compensation, the Land and Environment Court must have regard to:

- (a) any previous compensation agreement between the parties under this Division, and

- (b) any current or previous access arrangement between the parties that was determined, or taken to have been determined, by an arbitrator under Part 8, and
  - (c) any previous assessment under this Division of compensation payable to the landholder,
- with respect to the land to which the current assessment relates.

#### **277 Directions to furnish names and addresses**

- (1) If the Land and Environment Court considers that a landholder of any land may be entitled to compensation under this Part, the Court may, by instrument in writing served on the holder of the authorisation concerned, direct the holder to notify the Court of the name and address of the landholder.
- (2) An instrument served under this section must specify a date on or before which compliance with the direction contained in the instrument is required.

#### **278 Appeals**

- (1) The provisions of Division 3 of Part 15 apply to and in respect of an assessment made by the Land and Environment Court under this Part, and to and in respect of a person dissatisfied with such an assessment, as if the assessment were a decision of the Land and Environment Court and the person were a party to a complaint or proceeding dissatisfied with the decision.
- (2) No appeal lies against an assessment of compensation made in relation to a particular class of mineral claims or opal prospecting licences.
- (3) Subsection (2) does not prevent an appeal being made against an assessment of further compensation under section 276 merely because the original compensation was payable under an assessment of compensation made in relation to a particular class of mineral claims or opal prospecting licences.

### **Division 4 Consolidated mining leases**

#### **279 Compensation not payable on consolidation**

- (1) Compensation is not payable under this Part in respect of the grant of a consolidated mining lease.
- (2) Any compensation to which a person is entitled under this Part in respect of the grant of an existing lease that is consolidated under Part 6 is to be assessed or agreed on and paid as if the existing lease had not been consolidated.

#### **280 Compensation already due not affected by consolidation**

- (1) Except as provided by this Division, any compensation assessed, agreed on or paid

under this Part in respect of an existing lease that is consolidated under Part 6 is not affected by the consolidation of the existing lease and is to be dealt with as if the existing lease had not been consolidated.

- (2) If any compensation is paid into court under this Part in respect of an existing lease that is consolidated under Part 6, the date on which the existing lease ceases to have effect is taken, for the purposes of this Part, to be the date on which the consolidated mining lease ceases to have effect.

### **281 Compensation for further loss**

(1) If:

- (a) compensation has been assessed or agreed on under this Part in respect of an existing lease that is consolidated under Part 6, and
- (b) the date of expiry of the consolidated mining lease is later than the date on which the existing lease would have expired if it had not been consolidated, and
- (c) it is proved to the satisfaction of the Land and Environment Court that:
  - (i) further loss has been caused in respect of the land to which the assessment or agreement related, or in respect of other land, after the date on which the existing lease would have so expired, being compensable loss within the meaning of Division 1, and
  - (ii) in the case of an assessment, the whole of the amount paid into court pursuant to this Part has been duly paid out,

the Court is to assess the loss in accordance with Division 3 and order that the amount so assessed be paid by the holder of the consolidated mining lease to which the assessment relates, within the time and to the persons specified in the order.

- (2) The provisions of section 276 have effect with respect to a consolidated mining lease even though the assessment referred to in that section relates to an existing lease that has been consolidated under Part 6.

## **Division 5 Native title compensation payable by holders of authorities**

### **281A Application of Division**

This Division applies to the grant, renewal or variation of an authority under this Act after the commencement of this Division.

### **281B Compensation payable by holders of authority**

If compensation is payable under section 24MD or 24NA of the Commonwealth Native Title Act in respect of an act to which this Division applies that is attributable to the State, the holder of the authority concerned at the time of the grant, renewal or variation is

declared, in accordance with section 24MD (4) (b) (i) or 24NA (as the case requires) of that Act, to be liable to pay the compensation.

## **Part 14 Royalty**

### **Division 1 Publicly owned minerals**

#### **282 Liability to pay royalty—publicly owned minerals**

- (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.
- (2) Royalty that is payable to the Minister under a condition of a mining lease (being a condition of the kind referred to in section 70 (4)) is payable in addition to, and not instead of, royalty payable under this Division.

#### **283 Rate of royalty**

- (1) Royalty on a publicly owned mineral is payable under this Division:
  - (a) at the base rate prescribed by the regulations in respect of that mineral, and
  - (b) if the regulations so provide—at the additional rate prescribed by the regulations in respect of that mineral.
- (2) Royalty under this Division is payable on a publicly owned mineral at the rate or rates applicable as at the time the material from which it is recovered is extracted from the land.
- (3) A rate of royalty prescribed for the purposes of this Division may be prescribed:
  - (a) as a percentage of the value of minerals recovered from the land, or
  - (b) as an amount payable on the basis of any specified measurement of minerals recovered from the land, or
  - (c) by reference to such other matters as the Minister determines.
- (4) The quantity of minerals recovered is to be calculated (whether by volume or by weight) in the manner prescribed by the regulations.
- (5) The value of minerals recovered is to be calculated (whether by volume or by weight)

in the manner determined by the Minister.

## **Division 2 Privately owned minerals**

### **284 Liability to pay royalty—privately owned minerals**

- (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.
- (2) If royalty (including any interest on royalty) is paid to or recovered by the Minister in respect of a privately owned mineral, the Minister is to pay:
  - (a) seven-eighths of the amount so paid or recovered to the owner of the mineral, and
  - (b) one-eighth of the amount so paid or recovered to the Treasurer for payment into the Consolidated Fund.
- (3) This section does not apply to a mining (mineral owner) lease.

### **285 Rate of royalty**

Royalty is payable under this Division:

- (a) except as provided by paragraph (b)—at the base rate prescribed under section 283 (1) (a) in respect of the mineral concerned, or
- (b) in the case of a mineral other than coal—at such other rate as may be agreed on between the holder of the mineral claim or authority concerned and the owner of the mineral.

## **Division 3 Petroleum**

### **286 Royalty payable on petroleum recovered under mining lease for coal**

- (1) The holder of a mining lease for coal who recovers petroleum from a mining area by virtue of the fact that, under section 78, petroleum is included in the lease is liable to pay royalty to the Minister on the petroleum recovered.
- (2) The amount payable as royalty under this Division in respect of petroleum is the rate prescribed for the purposes of this Division by or under the [Petroleum \(Onshore\) Act 1991](#).

- (3) Royalty under this Division is payable on petroleum at the rate or rates applicable as at the time the petroleum is recovered from the land.
- (4) This section does not apply to methane recovered in conjunction with coal mining operations.

## **Division 3A Coal reject**

### **286A Definition of coal reject**

In this Division:

**coal reject** means the by-product of the mining or processing of coal that contains a mixture of coal and other substances (such as shale) and has either an energy value (the maximum energy capable of being produced by it on combustion) of less than 16 gigajoules per tonne (dry weight) or contains more than 35 per cent ash (by dry weight).

### **286B Royalty on coal in coal reject**

- (1) Royalty is not payable on the coal in coal reject recovered under a mining lease until the coal reject is used or disposed of.
- (2) The holder of a mining lease is liable to pay royalty under this Division to the Minister on the coal in coal reject recovered under the lease if the holder uses the coal reject in producing energy or disposes of it for use in producing energy.
- (3) If royalty is payable under this Division on the coal in coal reject, Division 1 does not apply to that coal.

### **286C Rate of royalty**

- (1) Royalty on the coal in coal reject recovered under a mining lease is payable under this Division at the rate determined from time to time by the Minister, with the concurrence of the Treasurer, in respect of the lease or the class of leases concerned.
- (2) The rate of royalty on the coal in coal reject may be a zero rate or may be any other rate up to, but not exceeding, half the base rate of royalty prescribed from time to time in respect of coal under section 283 (1) (a).
- (3) In determining the rate of royalty the Minister is to have regard to:
  - (a) the energy value of the coal reject, and
  - (b) the costs associated with extracting, transporting or processing the coal reject for the purposes of use or disposal, and
  - (c) such other matters as the Minister considers appropriate.
- (4) Royalty under this Division is payable on the coal in coal reject at the rate applicable:



- (a) at the time the coal reject is used by the holder of the relevant mining lease in producing energy, or
  - (b) at the time the coal reject is disposed of by that holder for use in producing energy.
- (5) Royalty required to be calculated on the basis of the weight of coal is to be calculated by reference to dry weight.

#### **286D Evidentiary matters**

- (1) The energy value and ash content of the by-product of the mining or processing of coal recovered under a particular mining lease is to be determined, in the manner directed by the Minister, on the basis of the average energy value and average ash content of that by-product.
- (2) The Minister may by determination in writing determine any of the following:
  - (a) that the by-product, or any identifiable quantity of the by-product, of the mining or processing of coal recovered under a particular mining lease is coal reject,
  - (b) the amount of coal in the coal reject recovered under a particular mining lease or the amount of coal in any identifiable quantity of that coal reject,
  - (c) that the coal reject, or any identifiable quantity of the coal reject, recovered under a particular mining lease and used or disposed of by the holder of the lease has been used by the holder in producing energy or disposed of by the holder for use in producing energy.
- (3) The Minister's determination is evidence of the matter determined.
- (4) A determination under subsection (2) (a) or (b) is not open to dispute or challenge on the basis that the determination is not correct or accurate for any particular sample or quantity of the material concerned.

### **Division 4 Miscellaneous**

#### **287 Exemption from royalty**

- (1) If the Minister, on application by the holder of a mining lease, is satisfied that the value of publicly owned minerals recovered as a result of mining operations carried on during a royalty period was less than the appropriate amount, no royalty is payable to the Minister under this Act in respect of those minerals.
- (2) In this section:
  - appropriate amount**, in relation to a royalty period, means:
    - (a) if the royalty period is 12 months—\$2,000, and

- (b) if the royalty period is less than 12 months—such amount as bears to \$2,000 the same proportion as the number of days in the royalty period bears to 365.

**mining operations** means mining operations carried on:

- (a) on a parcel of land subject to a mining lease held by a person who is not the holder of any other mining lease, or
- (b) on 2 or more parcels of land subject to 2 or more mining leases, if the holder of each parcel is the same person and if each parcel adjoins the other or another of those parcels.

**royalty period**, in relation to a mineral recovered by a person under a mining lease, means:

- (a) the period commencing on the day on which the person first became entitled, under the mining lease, to mine the mineral, and ending on the last day of the first period in respect of which the person is required by this Act to pay royalty in respect of the mineral, or
- (b) the period commencing on the day after the last day of any period in respect of which the person is required by this Act to pay royalty in respect of the mineral and ending on the last day of the next such period, or
- (c) if, during a period referred to in paragraph (b), the person ceases to be entitled to mine the mineral on the land the subject of the mining lease—the period commencing on the day after the last day of the previous royalty period and ending on the day on which the person ceases to be so entitled.

#### **287A Waiver of payment of additional royalty for coal**

- (1) The Minister may, by order in writing made with the concurrence of the Treasurer, waive all or part of the payment by the holder of a mining lease of royalty at the additional rate prescribed in respect of coal under section 283 (1) (b).
- (2) The order may be made only if the Minister is satisfied that it is necessary for the financial viability of the mine, or mines, to which the mining lease relates, having regard to such matters as the Minister considers appropriate.
- (3) The power of the Minister to make an order under this section cannot be delegated, despite section 363.

#### **288 Trust fund**

- (1) The Minister may, by written notice served on the holder of a mining lease, require the holder to establish a trust fund, in the manner specified in the notice, and to pay into the trust fund (at the time or times so specified) a specified proportion of the money accruing from the sale of minerals (being a proportion that will, in the opinion

of the Minister, be sufficient to meet royalty payable to the Minister under this Act in respect of those minerals).

- (2) A holder of the mining lease who fails to comply with such a notice is guilty of an offence.

Maximum penalty: 100 penalty units and, in the case of a continuing offence, 10 penalty units for each day that the offence continues.

## **289 Returns**

- (1) The holder of a mining lease is to furnish to the Minister returns in such form, at such intervals, in respect of such periods and containing such information, as may be prescribed by the regulations.
- (2) The Minister may authorise the holder of a mining lease to furnish to the Minister returns in a different form, at different intervals or in respect of different periods from the form, intervals or periods so prescribed.
- (3) A person must not:
- (a) refuse or fail to comply with a requirement under this section to the extent to which the person is capable of complying with it, or
  - (b) in purported compliance with such a requirement, furnish information that the person knows to be false or misleading in a material particular.

Maximum penalty: 100 penalty units.

## **290 (Repealed)**

## **291 Payment of royalty**

- (1) Royalty payable to the Minister under this Act is payable:
- (a) except in so far as a determination under paragraph (b) has effect—at such times, and in respect of such periods, as may be specified in or determined in accordance with the regulations, or
  - (b) on demand by the Minister in respect of such periods as the Minister determines.
- (1A) If a person who is liable to pay royalty fails to pay it as required by subsection (1), the person is guilty of an offence.

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 12 months, or both, in the case of an offence 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) If an amount of royalty payable to the Minister is not paid:

- (a) by the time that it becomes payable in accordance with the regulations, or
- (b) within 28 days of the demand for its payment,

interest is, if the Minister so directs, to be added to the amount due at such rate as the Minister determines.

(3) The regulations may make provision for or with respect to the manner in which royalty payable to the Minister under this Act is to be paid and, in particular, may require that payment of any royalty referred to in the regulations is to accompany a return made under this Part.

## **292 Recovery of royalty**

- (1) Royalty, and any interest on the royalty, payable to the Minister under this Act are debts due to the Crown and are recoverable in a court of competent jurisdiction.
- (2) A certificate that is signed by the Minister and that states that on a date, or during a period, specified in the certificate, an amount of royalty or interest so specified was payable to the Minister under this Act by a person so specified is admissible in evidence in all courts and is evidence of the fact or facts so certified.

## **Part 15 Land and Environment Court proceedings**

### **293 Jurisdiction of Land and Environment Court**

- (1) The Land and Environment Court has jurisdiction to hear and determine proceedings relating to any of the following matters:
  - (a) the area, dimensions or boundaries of land subject to an authority or mineral claim,
  - (b) the right to the possession or occupation of any land by virtue of an authority or mineral claim,
  - (c) any question or dispute arising as to:
    - (i) a right of way, right of access to water or right of entry conferred by or under this Act, or
    - (ii) any condition imposed by or under this Act (including any condition imposed pursuant to a registered access management plan) on a person's exercise of any such right of way, right of access to water or right of entry,

- (d) the right to the use and enjoyment of water for prospecting or mining and any dispute or question relating to such a right,
- (e) trespass or encroachment on, or injury to, land subject to an authority or mineral claim, or interference with, or injury to, any mining improvement,
- (f) any demand for debt or damages arising out of prospecting or mining,
- (g) any demand for specific performance of any contract relating to any authority or mineral claim,
- (h) the right to any mineral in, or to be recovered from, any land subject to an authority or mineral claim, and the rights under, or arising out of, any contract relating to any such mineral,
- (i) any transfer or disposition of, or charge on, land subject to an authority or mineral claim,
- (j) matters concerning:
  - (i) any partnership relating to an authority or mineral claim, or to prospecting or mining, or
  - (ii) the existence, formation and dissolution of any such partnership, or
  - (iii) the taking of accounts in connection with any such partnership, or
  - (iv) the contributions of the partners as between themselves, or
  - (v) the determination of questions arising between the partners,
- (k) contributions by or between persons holding joint or several interests in an authority or mineral claim towards rent or other expenses in relation to the authority or claim,
- (l) trespass or encroachment on, or injury to, land as a result of prospecting or mining,
- (m) trespass or encroachment on, injury to or any matter affecting, roads, railways or other property of whatever kind constructed, held or occupied under this Act,
- (n) the partition, sale, disposal or division of any mining improvements, or the proceeds of the sale of any mining improvements, held by 2 or more persons,
- (o) any question or dispute arising as to the working or management of land subject to an authority or mineral claim,
- (p) all rights claimed in, under or in relation to an authority or mineral claim or purported authority or mineral claim,

- (q) any question or dispute as to:
  - (i) the validity of an authority, mineral claim or opal prospecting licence, or
  - (ii) the decision of a decision-maker in relation to an application for the granting, renewal or transfer of an authority, a mineral claim or opal prospecting licence, or
  - (iii) the decision of a decision-maker to cancel an authority, a mineral claim or opal prospecting licence,
- (r) any question or dispute in connection with a consolidated mining lease arising under section 109, including any question or dispute concerning the rights and obligations conferred or imposed by an interest referred to in that section or the priority of any such interest,
- (s) any question or dispute in connection with an interest (whether legal or equitable) in, or affecting, an authority or mineral claim,
- (t) any question or dispute in connection with an assessment or agreement in respect of compensation under Part 13, arising because of the transfer of an authority or mineral claim or of part of such an authority or claim,
- (u) the review of an arbitrator's determination under Division 2 of Part 8 or of the Director-General's decision referred to in section 206,
- (v) any question or dispute as to the provisions of an access arrangement or as to any matter arising as a consequence of such an arrangement,
- (w) any question or dispute as to whether section 20 (1), 31 (1), 39 (1), 49 (1), 60 (1), 62 (1) (a) or (b), 185 (1) or 188 (1) applies in a particular case,
- (x) any other matter in respect of which jurisdiction is conferred on the Court by this Act.

- (2) Nothing in this section limits or restricts the jurisdiction conferred on any other court by any other Act or law.

#### **294 Land and Environment Court may order deposit of mineral etc**

- (1) On application by any party to proceedings in the Land and Environment Court, the Court may order any other party to the proceedings to deposit, pending its decision, any earth, mineral, money or chattels:
  - (a) the right to which will, in the opinion of the Court, be put in issue in the course of those proceedings, and
  - (b) which may then be in, or at any time before the termination of the proceedings may come into, the possession or control of that other party.

- (2) Such an order must specify the thing to be so deposited and must direct the deposit to be made, at or before a time specified in the order, with a person or at a place so specified.

### **295 Land and Environment Court may grant injunction**

- (1) If an application is made to the Land and Environment Court by a person claiming to hold a legal or equitable interest in any land subject to an authority or mineral claim, or in any property, the Court may, on such terms as to costs or otherwise as it may consider just, grant an injunction restraining any specified person:
  - (a) from encroaching on, occupying, using or working the land or property, or
  - (b) from seeking, washing out, extracting or removing any earth or minerals from the land, or
  - (c) from selling or disposing of or otherwise interfering with the property, or
  - (d) from doing any act that may affect the interest concerned in the whole, or any part, of the land or property.
- (2) An injunction remains in force for the period specified in the injunction, unless it is sooner discharged.

### **296 Granting of injunctions in cases of urgency**

- (1) If an applicant for an injunction satisfies the Land and Environment Court that there are urgent reasons for granting the injunction, the Court may, in any case in which the Court might otherwise grant an injunction, grant an injunction to have effect for a period of not more than 2 months (including the day on which the injunction is made) without notice of the application having been served on any other party.
- (2) The Land and Environment Court may not grant a continuance of an injunction granted under this section, and may not grant a further injunction under this section, but application for a further injunction may be made under section 295, either during or after the period of the injunction granted under this section.

### **297 Orders protecting adjacent authorities and mineral claims**

- (1) The holder of an authority or mineral claim over land which is adjacent to:
  - (a) land that is the subject of an injunction, or
  - (b) land on which is located property that is the subject of an injunction,may apply to the Land and Environment Court for an order permitting the land or property under injunction to be worked so as to prevent or minimise damage to or depreciation of the land over which the authority or mineral claim is held.

(2) The Land and Environment Court:

(a) may order, on such terms as the Court thinks fit, such working of that land or property as in the Court's opinion will be sufficient to prevent that damage or depreciation, and

(b) may make such further order as to the cost of that working as the Court considers just.

(3) An order may not be made under this section unless the applicant shows to the satisfaction of the Land and Environment Court that the authority or mineral claim concerned will sustain damage or be materially depreciated in value by reason of the non-working of the land or property under injunction.

**298 Court may order payment of money or delivery of mineral**

(1) If any money or mineral is claimed in the Land and Environment Court, the Court may order the payment of such money or the delivery of such mineral as it may find to be due or deliverable by one party to another.

(2) If such a claim arises out of a mining partnership, adventure or interest, the Land and Environment Court may take accounts in respect of that partnership, adventure or interest, to the extent to which it may be necessary to ascertain what money or mineral (if any) is so due by one party to the other, and may make such further order as it considers just.

(3) If the Land and Environment Court orders payment of money in respect of any debt, damages, costs or otherwise, the Court may make a further order:

(a) that any mineral in the possession, and being the property, of the party directed to make the payment must (to the extent in value of the payment as estimated by the Court) be delivered up to the party entitled to the payment, and

(b) that the mineral to that extent be seized and delivered accordingly.

(4) If such a further order is made, the order for payment of money may only be enforced in respect of any balance remaining due after deducting the value of the mineral so delivered to the party entitled to payment.

**299-340 (Repealed)**

**Part 16 Mine Safety Advisory Council**

**341 Establishment of Mine Safety Advisory Council**

(1) The Minister is to establish a Mine Safety Advisory Council that includes representation from peak industry and employee organisations.

(2) The Mine Safety Advisory Council has the following functions:



- (a) providing advice to the Minister on any policy matter relating to occupational health and safety in mines,
  - (b) any other advisory function relating to occupational health and safety in mines that is prescribed by the regulations.
- (3) The regulations may make provision for or with respect to the constitution, members and procedure of the Mine Safety Advisory Council.

**342-358 (Repealed)**

**Part 17 Administration**

**Division 1 Administration**

**359 Boards of management**

- (1) The Minister may constitute a board of management for the whole or any part of New South Wales.
- (2) A board of management may exercise, in respect of the area for which it is constituted, such of the functions of the Minister or of the Director-General as are delegated to it under this Act.
- (3) The regulations may provide for the constitution of a board of management and may regulate, or provide for the regulation of, its procedure.

**360 (Repealed)**

**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.

### **362 Exclusion of personal liability**

An act or omission of:

- (a) the Minister or the Director-General, or
- (b) a member of staff of the Department, or
- (c) a body constituted under this Act, a member of any such body or a member of staff of any such body, or
- (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),

does not subject the Minister, the Director-General, or any such member or member of staff or any person so acting, personally to any action, liability, claim or demand if the act or omission was done or omitted in good faith and for the purpose of executing this Act.

### **363 Delegation of functions by Minister, Director-General or mining registrar**

- (1) The Minister may delegate any of the following functions (except this power of delegation) of the Minister to any person:
  - (a) any function under this Act,
  - (b) any function under the *Environmental Planning and Assessment Act 1979*.
- (2) The Director-General may delegate any function under this Act (except this power of delegation or any function delegated to the Director-General by the Minister) to any person.
- (2A) A mining registrar may delegate any function under this Act or the regulations (except this power of delegation or any function delegated to the mining registrar by the Minister or the Director-General) to a deputy mining registrar.
- (3) A reference in this section to a function under this Act includes a reference to a

function under the regulations and a function under a condition of an authority, a mineral claim or an opal prospecting licence.

**364 Minister etc not to be holder of an authority, mineral claim or opal prospecting licence**

- (1) Neither the Minister nor any person employed in the Department may be the holder of an authority, a mineral claim or an opal prospecting licence.
- (2) This section does not prevent the Director-General from being the holder, on behalf of the Crown, of an exploration licence for an allocated mineral in respect of land within a mineral allocation area.

**365 Disclosure of information**

- (1) A person must not disclose any information obtained in connection with the administration or execution of this Act, unless the disclosure is made:
  - (a) with the consent of the person from whom the information was obtained, or
  - (b) in connection with the administration or execution of this Act, or
  - (c) for the purposes of any legal proceedings arising out of this Act or of any report of any such proceedings, or
  - (d) (Repealed)
  - (e) with the concurrence of the Minister, or
  - (f) in accordance with a requirement imposed under the *Government Information (Public Access) Act 2009*, or
  - (g) by an inspector or a member of staff of the Department to an officer or authority engaged in administering or executing the environment protection legislation, the *Environmental Planning and Assessment Act 1979*, occupational health and safety legislation or any other legislation prescribed by the regulations.
- (2) A person employed in the Department must not use for the purposes of personal gain any information obtained in connection with the administration or execution of this Act.

Maximum penalty: 100 penalty units.

**Division 2 Classification of lands**

**366 Mining divisions**

- (1) The Governor may, by order published in the Gazette, constitute any land as a mining division and may, by the same or a subsequent order so published, name the division

and fix its boundaries.

- (2) A mining registrar is to be appointed for each mining division constituted under this section.

### **367 Reserves**

- (1) The Governor may, by order published in the Gazette, constitute any land as a reserve and may, by the same or a subsequent order so published, name the reserve and fix its boundaries.
- (2) The Governor may, by an order under this section, give any one or more of the following directions:
- (a) that no exploration licence is to be granted over land in the reserve,
  - (b) that no assessment lease is to be granted over land in the reserve,
  - (c) that no mining lease is to be granted over land in the reserve,
  - (d) that no mineral claim is to be granted over land in the reserve.
- (3) In an order constituting land as a reserve, the Governor may stipulate that the reserve is to extend only to the surface of the land, to the surface of the land and the subsoil below the surface, to the surface of the land and the subsoil to a specified depth below the surface, or to the subsoil below or between any specified depth or depths below the surface of the land.
- (4) If:
- (a) an application for an exploration licence is made or pending in respect of land that is the subject of a direction under subsection (2) (a), or
  - (b) an application for an assessment lease is made or pending in respect of land that is the subject of a direction under subsection (2) (b), or
  - (c) an application for a mining lease is made or pending in respect of land that is the subject of a direction under subsection (2) (c), or
  - (d) an application for a mineral claim is made or pending in respect of land that is the subject of a direction under subsection (2) (d),

the application is a nullity to the extent to which it is made in respect of the land the subject of the direction, but, if the application is also made in respect of other land, the application is taken to have been made in respect of that other land.

### **368 Mineral allocation areas**

- (1) The Governor may, by order published in the Gazette, constitute any land as a

mineral allocation area and may, by the same or a subsequent order so published, name the area and fix its boundaries.

**Editorial note—**

For orders under this subsection see Gazettes No 101 of 20.8.1992, p 5946; No 127 of 19.11.1993, p 6850; No 35 of 11.2.1994, p 630; No 102 of 3.7.1998, p 5258; No 81 of 16.7.1999, p 5023; No 57 of 23.3.2001, p 1494; No 100 of 22.6.2001, p 4276; No 124 of 8.8.2003, p 7884; No 37 of 24.3.2006, p 1571 and No 182 of 14.12.2007, p 9633.

- (2) A mineral allocation area may be constituted for all minerals, for specified minerals or groups of minerals or for all minerals other than specified minerals or groups of minerals.
- (3) More than one mineral allocation area may be constituted in respect of any land.

**369 Notification areas**

- (1) The Dams Safety Committee may, by order published in the Gazette in relation to a prescribed dam, declare that the land described in the order, including land under the dam, is the notification area for the dam.
- (2) A notification area is an area which underlies or surrounds a prescribed dam and in relation to which the Dams Safety Committee is required by this Act to be notified of certain proposals to grant assessment leases or mining leases.

**369A Fossicking districts**

The Minister may, by order published in the Gazette, constitute any land as a fossicking district and may, by the same or a subsequent order so published, name the district and fix its boundaries.

**370 (Repealed)**

**371 Points to be ascertained by reference to Geocentric Datum of Australia**

The position on the surface of the Earth of a point, line or area that is necessary to be determined for the purposes of this Act, or of any order, instrument or notification under this Act, is to be determined by reference to the Geocentric Datum of Australia within the meaning of the [Surveying and Spatial Information Act 2002](#).

**Division 3**

**372-376 (Repealed)**

**Division 4 Miscellaneous**

**377 Museums and laboratories**

The Minister may establish and maintain in connection with the Department:

- (a) museums for the purpose of providing instruction, by means of displays, classes, lectures or other methods, in geology, mineralogy, chemistry and engineering in their scientific and practical application to mining pursuits, and
- (b) laboratories for the assaying and testing of mineral products or for other analytical determination.

### **378 Purchase of coal bearing land**

The Minister may, from funds appropriated by Parliament, purchase on behalf of the Crown land containing seams of coal.

## **Part 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.

### **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.

## **Part 18 Supplementary**

### **379 Saving of royal prerogative**

Except as expressly provided by this Act, this Act does not affect any prerogative of the Crown in respect of gold mines and silver mines.

### **380 Saving of other Acts etc**

Except as expressly provided by this Act, this Act does not affect any other Act or law that prohibits, regulates or restricts, or that has the effect of prohibiting, regulating or restricting:

- (a) the grant, renewal or transfer of an authority, a mineral claim or an opal prospecting licence, or
- (b) the exercise of any right conferred by or under this Act in respect of an authority, a mineral claim or an opal prospecting licence.

### **381 Prospecting unaffected by epis**

- (1) If a person is authorised under this Act to prospect on any land:
  - (a) nothing in, or done under, an environmental planning instrument operates so as to prevent the person from carrying on prospecting operations on that land, and
  - (b) to the extent to which anything in, or done under, any such instrument would so operate, it is of no effect in relation to the person.
- (2) A reference in this section to an environmental planning instrument does not include a reference to a State environmental planning policy made on or after the commencement of this subsection.

#### **381A Biobank sites**

The Minister is to notify the Minister administering the [Threatened Species Conservation Act 1995](#) of the grant of any authority, mineral claim or opal prospecting licence in relation to land that is a biobank site (within the meaning of Part 7A of that Act).

### **382 Applications and tenders generally**

- (1) An application or tender under this Act must be in or to the effect of the approved form.
  - (1A) If an approved form requires the form to be completed in a specified manner, or requires specified information to be included in, attached to or furnished with the form, the form is not duly completed unless it is completed in that manner and unless it includes, or has attached to it or furnished with it, that information.
- (2) An application or tender that is required to be lodged with a person must be so lodged in such manner, and during such times, as may be prescribed by the regulations but may, if the regulations so provide, be lodged with some other person.

#### **382A 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.

### **383 Service of documents**

- (1) For the purposes of this Act, any notice or other document may be issued or given to a person, or may be served on a person:
  - (a) in the case of a natural person:
    - (i) by delivering it personally to the person, or
    - (ii) by delivering it to the place of residence, or a place of business, of the person and by leaving it there for the person with some other person apparently of or above the age of 16 years, or
    - (iii) by posting it duly stamped and addressed to the person at the place last shown in the records of the Department as the person's place of residence or business, or
  - (b) in the case of a body corporate—by leaving it with a person apparently of or above the age of 16 years at, or by sending it by post to, a registered office of the body corporate, or
  - (c) by posting it duly stamped and addressed to the person at the place indicated by the person as an address to which correspondence may be posted (including for example a post office box), or
  - (d) by sending it by facsimile or electronic transmission (including for example the Internet) to the person in accordance with arrangements indicated by the person as appropriate for transmitting documents to the person, or
  - (e) by leaving it addressed to the person at a document exchange or other place (in accordance with usual arrangements for the exchange or other place) indicated by the person as an exchange or place through which correspondence may be forwarded to the person.
- (2) If a landholder on whom a document is authorised or required under this Act to be served is absent from the State or cannot, after diligent inquiry, be found or identified, and that person's place of residence or business cannot, after diligent inquiry, be ascertained, the document may be served by affixing it on some conspicuous part of the land.
- (3) If under this Act a document is authorised or required to be served on the holder of an authority or a mineral claim and there is more than one such holder, service on any one such holder of the document, together with copies of the document addressed to the other holders, is taken to be service on all of the holders.



- (4) If a person has more than one place of business, service may be effected under this section at any of those places.
- (5) (Repealed)
- (6) A requirement of this Act to serve a document on a landholder is, if the landholder is the Crown, a requirement to serve it in the manner prescribed by the regulations.
- (7) The regulations may, in a particular case or class of cases, dispense with service on the Crown pursuant to a requirement referred to in subsection (6).
- (8) This section does not affect any other mode of issuing, giving or serving a notice or other document under any other law.

**383A Service of documents on native title holders**

- (1) If a document is authorised or required under this Act to be served on a landholder who is a native title holder, service of the document is taken to be effected in accordance with section 383 if the document is served on a registered native title body corporate in relation to the land concerned.
- (2) If no approved determination of native title (within the meaning of the Commonwealth Native Title Act) exists in relation to the land concerned:
  - (a) a document authorised or required under this Act to be served on a landholder cannot, for the purposes of serving it on a landholder who is a native title holder who cannot be identified, be served in the manner prescribed by section 383 (2), and
  - (b) such a document may, however, be served on any such landholder by serving it, in a manner authorised by section 383 (1) and (4), on:
    - (i) any representative Aboriginal/Torres Strait Islander bodies for an area that includes the land concerned, and
    - (ii) any registered native title claimants in relation to the land concerned.
- (3)-(5) (Repealed)

**383B Consent of landholders and others**

- (1) This section applies in relation to:
  - (a) the requirements of sections 31, 49, 62 and 188 that certain rights cannot be exercised or leases or mineral claims cannot be granted except with the written consent of a person or persons specified in the relevant section, and
  - (b) the provision in section 81 that certain activities may be carried out with the consent of the landholder, and

- (c) the requirement of section 140 that certain operations may not be carried out otherwise than in accordance with an access arrangement agreed with each landholder or determined by an arbitrator as referred to in section 140 (1) (b), and
  - (d) the requirements of any regulations made under section 164 (6) or 211 (6) that restrict the exercise of a right of way otherwise than in accordance with the consent of the landholder, and
  - (e) the requirements of sections 166 and 213 that certain resources cannot be utilised otherwise than in accordance with the consent of the landholder, and
  - (f), (g) (Repealed)
  - (h) the requirement of section 265 (4) that rights cannot be exercised unless the amount of compensation payable to a landholder in respect of a mining area is the subject of a valid agreement or of an assessment.
- (2) If a landholder or other person whose consent or agreement must or may be obtained for a purpose mentioned in subsection (1) (a)–(e) or in relation to whom compensation must be agreed on or assessed for the purpose mentioned in subsection (1) (h) cannot, after diligent inquiry, be found or identified:
- (a) the rights may be exercised or the lease or mineral claim may be granted without the written consent of the landholder or person concerned, or
  - (b) the operations may be carried out without the consent of the landholder, or
  - (c) the operations may be carried out in accordance with any access arrangement made with, or determined in respect of, those landholders (if any) who have been found or identified without the agreement of a landholder who has not been found or identified, or
  - (d) the right of way may be exercised without the consent of the landholder, or
  - (e) the resources may be utilised without the consent of the landholder, or
  - (f) (Repealed)
  - (g) the rights under the mining lease may be exercised without the agreement as to, or the assessment of, the compensation.
- (3) For the purposes of subsection (2), a landholder who is a native title holder is taken to have been unable, after diligent inquiry, to be identified if:
- (a) where the purpose for which the landholder's consent or agreement is required to be obtained is an act to which Subdivision P of Division 3 of Part 2 of the Commonwealth Native Title Act applies:
    - (i) notice of an intention to carry out that purpose is given by the Government

party under section 29 of that Act, and

(ii) at the expiration of the prescribed period, the landholder is neither a registered native title claimant nor a registered native title body corporate in relation to the land concerned, or

(b) where the purpose for which the landholder's consent or agreement is required to be obtained is not such an act:

(i) notice of an intention to carry out that purpose is served in the manner authorised by section 383 (1) and (4), on any representative Aboriginal/Torres Strait Islander bodies for an area that includes the land concerned, and

(ii) at the expiration of the prescribed period, the landholder is neither a registered native title claimant nor a registered native title body corporate in relation to the land concerned.

(4) In this section:

**Government party** has the same meaning as it has in the Commonwealth Native Title Act.

**prescribed period** means:

(a) in relation to a notice referred to in subsection (3) (a)—the period of 4 months referred to in section 30 of the Commonwealth Native Title Act, or

(b) in relation to a notice referred to in subsection (3) (b)—the period of 4 months commencing on service of the notice.

### **383C General immunity of landholders**

(1) The landholder of land within which any person (other than the landholder) is authorised to exercise any power or right:

(a) by or under this Act, or

(b) by any authority, mineral claim, opal prospecting licence or permit under this Act, is not subject to any action, liability, claim or demand arising as a consequence of that person's acts or omissions in the exercise, or purported exercise, of any such power or right.

(2) In this section, **landholder** includes a secondary landholder.

### **384 Defence in proceedings for defamation**

(1) A person has qualified privilege in any proceedings for defamation arising out of an objection lodged under this Act.

- (2) This section does not limit any other right, privilege or immunity that a person has as a defendant in any such proceedings.

### **385 Payment of compensation**

Any amount payable under this Act by way of compensation (other than compensation payable under an access arrangement or compensation payable under Part 13) is to be paid out of money appropriated by Parliament.

### **386 Recovery of unpaid fees etc**

Any fee or charge imposed by or under this Act may be recovered, as a debt, in any court of competent jurisdiction.

### **387 Government agencies**

- (1) The Minister may, by order published in the Gazette, designate a corporation established by an Act as a Government agency for the purposes of the definition of **Government agency** in the Dictionary of words and expressions at the end of this Act.

#### **Editorial note—**

For orders under this subsection see Gazette No 101 of 20.8.1992, p 5947.

- (2) For the purposes of this section, a State owned corporation (and any of its subsidiaries) within the meaning of the [State Owned Corporations Act 1989](#) is taken to be a corporation established by an Act.

### **387A Application of Act to former minerals**

- (1) This section applies to a substance that, having been prescribed by the regulations as a mineral for the purposes of the definition of **mineral** in the Dictionary at the end of this Act, ceases to be so prescribed.
- (2) This Act continues to apply to a substance to which this section applies as if it were a mineral and any mining lease or mineral claim in respect of the substance continues in force, subject to this Act.
- (2A) The holder of any such lease or claim remains bound by the conditions of the lease or claim (including conditions requiring payment of royalty) in accordance with this Act.
- (3) This section does not operate so as to allow the renewal or consolidation of a mining lease or mineral claim that relates only to a substance to which this section applies.

### **388 Regulations**

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is

necessary or convenient to be prescribed for carrying out or giving effect to this Act and, in particular, for or with respect to any matter referred to in Schedule 4.

- (2) A regulation may create an offence punishable by a penalty not exceeding:
  - (a) 100 penalty units, in the case of an offence committed by a corporation, or
  - (b) 50 penalty units, in the case of an offence committed by an individual.

### **389 Repeals**

- (1) The *Mining Act 1973* and the *Coal Mining Act 1973* are repealed.
- (2) The *Mining Regulations 1974* and the *Coal Mining Regulations 1974* are repealed.

### **390 References to certain officers in mining titles**

- (1) The regulations may provide that a reference in any authority, mineral claim or opal prospecting licence to the holder of a specified office within the Department is, for the purposes of the performance of any specified function in connection with the authority, claim or licence, to be read as a reference to the Minister, and the authority, claim or licence is to be construed accordingly.
- (2) Nothing in this section affects the Minister's power of delegation under section 363.

### **391 Savings, transitional and other provisions**

Schedule 6 has effect.

## **Schedule 1 Public consultation with respect to the granting of assessment leases and mining leases**

(Sections 41, 52, 63 and 64)

### **Part 1 Assessment leases**

#### **1 Notification of Government agencies and councils**

- (1) Before granting an assessment lease, the Minister must cause notice of the proposal to be served on:
  - (a) each Government agency that, in the opinion of the Minister, would be materially affected by the granting of the lease, and
  - (b) the Director of Planning, and
  - (c) each council within whose local government area the land the subject of the proposed lease is situated.
- (2) Such a notice:

- (a) must state that an application for the lease has been lodged, and
  - (b) must contain a description or a plan of the land over which the lease is sought, and
  - (c) must state that objections to the granting of the lease (on the grounds that the person or body concerned has major proposals for some other use of that land) may be made to the Minister on or before the date specified in the notice.
- (3) The date specified in a notice under this clause must be a date occurring not less than 28 days after the date of service of the notice.

## **2 Objections to granting of assessment lease**

- (1) A person or body on which a notice under this Division is served may object to the granting of an assessment lease on the grounds that the person or body has major proposals for some other use of the land.
- (2) An objection must be in writing and must be lodged with the Director-General on or before the date specified in the notice in that regard.
- (3) The Director-General is to cause a copy of any objection lodged under this clause to be referred for comment to the applicant for the assessment lease concerned.

## **3 Resolution of objections**

- (1) The Minister may cause to be taken such steps as the Minister considers appropriate in connection with any objection under this Part and, if agreement is not reached concerning the acceptance, modification or withdrawal of the objection, the matter is to be referred to the Premier.
- (2) If any matter is so referred, the Premier may give such decision as the Premier considers appropriate.
- (3) (Repealed)

## **4 Granting of assessment lease if objection made**

An assessment lease in respect of which an objection has been duly made may not be granted unless the objection is withdrawn or otherwise resolved or is rejected by the Premier.

# **Part 2 Mining leases**

## **Division 1 Notification of Government agencies where development**

## **consent not required for mining**

### **4A Application of Division**

This Division does not apply to the grant of a mining lease if a development consent (or approval under Part 3A of the *Environmental Planning and Assessment Act 1979*) is required before the land is used for obtaining minerals.

### **5 Notification of Government agencies**

- (1) Before inviting tenders for a mining lease, the Minister must cause notice of the proposal to be served on each Government agency that, in the opinion of the Minister, would be materially affected by the granting of the lease.
- (2) Such a notice:
  - (a) must state that the Minister intends to invite tenders, and
  - (b) must describe the land to which the invitation will relate, and
  - (c) must state that objections to the granting of the lease, or proposals for the inclusion in the lease of any condition, may be made to the Minister on or before the date specified in the notice.
- (3) Before granting a mining lease (otherwise than by way of tender), the Minister must cause notice of the proposal to be served on each Government agency that, in the opinion of the Minister, would be materially affected by the granting of the lease.
- (4) Such a notice:
  - (a) must state that an application for the lease has been lodged, and
  - (b) must contain a description or a plan of the land over which the lease is sought, and
  - (c) must state that objections to the granting of the lease, or proposals for the inclusion in the lease of any condition, may be made to the Minister on or before the date specified in the notice.
- (5) The date specified in a notice under this clause must be a date occurring not less than 28 days after the date of service of the notice.

### **6 Notification of Director of Planning**

- (1) Before granting a mining lease (whether by way of tender or otherwise), the Minister must cause notice of the proposal to be served on the Director of Planning.
- (2) Such a notice:
  - (a) must state that a tender for the lease or an application for the lease has been

lodged, and

- (b) must contain a description or a plan of the land over which the lease is sought, and
  - (c) must contain a detailed description of the works to be undertaken if the lease is granted, including works and activities relating to:
    - (i) the preparation of the land for mining, and
    - (ii) the rehabilitation of the land either during the carrying on of mining operations or after they have ceased, and
  - (d) must contain a copy of any environmental impact statement that is required by Part 5 of the *Environmental Planning and Assessment Act 1979* to be prepared in relation to the tender or application, and
  - (e) must state that objections to the granting of the lease, or proposals for the inclusion in the lease of any condition, may be made to the Minister on or before the date specified in the notice.
- (3) The date specified in a notice under this clause must be a date occurring not less than 28 days after the date of service of the notice.
- (4) If, before granting a mining lease, the Minister becomes aware that the detailed description contained in a notice served under this clause requires alteration for any reason, the Minister must, before granting the lease, cause notice of the alteration to be served on the Director of Planning.

## **7 Notification of Dams Safety Committee**

- (1) Before inviting tenders for a mining lease in respect of land within a notification area, the Minister must cause notice of the proposal to be served on the Dams Safety Committee.
- (2) Such a notice:
  - (a) must state that the Minister intends to invite tenders, and
  - (b) must describe the land to which the invitation will relate, and
  - (c) must state that objections to the granting of the lease on grounds relating to the safety of a prescribed dam, or proposals for the inclusion in the lease of any condition relating to the safety of the prescribed dam, may be made to the Minister on or before the date specified in the notice.
- (3) Before granting a mining lease (otherwise than by way of tender) in respect of land within a notification area, the Minister must cause notice of the proposal to be served on the Dams Safety Committee.



- (4) Such a notice:
  - (a) must state that an application for the lease has been lodged, and
  - (b) must contain a description or a plan of the land over which the lease is sought, and
  - (c) must state that objections to the granting of the lease on grounds relating to the safety of a prescribed dam, or proposals for the inclusion in the lease of any condition relating to the safety of the prescribed dam, may be made to the Minister on or before the date specified in the notice.
- (5) The date specified in a notice under this clause must be a date occurring not less than 28 days after the date of service of the notice.

### **8 Notification of controlling bodies of exempted areas**

- (1) Before inviting tenders for a mining lease, the Minister must cause notice of the proposal to be served on the controlling body of each exempted area to which the invitation will relate.
- (2) Such a notice:
  - (a) must state that the Minister intends to invite tenders, and
  - (b) must describe the land to which the invitation will relate, and
  - (c) must state that objections to the granting of the lease, or proposals for the inclusion in the lease of any condition, may be made to the Minister on or before the date specified in the notice.
- (3) Before granting a mining lease (otherwise than by way of tender), the Minister must cause notice of the proposal to be served on the controlling body of each exempted area over which the lease is sought.
- (4) Such a notice:
  - (a) must state that an application for the lease has been lodged, and
  - (b) must contain a description or a plan of the land over which the lease is sought, and
  - (c) must state that objections to the granting of the lease, or proposals for the inclusion in the lease of any condition, may be made to the Minister on or before the date specified in the notice.
- (5) The date specified in a notice under this clause must be a date occurring not less than 28 days after the date of service of the notice.

## **9 Objections to granting of mining lease**

- (1) A person or body (other than the Dams Safety Committee) on which a notice under this Division is served:
  - (a) may object to the granting of a mining lease, or
  - (b) may propose that specified conditions be included in the lease.
- (2) The Dams Safety Committee, in respect of land within a notification area:
  - (a) may object (on grounds relating to the safety of the prescribed dam) to the granting of a mining lease, or
  - (b) may propose that specified conditions relating to the safety of the prescribed dam be included in the lease.
- (3) An objection must be in writing and must be lodged with the Director-General on or before the date specified in the notice in that regard.
- (4) The Director-General is to cause a copy of any objection lodged under this clause to be referred for comment to the tenderer or applicant for the mining lease concerned.
- (5) If the Minister does not accept the objections or proposals of the Dams Safety Committee, or if the Dams Safety Committee fails to make any proposals or to inform the Minister that it does not propose to make any proposals, the matter must be dealt with in consultation with the Minister administering the [Dams Safety Act 1978](#).

## **10 Resolution of objections**

- (1) The Minister may cause to be taken such steps as the Minister considers appropriate in connection with any objection or proposal made under this Division and, if agreement is not reached concerning the acceptance, modification or withdrawal of the objection or proposal, the matter is to be referred to the Premier.
- (2) If any matter is so referred, the Premier may give such decision as the Premier considers appropriate.
- (3) (Repealed)

## **11 Granting of mining lease if objection or proposal made**

- (1) If an objection to the granting of a mining lease is duly made:
  - (a) in the case of an objection to the invitation of tenders—the invitation must not be made, or
  - (b) in the case of an objection to the granting of a mining lease—the lease must not be granted,

unless the objection is withdrawn or otherwise resolved or is rejected by the Premier.

(2) A mining lease must include:

(a) any condition proposed under this Division (unless the proposal for the inclusion of the condition is withdrawn or is rejected by the Premier) or, if such a condition is modified, the condition as so modified, and

(b) any condition directed by the Premier to be included in the lease.

(3) The failure to include a condition in a mining lease does not affect the validity of the lease, but the Minister may, by instrument in writing, amend the lease so as to include the condition omitted.

(4) The Minister must cause to be served on the holder of a mining lease amended under this clause a written notice setting out details of the amendment.

(5) Such an amendment takes effect on the date on which the notice is served or on such later date as may be specified in the notice.

## **Division 2 Landowner consent not required where development consent required for mining**

### **12 Application of Division**

This Division applies:

(a) in relation to a mining lease for a mineral or minerals, to land for which development consent is required before the land may be used for the purpose of obtaining minerals, and

(b) in relation to a mining lease for a mining purpose or mining purposes only, to land for which development consent is required before the land may be used for that purpose or those purposes.

### **13 (Repealed)**

### **14 Consent of landowner not necessary in application required by this Division**

Any requirement of the *Environmental Planning and Assessment Act 1979* that an application for development consent be accompanied by the consent of the owner of the land concerned, and any requirement of the regulations under that Act that an application for the modification of a development consent be accompanied by such a consent, does not apply to an application under this Division.

### **15 (Repealed)**

## **Division 3 Notification of councils etc where development consent not**

## **required for mining**

### **16 Application of Division**

This Division applies:

- (a) in relation to a mining lease for a mineral or minerals, to land for which development consent is not required before the land may be used for the purpose of obtaining minerals, and
- (b) in relation to a mining lease for a mining purpose or mining purposes only, to land for which development consent is not required before the land may be used for that purpose or those purposes.

### **17 Notification of councils**

- (1) Before inviting tenders for a mining lease, the Minister must cause notice of the proposal to be served on each council within whose local government area is situated the land to which the invitation relates.
- (2) Such a notice:
  - (a) must state that the Minister intends to invite tenders, and
  - (b) must describe the land to which the invitation will relate, and
  - (c) must state that objections to the granting of the lease, or proposals for the inclusion in the lease of any condition, may be made to the Minister on or before the date specified in the notice.
- (3) Before granting a mining lease (otherwise than by way of tender), the Minister must cause notice of the proposal to be served on each council within whose local government area is situated the land over which the mining lease is proposed to be granted.
- (4) Such a notice:
  - (a) must state that an application for the lease has been lodged, and
  - (b) must contain a description or a plan of the land over which the lease is sought, and
  - (c) must state that objections to the granting of the lease, or proposals for the inclusion in the lease of any condition, may be made to the Minister on or before the date specified in the notice.
- (5) The date specified in a notice under this clause must be a date occurring not less than 28 days after the date of service of the notice.

## **18 Objections to granting of mining lease**

- (1) A council on which a notice is served under this Division:
  - (a) may object to the granting of a mining lease, or
  - (b) may propose that specified conditions be included in the mining lease.
- (2) An objection must be in writing and must be lodged with the Director-General on or before the date specified in the notice in that regard.
- (3) The Director-General is to cause a copy of any objection lodged under this clause to be referred for comment to the tenderer or applicant for the mining lease concerned.

## **19 Consideration of objections**

In deciding whether or not to grant a mining lease, the Minister must take into account any objection or proposal made under this Division.

## **Division 4 Notification of owners of private land**

### **20 Application of Division**

- (1) This Division applies to a mining lease that is proposed to extend to the surface of any land.
- (2) References in this Division to:
  - (a) land, and
  - (b) a landholder,are references only to land to whose surface the lease is proposed to extend, and the landholder of any such land, respectively.

### **21 Notification of landholders**

- (1) Before inviting tenders for a mining lease to which this Division applies, the Minister must cause notice of the proposal to be served on any landholder of the land concerned.
- (2) Such a notice:
  - (a) must state that the Minister intends to invite tenders, and
  - (b) must describe the land to which the invitation will relate, and
  - (c) must state that objections to the granting of the lease on the grounds that the land is agricultural land, and claims with respect to significant improvements on the land, may be made to the Minister within 28 days after the date on which the

notice is served.

- (3) An applicant for a mining lease to which this Division applies must (within 21 days after lodging the application or, in a case to which section 383A (2) (b) applies, within 21 days after the expiration of the period referred to in that paragraph) cause notice of the application to be served on any landholder of the land concerned (except where the landholder is the applicant or is, in relation to the applicant, a related corporation).
- (4) Such a notice:
  - (a) must state that an application for the lease has been lodged, and
  - (b) must contain a description, prepared in the manner prescribed by the regulations, of the land over which the lease is sought, and
  - (c) must state that objections to the granting of the lease on the grounds that the land is agricultural land, and claims with respect to significant improvements on the land, may be made to the Minister within 28 days after the date on which the notice is served.
- (5) A copy of every notice served in accordance with subclause (3) must be lodged with the Director-General within 21 days after the date on which the notice was served, together with a statutory declaration to the effect that each such notice was served and setting out the name and address of each landholder on whom it was served.

## **22 Objections to granting of mining lease**

- (1) A landholder of any land may object to the granting of the mining lease concerned on the ground that the land, or any part of the land, over which the lease is sought is agricultural land.
- (2) An objection must be in writing and must be lodged with the Director-General on or before the date specified in the relevant notice under clause 21.
- (3) Subclause (1) does not apply if the landholder consents in writing to the granting of the mining lease over the land or if the applicant for the mining lease consents in writing to the surface of the land being excluded from the application.
- (4) A written consent given under this clause is irrevocable.
- (5) On receipt of an objection under this clause, the Director-General is to determine the objection in accordance with Schedule 2.

## **23 Agricultural land**

- (1) If land is determined to be agricultural land as a consequence of an objection under this Division:
  - (a) in the case of an objection to the invitation of tenders—the invitation must not be

made, or

(b) in the case of an objection to the granting of a mining lease—the lease must not be granted,

except with the written consent of the landholder.

- (2) A written consent given under this clause is irrevocable.
- (3) A mining lease may not be granted beneath the surface of any agricultural land except at such depths, and subject to such conditions, as the Minister considers sufficient to minimise damage to the surface.
- (4) A mining lease may nevertheless be granted over any part of land that has been determined to be agricultural land, including the surface of any such land, if the Minister considers that the granting of the lease over that part of the land is necessary to give access to any other part of the land to which the lease applies.

### **23A Identification of significant improvements**

- (1) A landholder of land to which an invitation for tenders will relate, or over which a mining lease is sought, may make a claim to the Minister that something on the land is a significant improvement.
- (2) A claim must be in writing, identifying the nature and location of the improvement, and must be lodged with the Director-General on or before the date specified in the relevant notice under clause 21.
- (3) In the case of a claim relating to an application for a mining lease, the Director-General must cause notice of the claim to be given to the applicant for the lease.
- (4) An applicant for a mining lease may give notice to the Director-General of an application to the Land and Environment Court for a determination in relation to the claim.
- (5) Anything identified in a claim as being a significant improvement is taken to be a significant improvement for the purposes of section 62 unless the Land and Environment Court finds that it is not a significant improvement in an application made under section 62 (6A).
- (6) (Repealed)

### **23B (Repealed)**

## **Division 5 Notification of other persons**

### **24 Notification of the general public**

- (1) Before inviting tenders for a mining lease, the Minister must cause notice of the

proposal to be published in the Gazette, in a newspaper circulating generally in the State and in one or more newspapers circulating in the locality in which the land is situated.

(2) Such a notice:

- (a) must state that the Minister intends to invite tenders, and
- (b) must describe the land to which the invitation will relate, and
- (c) must state that objections to the granting of the lease may be made in writing to the Minister and must explain (having regard to the provisions of clause 28) what persons are entitled to object, and
- (d) must state that such objections should be made on or before the date specified in the notice.

(3)-(5) (Repealed)

## **25 Notification of owners of prescribed dams**

(1) Before inviting tenders for a mining lease in respect of land within a notification area, the Minister must cause notice of the proposal to be served on the owner of the relevant prescribed dam.

(2) Such a notice:

- (a) must state that the Minister intends to invite tenders, and
- (b) must describe the land to which the invitation will relate, and
- (c) must state that objections to the granting of a mining lease may be made to the Minister on or before the date specified in the notice by any owner of the prescribed dam (other than a person referred to in clause 28) and may also be made under Division 1 (on grounds relating to the safety of the prescribed dam) by the Dams Safety Committee.

(3) Before granting a mining lease in respect of land within a notification area, the Minister must cause notice of the proposal to be served on the owner of the relevant prescribed dam.

(4) Such a notice:

- (a) must state that an application for the lease has been lodged, and
- (b) must contain a description or a plan of the land over which the lease is sought, and
- (c) must state that objections to the granting of the lease may be made to the



Minister on or before the date specified in the notice by any owner of the prescribed dam (other than a person referred to in clause 28) and may also be made under Division 1 (on grounds relating to the safety of the prescribed dam) by the Dams Safety Committee.

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

## **26 Objections to granting of mining lease**

- (1) Any person (other than a person referred to in clause 28) may object to the granting of a mining lease.
- (2) An objection must be in writing and must be lodged with the Director-General on or before the date specified in the relevant notice under this Division.
- (3) The Director-General is to cause a copy of any objection lodged under this clause to be referred for comment to the tenderer or applicant for the mining lease concerned.

## **27 Consideration of objections**

In deciding whether or not to invite tenders for a mining lease, or to grant a mining lease, the Minister must take into account any objection made under this Division.

## **28 Certain persons not entitled to object**

An objection may not be made under this Division:

- (a) by any person or body that is entitled to object under Division 1 or 3 to the granting of a mining lease, or
- (b) by any person who is entitled, under the *Environmental Planning and Assessment Act 1979*, to make submissions in relation to the granting of any development consent that is required before the land concerned may be used for the purpose of obtaining minerals or for one or more mining purposes.

# **Schedule 2 Agricultural land**

(Sections 179 and 222 and cl 22, Sch 1)

## **1 Definitions**

- (1) In this Schedule:

***agricultural land*** means:

- (a) land that has been sown with not less than 2 crops of an annual species during the period of 10 years immediately preceding the relevant date, or
- (b) land that has been sown with 1 crop of an annual species during the period of 10

years immediately preceding the relevant date if the relevant authority is satisfied that:

- (i) having regard to the date on which the land was brought under cultivation, it would not be reasonable to expect more than one such crop to have been sown, and
  - (ii) there was a sufficient reason for not having brought the land under cultivation at an earlier date, or
- (c) land on which:
- (i) at the relevant date, shade, shelter or windbreak trees are growing, or
  - (ii) at any time during the period of 10 years immediately preceding the relevant date, edible fruit or nut bearing trees, vines or any other perennial crop approved by the relevant authority have or has been growing, or
- (d) pastures:
- (i) that are sown with seed of a species and at a rate of application, or treated with fertiliser of a composition and at a rate of application, satisfactory to the relevant authority, and
  - (ii) that have, as a result of that sowing or treatment, maintained a level of pasture production that is substantially above that which might be expected of natural pastures, or
- (e) land that is used, to an extent acceptable to the relevant authority, for the production of grass seed, pasture legume seed, hay or silage, or
- (f) land that has a preponderance of improved species of pasture grasses.

**the relevant authority** means the Director-General or any officer of the Department authorised by the Director-General to exercise functions under this Schedule.

**the relevant date** means the date or dates with reference to which the relevant authority is required under clause 2 to decide whether or not any land is agricultural land.

- (2) For the purposes of paragraphs (a) and (b) of the definition of **agricultural land** in subclause (1), land is not to be treated as having been sown with a crop of an annual species unless, in the opinion of the relevant authority, the crop sown was carried through to a successful use.

## **2 Decision by the relevant authority as to whether or not land is agricultural land**

- (1) When the relevant authority is required to decide whether or not any land is agricultural land, the relevant authority must do so:

- (a) in the case of a reference under section 179, by deciding whether or not the land was agricultural land on the date on which the application for the mineral claim concerned was lodged, and
  - (b) in the case of a reference under section 222, by deciding whether or not the land was agricultural land on the date on which the notice, pursuant to which the objection referred to in that section was made, was served in accordance with section 221, and
  - (c) in the case of a reference under clause 22 of Schedule 1, by deciding whether or not the land was agricultural land on the date on which the invitation for tenders for the mining lease concerned was first published or the application for the mining lease concerned was lodged.
- (2) If the Director-General, when referring a question for decision under clause 22 of Schedule 1, certifies a date pursuant to clause 3 of this Schedule, the relevant authority may not decide, pursuant to subclause (1) (c), that the land concerned is agricultural land unless satisfied that it was agricultural land on the date so certified.

### **3 Date to be certified by Director-General**

When referring a question for decision under clause 22 of Schedule 1, the Director-General, if the tenderer or applicant for a mining lease over any land was, when the invitation for tenders was first published or the application was lodged, the holder of an exploration licence or mineral claim over that land, must issue to the relevant authority a certificate to that effect and as to the date on which the invitation for tenders for that licence was first published or the application for that licence or claim was lodged.

### **4 Relevant authority may decide that part only of land is agricultural land**

If the relevant authority is required to decide whether or not any land is agricultural land, nothing in this Act operates so as to prevent the relevant authority from deciding that a part only of the land is agricultural land.

## **Schedule 3 (Repealed)**

## **Schedule 4 Regulation making powers**

(Section 388)

### **1 Prospecting**

Regulating prospecting and the carrying on of operations for that purpose, the methods which may or may not be used for that purpose and the duties of specified persons in relation to prospecting operations.

## **2 Mining**

Regulating mining and the carrying on of operations for that purpose, the methods which may or may not be used for that purpose and the duties of specified persons in relation to mining operations.

## **3 Fossicking**

Regulating fossicking and the carrying on of operations for that purpose and the methods which may or may not be used for that purpose.

## **4 Administrative matters**

Prescribing the qualifications for, and the functions of, mining inspectors and other persons acting in the administration of this Act.

## **5 Mining improvements**

Regulating the construction, use and maintenance of mining improvements on Crown lands in cases where a mining lease has not been granted.

## **6 Tourist activities**

Regulating the conduct of tourist activities in mining areas.

## **7 (Repealed)**

## **8 Fees, charges and refunds**

Regulating the imposition of fees and charges and authorising the postponement, refund or waiver of fees and charges.

## **9 Statistics, records and accounts**

Providing for:

- (a) the compilation of mining statistics, and
- (b) the furnishing of information for the purpose of enabling mining statistics to be compiled, and
- (c) the keeping of records and books of account, and
- (d) the inspection of, and the taking of extracts from, records and books so kept, and
- (e) the furnishing of returns and records.

## **9A Aggregation of conditions of mining leases**

Providing for the aggregation of the labour or expenditure conditions of mining leases and the cancellation or variation of any such aggregation.

## **10 Arbitration**

Regulating arbitrator's costs under this Act and the procedure of any arbitration conducted under this Act.

## **11 (Repealed)**

## **12 Savings and transitional provisions**

Prescribing provisions of a savings or transitional nature consequent on the consolidation of any existing leases under Part 6 or the transfer of parts of assessment leases or mining leases under Part 7.

## **Schedule 5 (Repealed)**

## **Schedule 6 Savings, transitional and other provisions**

(Section 391)

## **Part 1 Regulations**

### **1 Regulations**

(1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

*Mining Act 1992*

*Mining Legislation Amendment Act 1996*

*Native Title (New South Wales) Amendment Act 1998*

*Local Courts Amendment (Part-time Magistrates) Act 1999*

*Survey (Geocentric Datum of Australia) Act 1999*

*Offshore Minerals Act 1999*

*Mining Amendment Act 1999*

*Mining and Petroleum Legislation Amendment Act 2000*

*Mining Amendment (Miscellaneous Provisions) Act 2004*

*Coal Acquisition Legislation Repeal Act 2007*

*Mining Amendment Act 2008*

*Mining Amendment (Improvements on Land) Act 2008*

*Courts and Crimes Legislation Further Amendment Act 2008*, but only in relation to

the amendments made to this Act

*Mining and Petroleum Legislation Amendment (Land Access) Act 2010*, but only in relation to the amendments made to this Act

*Courts and Crimes Legislation Further Amendment Act 2010*

- (1A) The regulations may also contain provisions of a savings or transitional nature consequent on the publication by the Surveyor-General of a notice under section 4 (2) of the *Survey (Geocentric Datum of Australia) Act 1999*.
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or the date of publication of the notice under section 4 (2) of the *Survey (Geocentric Datum of Australia) Act 1999* (as the case may be), or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than its date of publication in the Gazette, the provision does not operate so as:
- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before its date of publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted before the date of its publication.

## Part 2 Provisions consequent on the enactment of the **Mining Act 1992**

### 2 Definitions

- (1) In this Part:

**entitlement** means:

- (a) an authority, claim or opal prospecting licence granted or deemed to be granted under the *Mining Act 1973*, or
- (b) an authorisation or concession granted or deemed to be granted under the *Coal Mining Act 1973*.

**the relevant commencement** means:

- (a) in relation to a provision of the *Mining Act 1973* or the *Coal Mining Act 1973*—the date on which the provision is repealed, and
- (b) in relation to a provision of this Act—the date on which the provision commences.

- (2) A reference in this Part to the granting of an entitlement includes, in the case of a

claim under the *Mining Act 1973*, a reference to the registration of the claim.

### **3 Mining Act 1973 or the [Coal Mining Act 1973](#) to continue to apply to certain applications**

- (1) This clause applies to an application for, or for the renewal or transfer of:
  - (a) any authority, claim or opal prospecting licence under the *Mining Act 1973*, or
  - (b) any authorisation or concession under the [Coal Mining Act 1973](#).
- (2) The provisions of the *Mining Act 1973* or the [Coal Mining Act 1973](#) continue to apply to applications and tenders duly lodged before the relevant commencement as if this Act had not been enacted.
- (3) Clause 4 applies to:
  - (a) an authority, claim or opal prospecting licence granted under the *Mining Act 1973* by virtue of this clause, and
  - (b) an authorisation or concession granted under the [Coal Mining Act 1973](#) by virtue of this clause,as if it had been granted immediately before the relevant commencement.
- (4) A reference in this clause to an application or tender that has been duly lodged includes a reference to an application or tender that, although not duly lodged, is an application or tender that could lawfully be dealt with under the *Mining Act 1973* or the [Coal Mining Act 1973](#).

### **4 Existing mining entitlements**

- (1) An exploration licence granted under the *Mining Act 1973* or an exploration permit or authorisation granted under the [Coal Mining Act 1973](#) and in force immediately before the relevant commencement is taken to be an exploration licence granted under this Act.
- (2) A mining lease or mining purposes lease granted under the *Mining Act 1973* or a coal lease granted under the [Coal Mining Act 1973](#) and in force immediately before the relevant commencement is taken to be a mining lease granted under this Act.
- (3) A claim registered under the *Mining Act 1973* and in force immediately before the relevant commencement is taken to be a mineral claim granted under this Act.
- (4) An opal prospecting licence granted under the *Mining Act 1973* and in force immediately before the relevant commencement is taken to be an opal prospecting licence granted under this Act.
- (5) In this clause, a reference to any form of entitlement granted under the *Mining Act 1973* or the [Coal Mining Act 1973](#) includes a reference to an entitlement that is

deemed to have been granted under either of those Acts.

## **5 Directions concerning certain mining leases**

A direction in force under section 92 of the *Mining Act 1973* immediately before the relevant commencement is taken to be a direction under section 77 of this Act.

## **6 Directions concerning certain coal leases**

- (1) Any coal lease that is the subject of a direction given under section 72 of the *Coal Mining Act 1973* and in force immediately before the relevant commencement is taken to have been amended so as to include that mineral as a mineral to which the corresponding mining lease under this Act applies.
- (2) Any direction given under section 72A of the *Coal Mining Act 1973* and in force immediately before the relevant commencement is taken to be a direction in force under section 78 of this Act.

## **7 Directions to protect the environment**

- (1) Any condition imposed on an authority, authorisation or concession in accordance with section 118, 119 or 119A of the *Mining Act 1973* or section 94, 95 or 95A of the *Coal Mining Act 1973* is taken to have been imposed under Division 2 of Part 11 of this Act.
- (2) Any direction given under section 120 of the *Mining Act 1973* or section 96 of the *Coal Mining Act 1973* and in force immediately before the relevant commencement is taken to be a direction in force under section 240 of this Act.
- (3) Any direction given under section 172 of the *Mining Act 1973* or section 115 of the *Coal Mining Act 1973* and in force immediately before the relevant commencement is taken to be a direction in force under section 245 of this Act.

## **8 Environmental planning and assessment matters**

Sections 65 and 74 of this Act apply to and in respect of a mining lease granted in accordance with section 116 of the *Mining Act 1973* or section 91 of the *Coal Mining Act 1973* before the relevant commencement in the same way as they apply to and in respect of a mining lease granted in accordance with this Act.

## **9 Consolidation of leases**

- (1) Part 5A of the *Mining Act 1973* continues to apply to a draft consolidated mining lease prepared under section 111C of that Act before the relevant commencement as if this Act had not been enacted.
- (2) Any consolidated mining lease granted under Part 5A of the *Mining Act 1973* as a consequence of the operation of subclause (1) is taken to have been granted under



Part 6 of this Act.

- (3) Part 4A of the *Coal Mining Act 1973* continues to apply to a draft consolidated coal lease prepared under section 82C of that Act before the relevant commencement as if this Act had not been enacted.
- (4) Any consolidated coal lease granted under Part 4A of the *Coal Mining Act 1973* as a consequence of the operation of subclause (3) is taken to have been granted under Part 6 of this Act.

## **10 Register of colliery holdings**

The register of colliery holdings kept under section 115A of the *Coal Mining Act 1973* is taken to be the register of colliery holdings kept under section 163 of this Act.

## **11 Rights of way**

Any right of way in force under section 175 of the *Mining Act 1973* or 117 of the *Coal Mining Act 1973* immediately before the relevant commencement is taken to be a right of way in force under section 164 of this Act.

## **12 Suspension of authorities**

Any suspension of the conditions of an authority made under Part 5 of the *Mining Act 1973* and in force immediately before the relevant commencement is taken to be a suspension of the conditions of the corresponding authority under section 168 of this Act.

## **13 Caveats**

Any caveat duly lodged under section 109 of the *Mining Act 1973* or section 106 of the *Coal Mining Act 1973* before the relevant commencement is taken to be a caveat duly lodged under section 124 of this Act and is to have effect as if this Act had been in force when it was lodged.

## **14 Claims**

- (1) Any obligation under the *Mining Act 1973* in connection with a claim registered under Part 4 of that Act (being an obligation in existence in force immediately before the relevant commencement) is taken to be an obligation under this Act in connection with the corresponding mineral claim.
- (2) Any security given in respect of a claim under Part 4 of the *Mining Act 1973* before the relevant commencement is taken to be security given in respect of the corresponding mineral claim under this Act.
- (3) Any claim whose registration had been renewed under Part 4 of the *Mining Act 1973* before the relevant commencement is taken to be a mineral claim renewed under Part 9 of this Act.

- (4) A certificate of registration of a claim or of renewal of registration of a claim issued before the relevant commencement is taken to have been duly issued under this Act.
- (5) Any application for the registration of a person on whom the rights of a registered holder of a claim have devolved as the holder of the claim (being an application that had not been finally dealt with before the relevant commencement) is to continue to be dealt with as if this Act had not been enacted.
- (6) Any such registration is taken to be a transfer duly effected under this Act.
- (7) Any suspension of the conditions of a registered claim under Part 4 of the *Mining Act 1973* and in force immediately before the relevant commencement is taken to be a suspension of the conditions of the corresponding mineral claim under section 215 of this Act.

## **15 Permits**

- (1) Any permit granted under section 36A of the *Mining Act 1973* and in force immediately before the relevant commencement continues to have effect for the purposes for which it was granted.
- (2) A permit may be issued under section 254 of this Act in relation to the obligations of the holder of a registered claim under Part 4 of the *Mining Act 1973*.

## **16 Licence to process tailings**

Any licence in force under section 173 of the *Mining Act 1973* immediately before the relevant commencement continues in force for the term for which it was granted as if this Act had not been enacted.

## **17 Licence to construct tunnels etc**

Any licence in force under section 174 of the *Mining Act 1973* immediately before the relevant commencement continues in force for the duration of the mining lease (including any mining purposes lease that is taken to be a mining lease) in relation to which it was granted.

## **18 Access arrangements**

- (1) An access arrangement in force under Division 4A of Part 5 of the *Mining Act 1973* immediately before the relevant commencement is taken to be an access arrangement in force under Division 2 of Part 8 of this Act.
- (2) A person who held office as an arbitrator under section 84E of the *Mining Act 1973* immediately before the relevant commencement is taken to have been appointed under section 143 of this Act.
- (3) The Arbitration Panel established by section 84B of the *Mining Act 1973* is taken to be

the Arbitration Panel established under section 139 of this Act.

- (4) Any person who was a member of the Arbitration Panel established under section 84B of the *Mining Act 1973* immediately before the relevant commencement is taken to be a member of the Arbitration Panel established by section 139 of this Act.
- (5) The conditions under which a member of the Arbitration Panel held office under the *Mining Act 1973* immediately before the relevant commencement are, until they are duly changed under this Act, to be the conditions under which the member holds office as a member of the Arbitration Panel under this Act.
- (6) Any notice served under section 84E or 84F of the *Mining Act 1973* before the relevant commencement is taken to have been duly served under section 142 or 143 of this Act.
- (7) Any matter done by an arbitrator before the relevant commencement for the purposes of a hearing under Division 4A of Part 5 of the *Mining Act 1973* is taken to have been done for the purposes of Division 2 of Part 8 of this Act.
- (8) An interim determination in force under section 84K of the *Mining Act 1973* immediately before the relevant commencement is taken to be an interim determination under section 149 of this Act.
- (9) A final determination in force under section 84M of the *Mining Act 1973* immediately before the relevant commencement is taken to be a final determination under section 151 of this Act.
- (10) Section 154 of this Act applies to a hearing conducted under Division 4A of Part 5 of the *Mining Act 1973* in the same way as it applies to a hearing conducted under Division 2 of Part 8 of this Act.

## **19 Compensation**

Any compensation payable under Part 8 of the *Mining Act 1973* or Part 8 of the *Coal Mining Act 1973* in respect of the granting of an entitlement under either of those Acts, or the exercise of rights under either of those Acts, before the relevant commencement is taken to be compensation payable under Part 13 of this Act.

## **20 Royalty**

Part 14 of this Act applies to royalty on coal and other minerals recovered pursuant to an instrument in force under the *Mining Act 1973* or the *Coal Mining Act 1973* before the relevant commencement in the same way as it applies to coal and other minerals recovered after that commencement.

## **21 Trust funds**

Any trust fund duly established under section 99 of the *Mining Act 1973* or section 77B of

the *Coal Mining Act 1973* and in existence immediately before the relevant commencement is taken to have been duly established under section 288 of this Act.

## **22 Inspectors**

Any person who was an inspector under section 183 of the *Mining Act 1973* immediately before the relevant commencement is taken to be an inspector under this Act.

## **23 Wardens and other officers**

Any person who held office as chief warden, warden or mining registrar under the *Mining Act 1973* immediately before the relevant commencement is taken to have been appointed as chief warden, warden or mining registrar under this Act.

## **24 Wardens' Courts**

Any Warden's Court established under the *Mining Act 1973* and in existence immediately before the relevant commencement is taken to have been established under this Act.

## **25 Proceedings**

- (1) Any proceedings that had been commenced under the *Mining Act 1973* in a Warden's Court but had not been finally dealt with before the relevant commencement are to continue to be dealt with in accordance with this Act.
- (2) Any decision of a Warden's Court under the *Mining Act 1973* and in force immediately before the relevant commencement is taken to be a decision of a Warden's Court under this Act.
- (3) Any order or injunction made or granted by a Warden's Court, or by a warden, under the *Mining Act 1973* and in force immediately before the relevant commencement is taken to be an order or injunction made or granted under this Act.
- (4) Any writ of execution issued by a Warden's Court under the *Mining Act 1973* and in force immediately before the relevant commencement is to be enforced as if this Act had not been enacted.
- (5) Any authorisation granted by a Warden's Court, or by a warden, under the *Mining Act 1973* or the *Coal Mining Act 1973* and in force immediately before the relevant commencement is taken to have been granted under this Act.
- (6) Any summons or subpoena issued by a Warden's Court, or by a warden, under the *Mining Act 1973* and in force immediately before the relevant commencement is taken to have been issued under this Act.

## **26 Appeals**

The *Mining Act 1973* continues to apply to an appeal, or an application for determination of a stated case, made under that Act before the relevant commencement as if this Act

had not been enacted.

### **27 Wardens' inquiries**

Any inquiry conducted by a warden under section 178 or 178A of the *Mining Act 1973* before the relevant commencement is taken to be a warden's inquiry under this Act.

### **28 Evidentiary certificates**

A certificate issued under section 26F, 37A or 111 of the *Mining Act 1973* or under section 108 of the *Coal Mining Act 1973* before the relevant commencement continues to have effect in relation to proceedings under that Act as if this Act had not been enacted.

### **29 Certain decisions by the Minister**

Any decision given by the Minister in respect of a dispute referred to in section 179 of the *Mining Act 1973* or section 121 of the *Coal Mining Act 1973* before the relevant commencement is taken to be a decision given under the corresponding section of this Act.

### **30 Agreements concerning payment by instalments**

Any agreement in force under section 127 of the *Coal Mining Act 1973* immediately before the relevant commencement continues in force as if it were a condition of a mining lease under section 70 (4) of this Act.

### **31 Delegations**

Any delegation in force immediately before the relevant commencement under the *Mining Act 1973* or the *Coal Mining Act 1973* is taken to have been given under this Act and continues to have effect as if it had been given under this Act.

### **32 Disclosure of information**

Any information obtained by a person in connection with the administration or execution of the *Mining Act 1973* or the *Coal Mining Act 1973* is taken to have been obtained by the person in connection with the administration or execution of this Act.

### **33 Mining divisions**

Any division of a mining district constituted under the *Mining Act 1973* and in existence immediately before the relevant commencement is taken to be a mining division constituted under this Act, with the same name and boundaries as it had immediately before the relevant commencement.

### **34 Reserves**

(1) Any reserve constituted under the *Mining Act 1973* (including any reserve that is deemed to have been constituted under that Act) and in existence immediately before

the relevant commencement is taken to be a reserve constituted under this Act, with the same name and boundaries as it had immediately before the relevant commencement.

- (2) Any order in force under section 24 of the *Mining Act 1973* immediately before the relevant commencement, being an order containing a direction prohibiting the granting or registration of a particular entitlement over land in a reserve is taken to be an order prohibiting the granting of the entitlement that, by virtue of clause 4, is the corresponding entitlement over land in the reserve.

### **35 Opal prospecting areas**

- (1) Any opal prospecting area constituted under the *Mining Act 1973* and in existence immediately before the relevant commencement is taken to be an opal prospecting area constituted under this Act, with the same name and boundaries as it had immediately before the relevant commencement.
- (2) Any notice served in accordance with section 25A (2) of the *Mining Act 1973* before the relevant commencement is taken to be a notice duly served under section 221 of this Act.
- (3) Any objection duly made under section 25B (1) of the *Mining Act 1973* before the relevant commencement is taken to be an objection duly lodged under section 222 of this Act.
- (4) Any opal prospecting block constituted under the *Mining Act 1973* and in existence immediately before the relevant commencement is taken to be an opal prospecting block constituted under this Act, with the same designation and boundaries as it had immediately before the relevant commencement.
- (5) Any map prepared under section 25C of the *Mining Act 1973* before the relevant commencement is taken to have been duly prepared under section 225 of this Act.
- (6) The particulars depicted on any such map are taken to be the corresponding particulars for the purposes of this Act.

### **36 Claims for damages**

Section 26H of the *Mining Act 1973* continues to apply in relation to any injury or loss referred to in that section (being an injury or loss sustained before the relevant commencement) as if this Act had not been enacted.

### **37 Notices and instruments**

Any notice or instrument published or served in accordance with any provision of the *Mining Act 1973* or the *Coal Mining Act 1973* before the relevant commencement is taken to have been duly served under the corresponding provision of this Act.

### **38 Records**

Any records kept before the relevant commencement under section 105 of the *Mining Act 1973* or section 102 of the *Coal Mining Act 1973* are to form part of the records kept under section 159 of this Act.

### **39 Museums and laboratories**

Any museum or laboratory established under the *Mining Act 1973* and in existence immediately before the relevant commencement is taken to have been established under this Act.

### **40, 41 (Repealed)**

### **42 Directions concerning graticular sections**

A direction in force immediately before the relevant commencement for the purposes of the definition of **block** or **unit** in section 6 (1) of the *Mining Act 1973* or section 6 (1) of the *Coal Mining Act 1973* is taken to be a direction for the purposes of the corresponding definition in the Dictionary at the end of this Act.

### **43 Instruments under sec 77 of the Mining Act 1973**

An instrument lodged with the Director-General in accordance with section 77 (1) (c) of the *Mining Act 1973* before the relevant commencement is taken to be a notice of intention duly given in accordance with section 8 (1) of this Act.

### **44 References to provisions of repealed Acts**

- (1) In determining a relevant date in accordance with section 62 (4) of this Act:
  - (a) a reference to the date on which a notice was published in the Gazette under section 136 of this Act includes a reference to the date on which a notice was published in the Gazette under section 31 of the *Coal Mining Act 1973*, and
  - (b) a reference to the date on which an application for an exploration licence was lodged under this Act includes, in the case of an application relating to coal, a reference to the date on which an application for an authorisation or exploration permit was lodged under the *Coal Mining Act 1973*, and
  - (c) a reference to the date on which a mineral claim was granted under this Act includes a reference to the date on which a claim was registered under the *Mining Act 1973*.
- (2) A reference in clause 3 of Schedule 2 to the date on which an application for an exploration licence or mineral claim was lodged includes, in the case of an exploration licence, claim, authorisation or concession granted under the *Mining Act 1973* or the *Coal Mining Act 1973* that is taken to be an exploration licence or mineral claim granted under this Act, a reference to the date on which the application for the

exploration licence, claim, authorisation or concession was lodged under the *Mining Act 1973* or the *Coal Mining Act 1973*.

#### **45 Miscellaneous applications**

Any application (other than an application referred to in clause 3) that had been made but not dealt with under a provision of the *Mining Act 1973* or the *Coal Mining Act 1973* before the relevant commencement is taken to be an application under the corresponding provision of this Act and may continue to be dealt with accordingly.

#### **46 Construction of certain references**

In any other Act or instrument:

- (a) a reference to the *Mining Act 1973* or the *Coal Mining Act 1973* includes a reference to this Act, and
- (b) a reference to a provision of the *Mining Act 1973* or the *Coal Mining Act 1973* includes a reference to the corresponding provision of this Act, and
- (c) a reference to an entitlement granted under the *Mining Act 1973* or the *Coal Mining Act 1973* includes a reference to the corresponding entitlement granted under this Act.

#### **47 Instruments under former Acts**

Any instrument that had been approved by the Minister under section 107 of the *Mining Act 1973* or section 104 of the *Coal Mining Act 1973* before the commencement of this Act is taken to have been registered under section 161 of this Act.

### **Part 3 Provisions consequent on the enactment of the *Mining Legislation Amendment Act 1996***

#### **48 Definition**

In this Part, **amending Act** means the *Mining Legislation Amendment Act 1996*.

#### **49 Amendment of exploration licence, assessment lease and mineral claim conditions**

Sections 29A, 47A and 195A apply to and in respect of an exploration licence, assessment lease or mineral claim granted before the commencement of those sections in the same way as they apply to and in respect of an exploration licence, assessment lease or mineral claim granted after that commencement.

#### **50 Protection of dwelling-houses, gardens and improvements**

Sections 31, 49, 62 and 188, as amended by the amending Act, apply to and in respect of an authority or mineral claim granted before the commencement of those amendments in the same way as they apply to and in respect of an authority or mineral claim granted



after that commencement.

#### **51 Surface prospecting in respect of subsurface mining leases**

Section 81, as amended by the amending Act, applies to and in respect of all prospecting operations carried out in relation to a mining lease after the commencement of that amendment, whether or not prospecting operations have been carried out in relation to that mining lease before that commencement.

#### **52 Partial transfers of exploration licences**

Section 123, as amended by the amending Act, applies to and in respect of an exploration licence granted before the commencement of that amendment in the same way as it applies to and in respect of an exploration licence granted after that commencement.

#### **53 Waiver of minor procedural matters concerning applications for mineral claims**

Section 210A applies to and in respect of an application for a mineral claim made before the commencement of that section in the same way as it applies to and in respect of an application for a mineral claim made after that commencement.

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

Section 210B applies to and in respect of a mineral claim granted before the commencement of that section in the same way as it applies to and in respect of a mineral claim granted after that commencement.

#### **55 Restrictions on grant of opal prospecting licence**

Section 227, as amended by the amending Act, applies to and in respect of an application for an opal prospecting licence made before the commencement of that amendment in the same way as it applies to and in respect of an application for an opal prospecting licence made after that commencement.

#### **56 Permits for surveys and ore sampling**

A permit that was in force under section 250 or 251, immediately before the repeal of that section by the amending Act, is taken to have been granted under section 250, as inserted by the amending Act.

#### **57 Assessment of compensation in relation to mineral claims and opal prospecting licences**

Sections 266 and 267, as amended by the amending Act, apply to and in respect of a mineral claim or opal prospecting licence granted before the commencement of those amendments in the same way as they apply to and in respect of a mineral claim or opal prospecting licence granted after that commencement, but do not affect any compensation determined before that commencement in respect of any such mineral claim or opal prospecting licence.

### **58 References for determination of agricultural land**

Clauses 2 and 3 of Schedule 2, as amended by the amending Act, apply to and in respect of a reference arising before the commencement of those amendments in the same way as they apply to and in respect of a reference arising after that commencement.

### **59 Royalty on coal in coal reject**

Division 3A of Part 14 applies to coal reject that the holder of a mining lease uses or disposes of on or after the commencement of that Division (even if the coal reject was recovered before that commencement).

### **60 Waiver of additional royalty for coal**

Section 287A applies in respect of coal disposed of on or after the commencement of that section (even if the coal was recovered before that commencement).

### **61 Lodgment fees**

A fee that, immediately before the commencement of section 382A, was prescribed by the regulations for the purposes of this Act or the regulations is taken to be an appropriate lodgment fee determined in accordance with that section.

## **Part 4 Provisions consequent on the enactment of the [Native Title \(New South Wales\) Amendment Act 1998](#)**

### **62 Conversion of existing exploration licences to low-impact exploration licences**

- (1) The holder of an exploration licence in force immediately before the commencement of Division 5 of Part 3 of this Act may apply to the Minister for its conversion to a low-impact exploration licence under that Division.
- (2) The Minister may approve the application only if satisfied that the notification and other requirements of that Division for the grant of a low-impact exploration licence have been complied with. For the purpose of converting the licence, the Minister is to amend the licence and its conditions by notice served on the holder of the licence.
- (3) On the service of the notice, the exploration licence becomes a low-impact exploration licence and is subject to the provisions of that Division.
- (4) An application under this clause may be made with respect to a part only of the land over which the exploration licence was granted. In that case, the Minister may, subject to the regulations, convert the licence as to that part of the land and continue the existing licence as to the remainder of the land.

### **63 Saving with respect to existing exploration licences or opal prospecting licences**

The amendments made to this Act by the [Native Title \(New South Wales\) Amendment Act](#)

1998 do not invalidate or affect any exploration licence or opal prospecting licence in force at the time the amendments are made.

## **Part 5 Provisions consequent on the enactment of the [Mining Amendment Act 1999](#)**

### **64 Definition**

In this Part, **amending Act** means the [Mining Amendment Act 1999](#).

### **65 Certain persons taken to be landholders**

Except in so far as the regulations otherwise provide, a class of persons that, immediately before the repeal of the definition of **occupier**, was prescribed for the purposes of that definition is taken to be a class of persons prescribed by or determined in accordance with the regulations to be landholders for the purposes of the definition of **landholder**.

### **66 Consents enabling the exercise of rights under mining titles**

- (1) In this clause, **consent provision** means section 31, 49, 62 or 188.
- (2) Rights referred to in a consent provision that were the subject of a written consent given under the consent provision before the date on which amendments made by the amending Act to the consent provision took effect may be exercised without the need to obtain consent under the consent provision as amended by the amending Act.

### **67 Notification of application for mineral claim**

- (1) A person:
  - (a) who, before the date on which amendments made by the amending Act to section 177 took effect, applied for a mineral claim over any land other than Crown land (within the meaning of that section, as in force immediately before that date), and
  - (b) whose application was not determined before that date,must serve notice on any person entitled, under that section as amended by the amending Act, to be notified of a proposed application.
- (2) Such a mineral claim is not to be granted unless a copy of a notice served as required by subclause (1) has been lodged in the same manner as the application.
- (3) The notice is taken, for the purposes of section 179, as amended by the amending Act, to be a notice under section 177, as so amended.

### **68 Compensation arising under mineral claim or opal prospecting licence**

The holder of a mineral claim or opal prospecting licence who, before the date on which amendments made by the amending Act to section 266 or 267, as the case may be, had

met the requirements of the relevant section in order to be entitled to exercise the rights conferred by the claim or licence is taken to have met the requirements of the relevant section, as amended by the amending Act, to exercise those rights.

## **Part 6 Provisions consequent on enactment of [Survey \(Geocentric Datum of Australia\) Act 1999](#)**

### **69 Definition**

In this Part, the **amending Act** means the [Survey \(Geocentric Datum of Australia\) Act 1999](#).

### **70 Boundaries of exploration licences**

- (1) On the commencement of this clause, an exploration licence that is in force applies to an area of land (in so far as a graticular section or unit referred to in section 370 is used to specify the area) determined in accordance with section 371 as repealed and re-enacted by the amending Act.
- (2) To the extent that, by the operation of subclause (1), the area to which an exploration licence in force on the commencement of this clause applies would include:
  - (a) land outside New South Wales, or
  - (b) land the subject of an authority or a mineral claim, or
  - (c) land the subject of an application for an authority or a mineral claim that was made before the commencement of this clause, or
  - (d) any other land over which, according to the provisions of Part 3 or of any other Act or law, the grant of an exploration licence is prohibited,that land is excluded from the area.
- (3) Land that, by operation of subclause (2), is excluded from the area to which an exploration licence applies because it is the subject of an authority or a mineral claim becomes subject to the exploration licence:
  - (a) if the authority or mineral claim ceases to have effect in relation to that land, and
  - (b) if, when it does so, the land is not then subject to a further authority or mineral claim.
- (4) Land that, by operation of subclause (2), is excluded from the area to which an exploration licence applies because it is subject to a pending application for an authority or a mineral claim becomes subject to the exploration licence:
  - (a) if the application is subsequently refused or withdrawn, or

(b) if, when the authority or a mineral claim is granted, the land does not become subject to the authority or claim.

- (5) On application made in writing, within 90 days after the commencement of this clause, by the holder of an exploration licence applying to an area from which any land has been excluded by the operation of subclause (1), the Minister, on being satisfied that, before the commencement of this clause, significant evidence of valuable mineral deposits existed in relation to the excluded land, may by order amend the licence so as to restore the whole or a specified part of the land excluded.
- (6) An order may be made under subclause (5) even though the land restored would, but for the order, have been subject to another exploration licence.
- (7) A person dissatisfied with the decision of the Minister on an application under this clause may appeal to a Warden's Court. In determining the appeal, the Court has all the functions of the Minister under this clause.
- (8) No compensation is payable to any person for loss or damage arising from the operation of this clause.

#### **71 Applications for exploration licences**

On the commencement of this clause, a pending application for an exploration licence applies to an area of land (in so far as a graticular section or unit referred to in section 370 is used to specify the area) determined in accordance with section 371 as repealed and re-enacted by the amending Act.

#### **72 Boundaries of assessment leases**

- (1) On the commencement of this clause, an assessment lease that is on foot applies to an area of land (in so far as a graticular section or unit referred to in section 370 is used to specify the area) determined in accordance with section 371 as repealed and re-enacted by the amending Act.
- (2) To the extent that, by the operation of subclause (1), the area to which an assessment lease that is on foot applies would include:
  - (a) land outside New South Wales, or
  - (b) land the subject of an authority or a mineral claim, or
  - (c) land the subject of an application for an authority or a mineral claim that was made before the commencement of this clause, or
  - (d) any other land over which, according to the provisions of Part 4 or of any other Act or law, the grant of an assessment lease is prohibited,that land is excluded from the area.

- (3) On application made in writing, within 90 days after the commencement of this clause, by the holder of an assessment lease applying to an area from which any land has been excluded by the operation of subclause (1), the Minister, on being satisfied that, before the commencement of this clause, significant evidence of valuable mineral deposits existed in relation to the excluded land, may by order amend the lease so as to restore the whole or a specified part of the land excluded.
- (4) An order may be made under subclause (3) even though the land restored would, but for the order, have been subject to another assessment lease.
- (5) A person dissatisfied with the decision of the Minister on an application under this clause may appeal to a Warden's Court. In determining the appeal, the Court has all the functions of the Minister under this clause.
- (6) No compensation is payable to any person for loss or damage arising from the operation of this clause.

### **73 Applications for assessment leases**

On the commencement of this clause, a pending application for an assessment lease applies to an area of land (in so far as a graticular section or unit referred to in section 370 is used to specify the area) determined in accordance with section 371 as repealed and re-enacted by the amending Act.

## **Part 7 Provisions consequent on the enactment of the [Mining and Petroleum Legislation Amendment Act 2000](#)**

### **74 Definition**

In this Part, **amending Act** means the [Mining and Petroleum Legislation Amendment Act 2000](#).

### **75 Authorities and claims over land in proximity to improvements**

- (1) Rights exercised under an exploration licence:
  - (a) at a time before the amendment made by the amending Act to section 31 took effect, and
  - (b) the exercise of which contravened that section, but would not have done if that amendment had been in force at the time,are taken to have been exercised without contravention of that section, as in force at the time.
- (2) Rights exercised under an assessment lease:
  - (a) at a time before the amendment made by the amending Act to section 49 took

effect, and

- (b) the exercise of which contravened that section, but would not have done if that amendment had been in force at the time,

are taken to have been exercised without contravention of that section, as in force at the time.

- (3) A mining lease:

- (a) that was granted at a time before the amendment made by the amending Act to section 62 took effect, and

- (b) the grant of which contravened that section, but would not have done if that amendment had been in force at the time,

is taken to have been granted without contravention of that section, as in force at the time.

- (4) A mineral claim:

- (a) that was granted at a time before the amendment made by the amending Act to section 188 took effect, and

- (b) the grant of which contravened that section, but would not have done if that amendment had been in force at the time,

is taken to have been granted without contravention of that section, as in force at the time.

- (5) Subclauses (3) and (4) apply to a renewal of a mining lease or mineral claim in the same way as to its grant.

## **76 Conditions of mining titles**

The Minister may, by instrument in writing served on the holder of an authority, mineral claim or opal prospecting licence in force at the commencement of this clause, vary the conditions of the authority, claim or licence so as to identify those conditions of the authority, claim or licence that are related to environmental management.

## **77 Direction affecting consolidated mining lease**

The repeal by the amending Act of section 111 does not affect the operation of a condition that, immediately before the repeal of that section, continued to have effect by reason of that section.

## **Part 8 Provisions consequent on enactment of [Mining Amendment](#)**

## **(Miscellaneous Provisions) Act 2004**

### **78 Definition**

In this Part:

**the 2004 Act** means the *Mining Amendment (Miscellaneous Provisions) Act 2004*.

### **79 Existing mining subleases**

- (1) Section 83A does not render void any mining sublease (within the meaning of that section) that was in force immediately before the commencement of that section.
- (2) Land the subject of any such mining sublease may nevertheless be taken into account for the purpose of determining a prescribed area (within the meaning of section 83A) in relation to any other mining sublease.

### **80 Mineral claims close to dwelling-houses**

- (1) The amendments made by the 2004 Act to section 188 do not affect any mineral claim that was in force before those amendments commenced.
- (2) Subclause (1) does not apply to any mineral claim that is renewed after the commencement of the amendments referred to in that subclause.

### **81 Conditions to which mineral claims are subject**

The amendments made by the 2004 Act to section 192 do not affect any mineral claim that was in force before those amendments commenced, and any such mineral claim remains subject to the same conditions as those to which it was subject before those amendments commenced.

### **82 Conditions to which opal prospecting licences are subject**

The substitution by the 2004 Act of section 229 does not affect any opal prospecting licence that was in force before that section was substituted, and any such licence remains subject to the same conditions as those to which it was subject before that section was substituted.

### **83 Liability for matters arising in relation to authorities and mineral claims**

Sections 171 and 218, as substituted by the 2004 Act, extend to anything done or omitted to be done, as referred to in those sections, before those sections were substituted.

### **84 Entry permits**

Section 259, as amended by the 2004 Act, extends to permits in force immediately before that section was amended.



## 85 General immunity of landholders

Section 383C, as inserted by the 2004 Act, extends to anything done or omitted to be done, as referred to in that section, before that section was inserted.

## Part 9 Provisions consequent on the enactment of the **Coal Acquisition Legislation Repeal Act 2007**

### 86 Definitions

In this Part:

**Board** means the New South Wales Coal Compensation Board established under the 1985 Arrangements.

**the 1985 Arrangements** means the *Coal Acquisition (Compensation) Arrangements 1985*, as in force immediately before the commencement of this Part.

**the 1990 Act** means the *Coal Ownership (Restitution) Act 1990*, as in force immediately before the commencement of this Part.

**the 1997 Order** means the *Coal Acquisition (Re-acquisition Arrangements) Order 1997*, as in force immediately before the commencement of this Part.

**Tribunal** means the New South Wales Coal Compensation Review Tribunal established under the 1985 Arrangements.

### 87 Abolition of Board and Tribunal

- (1) The Board and the Tribunal are abolished.
- (2) Any person who, immediately before the commencement of this Part, held office as a member of the Board or the Tribunal ceases to hold office as such on that commencement.
- (3) A person who ceases to hold office pursuant to this clause is not entitled to compensation because of that loss of office.

### 88 Assets of the Board

Any assets that, immediately before the commencement of this Part, were available for use for the purposes of the Board become available, on that commencement, for use for the purposes of the Department.

### 89 Annual report

- (1) The Board's obligations with respect to the preparation of annual reports under clause 7 of the 1985 Arrangements are taken to have become, on the commencement of this Part, the Director-General's obligations.

- (2) A report prepared by the Director-General pursuant to such an obligation in relation to any period may form part of the Department's report under the *Annual Reports (Departments) Act 1985* in relation to the same period.

#### **90 Pending claims under the 1985 Arrangements**

- (1) Any claim under the 1985 Arrangements that had not been determined before the commencement of this Part is to be determined by the Director-General.
- (2) The provisions of the 1985 Arrangements apply to:
  - (a) the determination of such a claim, and
  - (b) the payment of compensation in connection with such a claim,as if references in those provisions to the Board were references to the Director-General.

#### **91 Pending appeals under the 1985 Arrangements**

- (1) Any appeal under the 1985 Arrangements that had not been determined before the commencement of this Part is to be determined by the Land and Environment Court.
- (2) The provisions of the 1985 Arrangements apply to the determination of such an appeal as if references in those provisions to the Tribunal were references to the Land and Environment Court.
- (3) In particular, the costs incurred by a party in respect of such an appeal are to be borne by that party, as provided by clause 12 of Schedule 3 to the 1985 Arrangements, and are not to be the subject of any order by the Land and Environment Court.
- (4) Proceedings on such an appeal are taken to be proceedings in Class 3 of the Land and Environment Court's jurisdiction.
- (5) Rules may be made under the *Land and Environment Court Act 1979* in relation to such an appeal.

#### **92 New appeals under the 1985 Arrangements**

- (1) A person may, in accordance with the 1985 Arrangements, appeal to the Land and Environment Court against:
  - (a) any determination or refusal of a claim following a decision made by the Board before the commencement of this Part, or
  - (b) any determination or refusal of a claim following a decision made by the Director-General on or after the commencement of this Part.

- (2) The provisions of the 1985 Arrangements apply to the determination of such an appeal as if:
  - (a) references in those provisions to the Tribunal were references to the Land and Environment Court, and
  - (b) references in those provisions to the Board, in relation to any decision referred to in subclause (1) (b), were references to the Director-General.
- (3) In particular:
  - (a) the fee for filing a process to commence such an appeal is the fee prescribed by the 1985 Arrangements, and not the fee prescribed under the *Land and Environment Court Act 1979*, and
  - (b) the costs incurred by a party in respect of such an appeal are to be borne by that party, as provided by clause 12 of Schedule 3 to the 1985 Arrangements, and may not be the subject of any order by the Land and Environment Court.
- (4) Proceedings on such an appeal are taken to be proceedings in Class 3 of the Land and Environment Court's jurisdiction.
- (5) Rules may be made under the *Land and Environment Court Act 1979* in relation to such an appeal.

### **93 Pending applications under the 1997 Order**

- (1) Any application under the 1997 Order that had not been determined before the commencement of this Part is to be determined by the Director-General.
- (2) The provisions of the 1997 Order and 1985 Arrangements apply to:
  - (a) the determination of such an application, and
  - (b) the payment of compensation in connection with such an application,as if references in those provisions to the Board were references to the Director-General.

### **94 Pending appeals under the 1997 Order**

- (1) Any appeal under the 1997 Order that had not been determined before the commencement of this Part is to be determined by the Land and Environment Court.
- (2) The provisions of the 1997 Order and 1985 Arrangements apply to the determination of such an appeal as if references in those provisions to the Tribunal were references to the Land and Environment Court.
- (3) In particular, the costs incurred by a party in respect of such an appeal are to be

borne by that party, as provided by clause 12 of Schedule 3 to the 1985 Arrangements, and are not to be the subject of any order by the Land and Environment Court.

- (4) Proceedings on such an appeal are taken to be proceedings in Class 3 of the Land and Environment Court's jurisdiction.
- (5) Rules may be made under the *Land and Environment Court Act 1979* in relation to such an appeal.

#### **95 New appeals under the 1997 Order**

- (1) A person may, in accordance with the 1997 Order, appeal to the Land and Environment Court against:
  - (a) any determination or refusal of a claim following a decision made by the Board before the commencement of this Part, or
  - (b) any determination or refusal of a claim following a decision made by the Director-General on or after the commencement of this Part.
- (2) The provisions of the 1997 Order and 1985 Arrangements apply to the determination of such an appeal as if:
  - (a) references in those provisions to the Tribunal were references to the Land and Environment Court, and
  - (b) references in those provisions to the Board, in relation to any decision referred to in subclause (1) (b), were references to the Director-General.
- (3) In particular:
  - (a) the fee for filing a process to commence such an appeal is the fee prescribed by the 1997 Order, and not the fee prescribed under the *Land and Environment Court Act 1979*, and
  - (b) the costs incurred by a party in respect of such an appeal are to be borne by that party, as provided by clause 12 of Schedule 3 to the 1985 Arrangements, and may not be the subject of any order by the Land and Environment Court.
- (4) Proceedings on such an appeal are taken to be proceedings in Class 3 of the Land and Environment Court's jurisdiction.
- (5) Rules may be made under the *Land and Environment Court Act 1979* in relation to such an appeal.

#### **96 Pending applications under the 1990 Act**

- (1) Any application under the 1990 Act that had not been determined before the

commencement of this Part is to be determined by the Director-General.

- (2) The provisions of the 1990 Act apply to:
- (a) the determination of such an application, and
  - (b) the refund of compensation in connection with the granting of such an application,
- as if references in those provisions to the Board were references to the Director-General.

## **Part 10 Provisions consequent on enactment of [Mining Amendment Act 2008](#)**

### **97 Definition**

In this Part:

**the 2008 Act** means the [Mining Amendment Act 2008](#).

### **98 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.

### **99 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).

### **100 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.

### **101 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.

### **102 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.

### **103 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.

### **104 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.

#### **105 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.

#### **106 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.

#### **107 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.

#### **108 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.

### **109 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.

### **110 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.

### **111 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.

### **112 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.

### **113 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.

### **115 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.



### **116 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.

### **117 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.

### **118 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.

### **119 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.

## **Part 11 Provisions consequent on enactment of [Mining Amendment \(Improvements on Land\) Act 2008](#)**

### **122 Consent to mining leases and application of amending Act to pending applications**

- (1) If, in relation to an application for a mining lease that was lodged before the commencement of this clause:
  - (a) the owner of any improvement situated on the land to which the application relates was notified of the application in accordance with clause 21 (3) and (4) of Schedule 1, and
  - (b) the 28-day period (as referred to in clause 21 (4) (c) of that Schedule) ended on or at any time before 7 August 2008, and
  - (c) the owner did not, within that 28-day period, make a claim under clause 23A of that Schedule in relation to the improvement,

the owner of the improvement is, to the extent that the owner's consent to the granting of the lease was required because of section 62 (1) (c) of this Act (as in force immediately before the commencement of this clause), taken to have given that consent.

- (2) Subclause (1) applies regardless of whether the mining lease the subject of the

application was granted before the commencement of this clause.

- (3) Any mining lease granted before the commencement of this clause that would have been validly granted if subclause (1) had been in force when it was granted is validated. To remove doubt, this subclause extends to any mining lease that may otherwise be invalid because of the decision of the New South Wales Court of Appeal in *Ulan Coal Mines v Minister for Mineral Resources & Anor*[2008] NSWCA 174 or any order resulting from that decision.
- (4) If, in relation to an application for a mining lease that was lodged, but not determined, before the commencement of this clause:
  - (a) the owner of any improvement situated on the land to which the application relates was notified of the application in accordance with clause 21 (3) and (4) of Schedule 1, and
  - (b) the 28-day period (as referred to in clause 21 (4) (c) of that Schedule) did not end before 8 August 2008,the amendments made by the *Mining Amendment (Improvements on Land) Act 2008* are taken to apply to and in respect of the application.
- (5) In the case of any such pending application as referred to in subclause (4), the 28-day period within which a claim may be made under clause 23A of Schedule 1 is, despite the date on which the notice was served, taken to start on the commencement of this clause.
- (6) Except to the extent as otherwise provided by this clause, the amendments made by the *Mining Amendment (Improvements on Land) Act 2008* extend to an application for a mining lease that was lodged, but not determined, before the commencement of this clause.

## **Part 12 Provisions consequent on enactment of *Courts and Crimes Legislation Further Amendment Act 2008***

### **123 Definitions**

In this Part:

**2008 amending Act** means the *Courts and Crimes Legislation Further Amendment Act 2008*.

**abolition date** means the date on which Part 15 is substituted by the 2008 amending Act.

### **124 Abolition of Warden's Courts**

Each Warden's Court is abolished.

### **125 Wardens**

- (1) The offices of chief warden and warden are abolished.
- (2) A person who was a warden immediately before the abolition date does not cease to hold office as a Magistrate merely because of the abolition of the office of warden.

### **126 Pending proceedings**

- (1) Proceedings commenced before a warden that have not been disposed of before the abolition date are to be dealt with by that person as if the 2008 amending Act had not been enacted and as if that person were still a warden.
- (2) Proceedings commenced before a Warden's Court that have not been disposed of before the abolition date are to be dealt with by a Local Court as if the 2008 amending Act had not been enacted and as if that Court were a Warden's Court.

### **127 Orders, directions and injunctions**

Any order, direction or injunction that was made, given or issued by a warden or Warden's Court before the abolition date is taken to have been made, given or issued by the Land and Environment Court and may be enforced accordingly.

### **128 References to wardens and Wardens' Courts**

Subject to the regulations, a reference in any Act or instrument to a warden or Warden's Court within the meaning of this Act is to be read as a reference to the Land and Environment Court.

## **Part 13 Provisions consequent on enactment of [Mining and Petroleum Legislation Amendment \(Land Access\) Act 2010](#)**

### **132 Definition**

In this Part:

**the amending Act** means the [Mining and Petroleum Legislation Amendment \(Land Access\) Act 2010](#).

### **133 Existing land access arrangement**

- (1) A land access arrangement purporting to have been agreed or determined under Division 2 of Part 8 of this Act before the commencement of the amending Act that would have been a valid arrangement if agreed or determined after that commencement is taken to be (and always to have been) a valid arrangement under that Division.
- (2) Any action purportedly taken before the commencement of the amending Act in relation to a proposed access arrangement under that Division that would have been

validly taken after that commencement is taken to have been (and always to have been) validly taken under that Division.

- (3) Any amendment made by the amending Act that requires the agreement for an access arrangement to be in writing does not affect the operation of any access arrangement, in force immediately before the commencement of that amendment, that was agreed to orally.
- (4) This clause does not affect any order of a court made before the commencement of the amending Act.

### **134 Existing mining authorities**

- (1) In this clause:

***mining authority*** means an authority or other authorisation granted under this Act or any prospecting area constituted under this Act.

- (2) A mining authority purporting to have been granted or constituted under this Act before the commencement of the amending Act that would have been a valid mining authority if granted or constituted after that commencement is taken to be (and always to have been) a valid mining authority under this Act.
- (3) Any action purportedly taken before the commencement of the amending Act in relation to a proposed mining authority under this Act that would have been validly taken after that commencement is taken to have been (and always to have been) validly taken under this Act.
- (4) This clause does not affect any order of a court made before the commencement of the amending Act.

## **Part 15 Provisions consequent on enactment of [Courts and Crimes Legislation Further Amendment Act 2010](#)**

### **136 Application of amendments**

Section 62 and clauses 23A and 23B of Schedule 1 (as in force immediately before the commencement of Schedule 16 to the [Courts and Crimes Legislation Further Amendment Act 2010](#)) continue to apply in relation to a claim made under clause 23A of Schedule 1 before that commencement.

## **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).

## Dictionary

(Section 4)

**access arrangement** means an access arrangement under Division 2 of Part 8.

**access management area** means an access management area constituted under Part 10A.

**allocated mineral**, in relation to a mineral allocation area, means a mineral or group of minerals in respect of which the mineral allocation area is constituted.

**appropriate lodgment fee** means the fee determined for the time being in accordance with section 382A with respect to the matter to which the fee relates.

**approved** means approved by the Minister.

**Arbitration Panel** means the Arbitration Panel established by section 139.

**arbitrator** means an arbitrator appointed under Division 2 of Part 8.

**assessment area** means land the subject of an assessment lease.

**assessment lease** means an assessment lease granted under Part 4.

**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** means an exploration licence, an assessment lease or a mining lease.

**authority area** means land the subject of an authority.

**claim area** means land the subject of a mineral claim.

**colliery holding** means a colliery holding registered in accordance with section 163.

**Commonwealth Native Title Act** means the [Native Title Act 1993](#) of the Commonwealth.

**consent authority** has the same meaning as it has in the [Environmental Planning and Assessment](#)

[Act 1979](#).

**consolidated mining lease** means a lease granted under Part 6.

**controlling body**, in relation to an exempted area, means:

- (a) in the case of land referred to in paragraph (a) or (c) of the definition of **exempted area**—the person having the control and management of the land, or
- (b) in the case of land referred to in paragraph (b) of that definition—the holder of the lease referred to in that paragraph, or
- (c) in the case of land referred to in paragraph (d) of that definition—the person prescribed by the regulations as the controlling body for that land for the purposes of this definition.

**council** has the same meaning as it has in the [Local Government Act 1993](#).

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

**dam** includes the water or other material impounded by the dam.

**Dams Safety Committee** means the Dams Safety Committee constituted by section 7 of the [Dams Safety Act 1978](#).

**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.

**Department** means the Department of Industry and Investment.

**deputy mining registrar** means a deputy mining registrar referred to in section 360.

**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.

**development consent** means a development consent under Part 4 of the [Environmental Planning and Assessment Act 1979](#) or an approval under Part 3A of that Act.

**Director-General** means the Director-General of the Department.

**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*.

**environmental planning instrument** has the same meaning as it has in the *Environmental Planning and Assessment Act 1979*.

**exclusion order** means an exclusion order referred to in section 175B.

**exempted area** means an area constituted by land:

- (a) reserved, dedicated, appropriated, resumed or acquired for public purposes (except land reserved for a temporary common or a commonage), whether vested in the Crown or in any person as trustee for public purposes, or
- (b) held under a lease for water supply by virtue of a special lease or otherwise, or
- (c) transferred, granted or vested in trust by the Crown for the purpose of a race-course, cricket-ground, recreation reserve, park or permanent common or for any other public purpose, or
- (d) prescribed by the regulations for the purposes of this definition.

**exercise a function** includes perform a duty.

**exploration area** means land the subject of an exploration licence.

**exploration licence** means an exploration licence granted under Part 3.

**exploration (mineral owner) licence** means an exploration licence granted to the owner of privately owned minerals with respect to those minerals.

**fossicking district** means a fossicking district constituted under section 369A.

**full transfer**, in relation to an authority, means a transfer of the authority that relates to the whole authority area.

**function** includes power, authority and duty.

**Government agency** means:

- (a) a Government Department, or
- (b) an Administrative Office, or
- (c) a corporation designated by the Minister under section 387.

**group of minerals** means any minerals prescribed by the regulations as a group of minerals for the purposes of this definition.

**head lease** means a mining lease in relation to which a mining sublease has effect under section 83A.

**inspector** means an inspector appointed under section 361.

**land** includes land covered by water.

**landholder** means, in relation to reserved land, the controlling body of that land, or, in relation to any other land:

- (a) the owner of an estate in fee simple in the land, or
- (b) a native title holder of the land, or
- (c) the holder of a lease or licence granted under the *Crown Lands Act 1989* over the land, or
- (d) the holder of a tenure referred to in Part 1 or 2 of Schedule 1 to the *Crown Lands (Continued Tenures) Act 1989* in the land, or
- (e) the holder of a permissive occupancy granted over the land, or
- (f) the holder of a lease granted under the *Western Lands Act 1901* over the land, or
- (g) a person identified in any register or record kept by the Registrar-General as a person having an interest in the land, being:
  - (i) a mortgagee in possession of the land, or
  - (ii) a lessee of the land or other person entitled to an exclusive right of occupation of the land, or
  - (iii) a Minister or public authority having the benefit of a covenant affecting the land that is imposed by a Minister on behalf of the Crown under the *Crown Lands Act 1989*, or
  - (iv) a Minister or public authority having an interest in the land under a conservation, natural heritage or biobanking agreement, or
  - (v) a person prescribed by the regulations for the purposes of this paragraph, or
- (g1) a person identified in any register or record kept by the Registrar-General as a person having an interest in the land, other than a person to whom paragraph (g) applies, but only in a provision of this Act in which a reference to a landholder is expressed to include a **secondary landholder**, or

**Note—**

See s 255A, Part 13, s 383C.

- (h) a person of a class prescribed by or determined in accordance with the regulations to be landholders for the purposes of this definition,

but does not include a person of a class prescribed as outside the scope of this definition.

**local government area** has the same meaning as **area** has in the *Local Government Act 1993*.

**mine** means:

- (a) when used as a noun—any place, pit, shaft, drive, level or other excavation, drift, gutter, lead, vein, lode, reef or salt-pan (whether occurring naturally or artificially created) in, on or by means of which, any mining operation is carried on, and
- (b) when used as a verb—to extract material from land for the purpose of recovering minerals from the material so extracted or to rehabilitate land (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.

**mineral** means any substance prescribed by the regulations as a mineral for the purposes of this definition, and includes coal and oil shale, but does not include uranium or petroleum.

**mineral allocation area** means a mineral allocation area constituted under section 368.

**mineral claim** means a mineral claim granted under Part 9.

**mineral claims district** means a mineral claims district constituted under Division 1 of Part 9.

**mineral owner authority** means an exploration (mineral owner) licence, an assessment (mineral owner) lease or a mining (mineral owner) lease.

**miners' representative**, in relation to an access management plan over land, means a person or body prescribed by the regulations, or nominated as prescribed by the regulations, to represent the interests of holders (and potential holders) of small-scale titles with respect to the land.

**mining area** means land the subject of a mining lease.

**mining division** means a mining division constituted under section 366.

**mining improvement** includes:

- (a) any machinery used for or in connection with prospecting or mining, and
- (b) any race, drain, dam or reservoir so used.

**mining lease** means a mining lease granted under Part 5, and includes a consolidated mining lease.

**mining (mineral owner) lease** means a mining lease granted to the owner of privately owned minerals with respect to those minerals.

**mining operations** means operations carried out in the course of mining.

**mining purpose** means any purpose prescribed by the regulations as a mining purpose for the purposes of this definition.

**mining 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.

**native title holder** has the same meaning as it has in the Commonwealth Native Title Act.

**new authority** means the authority that is taken by section 122 (5) (b) to have been granted on a partial transfer.

**notification area**, in relation to a prescribed dam, means the land for the time being declared under section 369 to be the notification area for the dam.

**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.

**opal prospecting area** means an opal prospecting area constituted under Division 1 of Part 10.

**opal prospecting block** means an opal prospecting block constituted under Division 1 of Part 10.

**opal prospecting licence** means an opal prospecting licence granted under Division 2 of Part 10.

**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.

**party** means:

- (a) in relation to a hearing before an arbitrator—a person who is entitled to appear and be heard at the hearing pursuant to section 146, or
- (b) in relation to an access arrangement—the holder of a prospecting title to whom, or a landholder of land to which, the arrangement relates.

**permissive occupancy** has the same meaning as in the *Crown Lands (Continued Tenures) Act 1989*.

**permit** means a permit in force under Division 2 of Part 12.

**petroleum** has the same meaning as it has in the *Petroleum (Onshore) Act 1991*.

**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.

**prescribed dam** has the same meaning as it has in the *Dams Safety Act 1978*.

**preserved mining field** means a preserved mining field constituted by an order referred to in section 173A (2).

**privately owned mineral** means a mineral that is not owned by, or reserved to, the Crown.

**prospect** means to carry out works on, or to remove samples from, land for the purpose of testing the mineral bearing qualities of the land, but does not include any activity declared not to be prospecting by a regulation under section 11A or by a declaration made under such a regulation.

**prospecting operations** means operations carried out in the course of prospecting.

**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.

**publicly owned mineral** means a mineral that is owned by, or reserved to, the Crown.

**record** includes a plan, specifications, map, report, book and other document (whether in writing, in electronic form or otherwise).

**registered access management plan** means an access management plan registered under section 236l.

**registered native title body corporate** has the same meaning as in the Commonwealth Native Title Act.

**registered native title claimant** has the same meaning as in the Commonwealth Native Title Act.

**registered surveyor** means a person who is registered as a land surveyor or mining surveyor under the [Surveying and Spatial Information Act 2002](#).

**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.

**reserve** means a reserve constituted under section 367.

**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.

**secondary landholder**—see paragraph (g1) of the definition of **landholder**.

**significant improvement** means any substantial building, dam, reservoir, contour bank, graded bank, levee, water disposal area, soil conservation work or other valuable work or structure.

**small-scale title** means a mineral claim or an opal prospecting licence.

**special conditions** means:

- (a) in relation to a mineral claims district—the conditions specified under section 175 as the conditions to which mineral claims registered over land within the district are to be subject, or
- (b) in relation to an opal prospecting area—the conditions specified under section 223A as the conditions to which opal prospecting licences granted over land within the area are to be subject.

**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.