

# Mining Amendment Act 2008 No 19

[2008-19]



New South Wales

## Status Information

### Currency of version

Historical version for 8 July 2011 to 29 June 2012 (accessed 18 September 2024 at 22:04)

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

### Provisions in force

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

### Notes—

- **Does not include amendments by**  
[Coal Mine Health and Safety Amendment Act 2010 No 23](#) (not commenced)
- **See also**  
[State Revenue and Other Legislation Amendment \(Budget Measures\) Bill 2012](#)
- **Proposed repeal**  
The Act is to be repealed by sec 6 (1) of this Act on the day following the day on which all of the provisions of this Act have commenced.

### Authorisation

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

File last modified 12 June 2012

# Mining Amendment Act 2008 No 19



New South Wales

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# Mining Amendment Act 2008 No 19



New South Wales

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

## 1 Name of Act

This Act is the *Mining Amendment Act 2008*.

## 2 Commencement

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

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

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

## 4 Amendment of other Acts and instrument

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

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

The *Mining Amendment (Miscellaneous Provisions) Act 2004* is repealed.

## 6 Repeal of this Act

- (1) This Act is repealed on the day following the day on which all of the provisions of this Act have commenced.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

## Schedule 1 Amendment of *Mining Act 1992*

(Section 3)

### [1]-[20] (Repealed)

### [21] Section 22 (2)

Omit the subsection. Insert instead:

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

**Note—**

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

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

Omit section 23 (3). Insert instead:

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

**Note—**

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

**[23]-[26] (Repealed)**

**[27] Sections 29 and 30**

Omit sections 29–30. Insert instead:

**29 Rights under exploration licence**

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

**Note—**

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

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

- (1) The holder of an exploration licence may, within 30 days (or such longer period as may be prescribed) after being served with written notice of the determination of an application under section 29, apply to the decision-maker for a review of the determination.
- (2) An application must:
  - (a) be made in the approved form and manner (if any), and
  - (b) contain any information that is prescribed by the regulations, and
  - (c) be accompanied by the fee (if any) prescribed by the regulations.
- (3) The making of an application for review of a determination does not operate to stay the determination.
- (4) On a review, the decision-maker may confirm or change the determination.
- (5) The decision-maker is to give the applicant written notice of the outcome of the review.
- (6) If the decision-maker changes a determination, the changed determination replaces the earlier determination from the date of the written notice.
- (7) A decision on a review may not be further reviewed under this section.

### **[28]-[37] (Repealed)**

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

Omit the subsection. Insert instead:

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

**Note—**

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

**[39], [40] (Repealed)**

**[41] Sections 47 and 48**

Omit sections 47–48. Insert instead:

**47 Rights under assessment lease**

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

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

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

#### **[42]-[57] (Repealed)**

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

Omit the subsection. Insert instead:

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



account the matters required by section 238.

**Note—**

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

**[59], [60] (Repealed)**

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

Omit section 64 (3). Insert instead:

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

**Note—**

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

**[62], [63] (Repealed)**

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

Omit section 70 (1). Insert instead:

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

- (c) any other conditions that the decision-maker may impose.

**Note—**

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

**[65]-[68] (Repealed)**

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

Omit section 73 (2). Insert instead:

- (2) While a mining lease is in force, the holder of the lease and any person acting as agent or employee of the holder, or delivering goods or providing services to the holder, for the purpose of a requirement of or an activity authorised by the lease may:
  - (a) for that purpose enter and be on the mining area, and
  - (b) do anything so authorised or required.
- (3) Despite subsection (1), the only prospecting and prospecting operations that a mining lease authorises are:
  - (a) prospecting and prospecting operations of a kind determined by the Minister by order under section 29, or
  - (b) any other kinds of prospecting and prospecting operations authorised by the decision-maker.
- (4) The holder of the lease may apply in writing to the decision-maker for a variation of the lease or conditions of the lease to authorise other kinds of prospecting or prospecting operations to be carried out.
- (5) An application must:
  - (a) be made in the approved form and manner (if any), and
  - (b) contain any information that is prescribed by the regulations, and
  - (c) be accompanied by the fee (if any) prescribed by the regulations.
- (6) The decision-maker may:
  - (a) vary the lease in accordance with the application and make any variations to the conditions of the lease that the decision-maker considers appropriate, or
  - (b) refuse the application.

- (7) The decision-maker is to give the applicant written notice of the outcome of any application under this section.
- (8) Any variation of the lease or the conditions of the lease takes effect on the date on which written notice of the variation is served on the applicant or any later date specified in the notice.
- (9) In this section:  
***mining area*** includes, in relation to a lease that does not include the surface of land, any part of the surface of land on which the holder of the lease is authorised, in accordance with section 81, to carry out activities.

**[70] Section 74**

Insert after section 73:

**74 Review of determination under section 73**

- (1) The holder of a mining lease may, within 30 days (or such longer period as may be prescribed) after being served with written notice of the determination of an application under section 73, apply to the decision-maker for a review of the determination.
- (2) An application must:
  - (a) be made in the approved form and manner (if any), and
  - (b) contain any information that is prescribed by the regulations, and
  - (c) be accompanied by the fee (if any) prescribed by the regulations.
- (3) The making of an application for review of a determination does not operate to stay the determination.
- (4) On a review, the decision-maker may confirm or change the determination.
- (5) The decision-maker is to give the applicant written notice of the outcome of the application.
- (6) If the decision-maker changes a determination, the changed determination replaces the earlier determination from the date of the written notice.
- (7) A decision on a review may not be further reviewed under this section.

**[71]-[81] (Repealed)**

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

Omit section 114 (2). Insert instead:

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

**Note—**

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

**[83], [84] (Repealed)**

**[85] Sections 120-122**

Omit sections 120-123. Insert instead:

**120 Application for approval of transfer**

- (1) The holder of an authority may apply for approval of the transfer of the authority to another person.
- (2) An application for approval must be lodged with the Director-General, include any information that is prescribed by the regulations and be accompanied by the following:
  - (a) the application fee prescribed by the regulations,

- (b) the consent of the proposed transferee,
- (c) in the case of a partial transfer, a plan identifying the area to which the new authority would apply.

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

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

**Note—**

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

- (3) An application for the transfer of a mineral owner authority may be approved only:
  - (a) if the proposed transferee is the owner of the minerals to which the authority relates, or
  - (b) if the proposed transferee is not the owner, subject to the condition that the transfer does not come into effect until the decision-maker notifies the applicant in writing that the decision-maker is satisfied that the proposed transferee has become the owner.
- (4) In approving a full transfer, the decision-maker may, subject to this Act, vary the conditions of the authority or include further conditions in the authority.
- (5) In approving a partial transfer, the decision-maker:

- (a) may, subject to this Act, vary the conditions of the original authority, and
  - (b) is to determine the conditions of the new authority.
- (6) Without limiting subsection (4) or (5), the decision-maker may vary an authority by adding conditions, including conditions that impose obligations on the transferor or the transferee to rehabilitate land or water affected by mining or prospecting or by associated activities carried out on land that is the subject of the transfer.
- (7) The decision-maker is to give the applicant written notice of the outcome of the application.
- (8) This section does not affect the operation of section 75V (Approvals etc legislation that must be applied consistently) or 93 (Granting and modification of approval by approval body) of the *Environmental Planning and Assessment Act 1979*.

## **122 Registration of transfers**

- (1) If the transfer of an authority has been approved, the transferor or transferee of the authority may, within 3 months after being notified of the approval, apply for registration of the transfer.
- (2) Any such application must be:
- (a) lodged with the Director-General, and
  - (b) accompanied by the application fee prescribed by the regulations, and
  - (c) accompanied by:
    - (i) in the case of a full transfer—a document signed by the decision-maker and the transferee acknowledging the terms of the authority after the transfer, and
    - (ii) in the case of a partial transfer—a document signed by the decision-maker and the transferor acknowledging the terms of the original authority after the transfer, and
    - (iii) in the case of a partial transfer—a document signed by the decision-maker and the transferee acknowledging the terms of the new authority.
- (3) On receipt of the application, the Director-General must register the transferee as the holder of the authority or (in the case of a partial transfer) the new authority.
- (4) On registration of a full transfer the transferee becomes the holder of the

authority and any variation of the authority under this Division takes effect.

(5) On registration of a partial transfer:

- (a) the original authority is taken to have been cancelled as to the area of the part transferred, and
- (b) an authority over the part transferred is taken to have been granted to the transferee for the period from the date of registration until the date on which the original authority is due to expire and subject to the conditions determined under this Division, and
- (c) the transferee becomes the holder of the new authority, and
- (d) any variation of the original authority under this Division takes effect.

**[86], [87] (Repealed)**

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

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

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

**[89]-[124] (Repealed)**

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

Omit "land within an exempted area" and "that area".

Insert instead "reserved land" and "that land", respectively.

**[126] (Repealed)**

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

Omit "land within an exempted area" and "that area".

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

**[128]-[132] (Repealed)**

**[133] Section 181**

Omit the section.

**[134]-[142] (Repealed)**

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

Omit section 190 (2). Insert instead:

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

**Note—**

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

**[144]-[151] (Repealed)**

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

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

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



- (b) that a person has contravened a condition of the claim (whether or not the person has been prosecuted or convicted of any offence arising from the contravention),
- (c) that the Director-General reasonably considers that the holder of the claim provided false or misleading information in or in connection with an application or any report provided under this Act for or with respect to the claim,
- (d) that the Director-General considers it appropriate to do so having taken into account the matters required by section 238.

**Note—**

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

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

**[153], [154] (Repealed)**

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

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

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

**Note—**

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

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

**[156]-[158] (Repealed)**

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

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

- (c) if the holder of the claim contravenes a provision of this Act or the regulations (whether or not the holder is prosecuted or convicted of any offence arising from the contravention), or
- (c1) if a person contravenes a condition of the claim (whether or not the holder is prosecuted or convicted of any offence arising from the contravention), or
- (c2) if the Director-General reasonably considers that the holder of the claim provided false or misleading information in or in connection with an application or any report provided under this Act for or with respect to the claim, or
- (c3) if the Director-General considers it appropriate to do so having taken into account the matters required by section 238, or

**[160]-[182] (Repealed)**

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

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

Insert instead "reserved land".

**[184]-[190] (Repealed)**

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

Omit section 228 (2). Insert instead:

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

**Note—**

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

**[192], [193] (Repealed)**

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

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

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

**[195]-[203] (Repealed)**

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

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

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

**237 Interpretation**

In this Division:

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

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

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

246H.

**environmental performance**—see section 239.

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

**relevant person** means:

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

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

- (1) In making an authorisation decision, the decision-maker is to take into account:
  - (a) the likely impact on the environment of activities authorised by the authorisation or undertaken in the authorisation area or proposed authorisation area in connection with activities authorised by the authorisation (including any impact outside the authorisation area), and
  - (b) the environmental performance of each relevant person and, if a relevant person is a corporation, of any related corporation, and
  - (c) any guidelines approved by the Director-General for the purposes of this section.
- (2) The decision-maker may:
  - (a) have studies (including environmental impact studies) carried out or engage persons to provide advice, as the decision-maker considers necessary, to assist in the making of an authorisation decision, and
  - (b) consider any reports or studies prepared in connection with a relevant decision referred to in subsection (3).
- (3) This section does not require the decision-maker:
  - (a) to consider or assess any matters that have already been, or are to be, considered or assessed by a Minister or public authority in connection with an approval of the Minister or authority, or
  - (b) to take into account the impact of the uses of any products obtained or derived from the minerals or other things obtained as a result of activities authorised by the authorisation, unless the uses are activities authorised by the authorisation.

- (4) The decision-maker may, in making an authorisation decision, disregard a contravention of the environment protection legislation, having regard to its seriousness or otherwise, the length of time since it occurred, and any other matters that appear relevant to the decision-maker.
- (5) Nothing in this section affects any requirement for an applicant to provide information or documents in connection with an application under this Act.

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

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

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

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

## **Division 2 Conditions relating to the environment,**

## rehabilitation and reporting

### 239B Conditions for environment protection and rehabilitation

- (1) Without limiting any other provision of this Act, a condition may be imposed on an authorisation that requires the holder to carry out activities for any one or more of the following purposes:
  - (a) the conservation of the environment, protection of the environment from harm as a result of activities under the authorisation or the prevention, control or mitigation of any such harm,
  - (b) the rehabilitation of land or water that is or may be affected by activities under the authorisation,
  - (c) the afforestation (including for carbon sequestration within the meaning of section 87A of the *Conveyancing Act 1919* and related environmental purposes) of any part of the authorisation area that may have been adversely affected by activities under the authorisation,
  - (d) the offsetting of any such adverse effects by the dedication or conservation of land for a public purpose or the rehabilitation of land or water other than the authorisation area.
- (2) However, a condition referred to in subsection (1) (c) may be imposed only at the request of an applicant for, or the holder of, the authorisation.
- (3) A condition may be imposed under this section:
  - (a) whether or not the land or water that is or may be affected by the activities is or has at any time been an authorisation area, and
  - (b) whether or not the activities were carried out by the current holder of the authorisation, and
  - (c) whether or not the activities were authorised by the authorisation, and
  - (d) if the authorisation has been previously wholly or partly transferred, whether or not the activities were carried out under the transferred authority.
- (4) A condition relating to land or water outside an authorisation area (including land previously in an authorisation area):
  - (a) may be imposed only in relation to matters arising, or likely to arise, directly from activities carried out under an authorisation or under section 81, and
  - (b) may require the provision and management of environmental off-sets related to the matters referred to in paragraph (a), and

- (c) may require the monitoring of environmental impacts and the provision of environmental data in relation to the land or water.
- (5) A condition may be imposed on the holder of an authorisation in relation to the rehabilitation of land or water affected by activities carried on under an authorisation that has been cancelled or previously carried on without an authorisation, only if the condition is imposed when the authorisation is granted or with the consent of the holder.
- (6) A condition imposed under this section may be varied or revoked by written notice served on the holder of the authorisation.
- (7) A condition imposed under this section takes effect on the date on which the written notice is served on the holder of the authorisation or on any later date specified in the notice.
- (8) This section does not affect the operation of section 75V (Approvals etc legislation that must be applied consistently) or 93 (Granting and modification of approval by approval body) of the *Environmental Planning and Assessment Act 1979*.

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

- (1) A condition may be imposed on an authorisation to require the holder to provide the Director-General with reports detailing any one or more of the following:
  - (a) the extent to which the conditions of the authorisation, or any provisions of this Act or the regulations applicable to activities under the authorisation, have or have not been complied with,
  - (b) particulars of any non-compliance with any such conditions or provisions,
  - (c) the reasons for any such non-compliance,
  - (d) any action taken, or to be taken, to prevent any recurrence, or to mitigate the effects, of that non-compliance.
- (2) A condition imposed under this section (a **reporting condition**) may require a report to be certified as correct by the holder, another person approved by the Director-General or a person who is a member of a class of persons prescribed by the regulations.
- (3) A condition imposed under this section takes effect on the date on which written notice of the condition is served on the holder of the authorisation or on any later date specified in the notice.
- (4) A condition imposed under this section may be varied or revoked by written notice served on the holder of the authorisation.

- (5) A person who gives a certificate for the purposes of a reporting condition is guilty of an offence if the person gives the certificate knowing that any of the statements certified is false or misleading in a material respect.

Maximum penalty:

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

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

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

### **[205]-[212] (Repealed)**

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

Omit sections 245 and 246. Insert instead:

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

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



expired.

## **246 Forfeiture of mining plant**

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

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

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

Maximum penalty: 100 penalty units.

- (2) The proceeds of any disposal of an item of mining plant forfeited to the Crown under this Division must be paid into the Derelict Mine Sites Fund, after deduction of the following amounts:
  - (a) the costs of the disposal and of any matter incidental to or connected with the disposal,
  - (b) the costs of removing from the land concerned any plant remaining unsold after the disposal,

- (c) any amount owing in respect of compensation for compensable loss within the meaning of Division 3 of Part 13,
  - (d) any other amount that the Director-General certifies to be a deductible amount.
- (3) If the proceeds of any such disposal are less than the amounts to be deducted, the proceeds are to be applied in or towards meeting those amounts in such manner as the Minister directs.

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

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

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

- (1) A landholder on whose land an item of mining plant is located that is the subject of a forfeiture order may, within 28 days after a copy of the order is served on the landholder, apply to the Land and Environment Court for a review of the order.
- (2) The landholder must serve a copy of the application on the Minister in accordance with the rules under section 332.
- (3) The Minister is a party to the review proceedings.
- (4) The court may dispose of the application:
- (a) by varying or revoking the order, or
  - (b) by confirming the order.
- (5) If the court revokes the order, it may make an order vesting the item of plant in:
- (a) a person whom the court is satisfied has a right to the control, use or benefit of the plant, or
  - (b) if the court is not so satisfied, one of the following, as the court thinks fit:
    - (i) the Crown,

- (ii) a landholder on whose land the plant is located.

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

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

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

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

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

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

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

#### **246F Definitions**

In this Division:

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

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

#### **246G Rehabilitation and environmental management plans for**

### **authorisations other than mining leases**

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

**Note—**

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

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

- (1) The holder of an authorisation may apply in writing to the Director-General for approval of a rehabilitation and environmental management plan or a variation of a rehabilitation and environmental management plan for the purposes of the authorisation.
- (2) The Director-General may grant or refuse the application.
- (3) The Director-General may grant an application only if satisfied that the plan or the plan as varied:
  - (a) describes how activities are to be carried out under the authorisation and how the authorisation area is to be managed after those activities cease, and
  - (b) addresses any other matters that are prescribed by the regulations, and
  - (c) is consistent with the conditions of the authorisation, and
  - (d) is consistent with the guidelines.

**Note—**

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

- (4) The Director-General must approve a new plan or a variation of a plan if satisfied that the plan or variation is necessary for compliance with a condition of a licence under the *Protection of the Environment Operations Act 1997* or a development consent.
- (5) The Director-General may refuse to approve the variation of a rehabilitation and

environmental management plan if the Director-General considers that the variation would be more appropriately dealt with by a new plan (because of, for example, the number of changes proposed).

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

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

#### **246J Continuing rehabilitation obligations**

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

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

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

#### **246K Reviews**

- (1) If the Director-General refuses an application under this Division, the applicant may, within 2 months after the refusal, apply in writing to the Minister to review the refusal.
- (2) In reviewing a refusal, the Minister is to have regard to:
  - (a) any reasons given by the Director-General for the decision, and
  - (b) any supporting information that the applicant may submit in relation to the application for review, and

- (c) any other information that the Minister considers relevant.
- (3) On a review, the Minister:
  - (a) has all the functions and discretions of the Director-General in respect of the matter that is under review, and
  - (b) cannot approve a rehabilitation and environmental management plan, or a variation of a plan, other than that for which approval was sought from the Director-General.
- (4) The decision of the Minister on a review is taken to be the decision of the Director-General and is to be given effect to accordingly.

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

- (1) An application under this Division must:
  - (a) be made in the approved form and manner (if any), and
  - (b) contain any information that is prescribed by the regulations, and
  - (c) be accompanied by the fee (if any) prescribed by the regulations.
- (2) The Director-General or the Minister must cause written notice of his or her decision on an application under this Division to be given to the applicant (including, if the decision is to refuse the application, the reasons for that refusal) within the period prescribed by the regulations.
- (3) An application under this Division is taken to have been refused if it has not been determined within the period prescribed by the regulations.
- (4) However, this does not preclude the determination of an application after that period expires.

### **Division 6 Audits**

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

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

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

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

An audit under this Division is a periodic or particular documented evaluation of

prospecting or mining operations (including management practices, systems and plant) for any one or more of the following purposes:

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

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

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

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

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

- (1) A condition that requires one or more mandatory audits to be undertaken, to the satisfaction of the Director-General, for any one or more of the purposes referred to in section 246N (a **mandatory audit condition**) may be imposed on an authorisation.
- (2) A mandatory audit condition must specify the purpose or purposes of the audit.
- (3) A mandatory audit condition may require any one or more of the following:
  - (a) appointment of an auditor to undertake the audit,
  - (b) approval by the Director-General of the auditor before being appointed,
  - (c) preparation of particular written documentation during the course of the audit,
  - (d) preparation of an audit report,
  - (e) production to the Director-General of the audit report.
- (4) A mandatory audit condition may also:
  - (a) specify the format and level of detail required for the audit, or
  - (b) require the auditor to submit the proposed format and level of detail to the

Director-General for approval.

- (5) A mandatory audit condition may be varied or revoked by written notice served on the holder of the authorisation.
- (6) A condition imposed under this section takes effect on the date on which written notice of the condition is served on the holder of the authorisation or on any later date specified in the notice.
- (7) This section does not affect the operation of section 75V (Approvals etc legislation that must be applied consistently) or 93 (Granting and modification of approval by approval body) of the *Environmental Planning and Assessment Act 1979*.

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

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

- (a) a declaration signed by the holder of the authorisation certifying that the holder has not knowingly provided any false or misleading information to the auditor and has provided all relevant information to the auditor, and
- (b) a declaration signed by the auditor:
  - (i) setting out the auditor's qualifications, and
  - (ii) certifying that the report is accurate, and that the auditor has not knowingly included any false or misleading information in it or failed to include any relevant information in it.

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

- (1) A person who provides information to an auditor in connection with a mandatory audit, knowing the information to be false or misleading in a material respect, is guilty of an offence.
- (2) The holder of an authorisation who fails to provide information to an auditor in connection with a mandatory audit being carried out in relation to the authorisation, knowing the information to be materially relevant to the audit, is guilty of an offence.
- (3) An auditor who includes information in an audit report produced to the Director-General in connection with a mandatory audit, knowing the information to be false or misleading in a material respect, is guilty of an offence.
- (4) An auditor who fails to provide information in an audit report produced to the Director-General in connection with a mandatory audit, knowing the information



to be materially relevant to the audit, is guilty of an offence.

(5) The holder of an authorisation who:

- (a) fails to retain any written documentation required to be prepared by the holder in connection with a mandatory audit for a period of at least 5 years after the audit report concerned was produced to the Director-General (or such other period as is prescribed by the regulations), or
- (b) fails to produce during that period any such documentation to the Director-General on request,

is guilty of an offence.

Maximum penalty:

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

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

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

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

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

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

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

### **246V Protected documents**

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

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

- (1) A protected document:
  - (a) is not admissible in evidence against any person in any proceedings connected with the administration or enforcement of this Act, the environment protection legislation or such other legislation, if any, as may be prescribed 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.

### **[214] (Repealed)**

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

Omit Division 1. Insert instead:

## **Division 1 Preliminary**

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

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

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

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

Nothing in this Part:

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

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

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

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

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

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

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

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

- (1) An inspector may enter:
  - (a) any premises at which the inspector reasonably suspects that any prospecting operations, mining operations or mining purposes are being or are about to be carried out—at any time, and
  - (b) any premises that the inspector reasonably suspects have been, are being or are likely to be affected by prospecting operations, mining operations or a mining purpose—at any time, and
  - (c) any premises where the inspector reasonably believes that documents that relate to any activity referred to in paragraph (a) or (b) are kept—at any time.
- (2) The power to enter premises authorises entry by foot or by means of a motor vehicle or other vehicle, or by an aircraft, or in any other manner.

(3) Entry may be effected with the aid of such police officers or other inspectors as the inspector considers necessary and with the use of reasonable force.

(4) Entry may be effected to any premises with the authority of a search warrant under section 248F.

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

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

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

(1) An inspector may, at any premises lawfully entered, do anything that in the opinion of the inspector is necessary to be done for the purposes of this Part, including (but not limited to) the things specified in subsection (2).

(2) An inspector may do any or all of the following:

(a) examine and inspect any works, plant, vehicle, aircraft or other article,

(b) take and remove samples,

(c) make such examinations, inquiries and tests as the inspector considers necessary,

(d) take such photographs, films, audio, video and other recordings as the inspector considers necessary,

(e) require records to be produced for inspection,

(f) examine and inspect any records,

(g) take extracts from, or a copy of, any records,

(h) seize anything that the inspector has reasonable grounds for believing is connected with an offence against this Act or the regulations,

(i) for the purposes of paragraph (h), direct the occupier of the premises where the thing is seized to retain it at those premises or at another place under the control of the occupier,

(j) do any other thing the inspector is empowered to do under this Part.

(3) The power to seize anything connected with an offence includes a power to seize:

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

- (b) a thing that will afford evidence of the commission of the offence, and
- (c) a thing that was used for the purpose of committing the offence.

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

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

- (1) An inspector may apply to an authorised officer within the meaning of the *Law Enforcement (Powers and Responsibilities) Act 2002* for the issue of a search warrant if the inspector believes on reasonable grounds that:
  - (a) a provision of this Act or the regulations is being or has been contravened at any premises, or
  - (b) there is in or on any premises matter or a thing that is connected with an offence under this Act or the regulations.
- (2) An authorised officer within the meaning of the *Law Enforcement (Powers and Responsibilities) Act 2002* to whom an application is made may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising an inspector named in the warrant:
  - (a) to enter the premises, and
  - (b) to exercise any function of an inspector under this Part.
- (3) Division 4 of Part 5 of the *Law Enforcement (Powers and Responsibilities) Act 2002* applies to a search warrant issued under this section.
- (4) **Definitions** In this section:

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

  - (a) matter or a thing with respect to which the offence has been committed, or
  - (b) matter or a thing that will afford evidence of the commission of an offence, or
  - (c) matter or a thing that was used, or is intended to be used, for the purpose of committing the offence.

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

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

A person may accompany an inspector and take all reasonable steps to assist the inspector in the exercise of his or her functions under this Part if the inspector is of

the opinion that the person is capable of providing assistance to the inspector in the exercise of those functions.

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

- (1) This section applies for the purpose of enabling an inspector to exercise any of the powers of an inspector under this Part in connection with any premises.
- (2) The Director-General may, by written notice given to the owner or occupier of the premises, require the owner or occupier to provide such reasonable assistance and facilities as are specified in the notice within a specified time and in a specified manner.
- (3) Assistance and facilities can be required under this section, whether they are of the same kind as, or a different kind from, any prescribed by the regulations.

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

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

#### **248J Compensation**

The Crown is to compensate all interested parties for any damage caused by an inspector in exercising a power under this Part of entering premises (but not any damage caused by the exercise of any other power), unless the occupier obstructed or hindered the inspector in the exercise of the power of entry.

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

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

- (1) Powers may be exercised under this Division for determining whether there has been compliance with or a contravention of any of the following provisions of this Act:
  - (a) Division 1 of Part 2 or 378A (in relation to a condition imposed under section 70 (1) (b) or 246G),
  - (b) section 239C, 240C, 246R or 378A (in relation to a condition imposed under section 239B (1)).
- (2) Powers may only be exercised under this Part in relation to a provision referred to in subsection (1) (b) if an inspector reasonably suspects that a failure to comply with, or contravention of, the provision has resulted, or may result, in harm to the environment that:
  - (a) involves actual or potential harm to the health or safety of human beings or

to ecosystems that is not trivial, or

(b) results in actual or potential loss or property damage of an amount, or amounts in aggregate, exceeding \$10,000 (or such other amount as is prescribed by the regulations).

(3) Evidence obtained by the use of powers exercised under this Division may be used in respect of offences other than offences referred to in subsection (1).

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

- (1) An inspector may require a person whom the inspector suspects on reasonable grounds to have knowledge of matters in respect of which information is reasonably required for a purpose to which this Division applies to answer questions in relation to those matters.
- (2) The Director-General may, by written notice, require a corporation to nominate, in writing within the time specified in the notice, a director or officer of the corporation to be the corporation's representative for the purpose of answering questions under this section.
- (3) Answers given by a person nominated under subsection (2) bind the corporation.
- (4) An inspector may, by written notice, require a person to attend at a specified place and time to answer questions under this section if attendance at that place is reasonably required in order that the questions can be properly put and answered.
- (5) The place and time at which a person may be required to attend is to be:
  - (a) a place or time nominated by the person, or
  - (b) if the place and time nominated is not reasonable in the circumstances or a place and time is not nominated by the person, a place and time nominated by the inspector that is reasonable in the circumstances.

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

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



- (4) A record may be made under this section despite the provisions of any other law.

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

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

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

- (1) This section applies in addition to the powers of entry to premises conferred by section 248C.
- (2) An inspector may enter any other premises at any reasonable time.
- (3) Division 1B applies in respect of a power of entry conferred by this section in the same way as it applies to a power of entry conferred by that Division.

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

#### **248P Definition**

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

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

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

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

- (1) An inspector may, for the purposes of this Part, inspect and test any article.
- (2) The inspector may, for the purposes of any such inspection or testing:
  - (a) enter the article, and
  - (b) enter in accordance with this Act the premises where the article is located,

and

- (c) operate the article, and
- (d) take photographs or video films of the article, and
- (e) inspect or test any substance being carried by the article or in any container on the article, and
- (f) take a sample of any such substance for testing.

## **Division 1E General**

### **248S Offences**

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

Maximum penalty:

- (a) in the case of a corporation—1,000 penalty units and, in the case of a continuing offence, a further penalty of 10 penalty units for each day the offence continues, or
- (b) in the case of a natural person—200 penalty units and, in the case of a continuing offence, a further penalty of 5 penalty units for each day the offence continues.

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

- (1) A person is not guilty of an offence of failing to comply with a requirement under this Part to furnish records or information or to answer a question unless the person was warned on that occasion that a failure to comply is an offence.
- (2) A person is not excused from a requirement under this Part to furnish records or information or to answer a question on the ground that the record, information or answer might incriminate the person or make the person liable to a penalty.
- (3) However, any information furnished or answer given by a natural person in compliance with a requirement under this Part is not admissible in evidence against the person in criminal proceedings (except proceedings for an offence under this Part) if:

- (a) the person objected at the time to doing so on the ground that it might incriminate the person, or
  - (b) the person was not warned on that occasion that the person may object to furnishing the information or giving the answer on the ground that it might incriminate the person.
- (4) Any record furnished by a person in compliance with a requirement under this Part is not inadmissible in evidence against the person in criminal proceedings on the ground that the record might incriminate the person.
- (5) Further information obtained as a result of a record or information furnished or of an answer given in compliance with a requirement under this Part is not inadmissible on the ground:
- (a) that the record or information had to be furnished or the answer had to be given, or
  - (b) that the record or information furnished or answer given might incriminate the person.
- (6) This section extends to a requirement under this Part to state a person's name and address.

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

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

#### **248V Extraterritorial application**

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

**[216] (Repealed)**

**[217] Section 249**

Omit the section. Insert instead:

**249 Entry on land for rehabilitation purposes**

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

**[218]-[227] (Repealed)**

**[228] Sections 266-267**

Omit sections 266 and 267. Insert instead:

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

- (1) On the granting of a small-scale title, a landholder becomes entitled to be paid compensation by the holder of the title concerned in respect of any compensable loss suffered, or likely to be suffered, by the landholder as a result of the exercise of rights under the title.
- (2) The compensation payable consists of such amount as the holder of the title and the landholder may agree or:
  - (a) if there is no agreement, such amount as may be declared by, or determined in accordance with, an order by the Minister under section 266A that applies to the authorisation area of the title, or

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

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

- (1) The Minister may, by order published in the Gazette, declare:
  - (a) the amount of compensation that is payable under section 266 by the holders of small-scale titles in an area specified by the order, or
  - (b) the manner in which that amount must be determined,in accordance with the Land and Environment Court's assessment under this section or section 266B (2) (b).
- (2) Before making an order (other than an order in accordance with an assessment under section 266B), the Minister must request the Land and Environment Court to assess the compensation that is payable or determine the manner in which the amount is to be determined.
- (3) The Minister may, by the order:
  - (a) declare amounts to be payable only on the grant of a claim or licence or, in the case of a mineral claim, also on any or every subsequent renewal of the claim, and
  - (b) specify the manner and circumstances in which compensation paid to the Director-General may be paid to the landholder.

- (4) A holder of a small-scale title who is required to make a payment under an order must make the payment to the Director-General, in accordance with the terms of the order.
- (5) An order takes effect on the day the order is published in the Gazette or on a later day specified in the order.
- (6) The regulations may make provision for or with respect to matters that are to be:
  - (a) considered by the Minister in making an order, or
  - (b) specified in the order, such as the manner and time for making payments under the order.

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

- (1) If:
  - (a) the landholder and the holder of a small-scale title fail to agree on an amount of compensation under section 266 and an order is not made under section 266A for the amount of compensation, or
  - (b) the landholder or holder of a small-scale title is of the opinion that the amount of compensation specified in an order under section 266A is not appropriate in the circumstances,the landholder or holder may apply to the Land and Environment Court to assess the compensation that is payable.
- (2) On an application under this section, the Land and Environment Court may:
  - (a) assess the compensation payable in relation to the small-scale title and, by order, vary the amount of compensation payable under this Division in respect of the title, or
  - (b) with the consent of the Minister, assess the amount of compensation payable by all or a group of holders of small-scale titles in the area concerned and recommend to the Minister that an order varying the amount of compensation payable under an order under section 266A be made in respect of the holders affected by the order.
- (3) An order by the Land and Environment Court under this section may specify the manner and circumstances in which compensation paid to the Director-General may be paid to the landholder.
- (4) If the Land and Environment Court makes an assessment under subsection (2), the Land and Environment Court may assess compensation as a fixed amount

per small-scale title or as an amount per small-scale title to be calculated at a fixed rate.

**Note—**

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

**267 Compensation for landholder not initially identified**

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

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

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

Insert instead “to be validly agreed on or assessed for the purposes of whichever is relevant of section 263, 264, 265, 266 or 267 or validly declared by, or determined in accordance with, an order under section 266A or 266B”.

**[230] (Repealed)**

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

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

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

Insert at the end of section 273:

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

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

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

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

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

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

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

**[236]-[239] (Repealed)**

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

Insert after Division 5 of Part 13:

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

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

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



such compensation, if any, as the Director-General determines is payable to the landholder under an order under section 266A, 266B or 267.

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

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

#### **[241]-[246B] (Repealed)**

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

Insert after section 293 (1) (v):

(v1) the review of an order issued under section 246 (Forfeiture of mining plant),

(v2) the review of payments out of the Mineral Claims Districts Compensation Fund in accordance with any regulations under section 281D,

#### **[247]-[257] (Repealed)**

#### **[258] Part 17A**

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

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

### **Division 1 Offences**

#### **378A Obstruction**

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

Maximum penalty: 1,000 penalty units.

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

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

Maximum penalty: 100 penalty units.

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

A person must not:

- (a) in or in connection with an application under this Act, or
- (b) in purported compliance with any requirement under this Act (including a condition of an authorisation),

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

Maximum penalty: 500 penalty units.

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

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

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

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

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

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

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

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

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

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

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

### **378E Defences**

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

- (4) In this section:

**mine safety legislation** means the *Coal Mine Health and Safety Act 2002*, *Mine Health and Safety Act 2004*, *Mines Inspection Act 1901*, *Occupational*

*Health and Safety Act 2000* and any other legislation that is prescribed by the regulations.

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

- (1) If a corporation contravenes, whether by act or omission, any provision of this Act or the regulations, each person who is a director of the corporation or who is concerned in the management of the corporation is taken to have contravened the same provision, unless the person satisfies the court that:
  - (a) the person was not in a position to influence the conduct of the corporation in relation to its contravention of the provision, or
  - (b) the person, if in such a position, used all due diligence to prevent the contravention by the corporation.
- (2) A person may be proceeded against and convicted under subsection (1) whether or not the corporation has been proceeded against or convicted under the provision concerned.
- (3) Nothing in this section affects any liability imposed on a corporation for an offence committed by the corporation against this Act or the regulations.

### **378G Continuing offences**

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

## **Division 2 Proceedings for offences**

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

- (1) Proceedings for an offence against this Act or the regulations are, except as

provided by this section, to be dealt with summarily before:

- (a) the Land and Environment Court, in the case of an offence under Division 1 of Part 2 (committed by a corporation), section 239C, 240C, 246R, 248S, 378A, 378D (in the case of a contravention of a condition referred to in Part 1 of Schedule 7 or section 261B) or 378ZF, or
  - (b) the Local Court, in the case of any offence.
- (2) If proceedings for an offence under this Act or the regulations are brought in the Local Court:
- (a) the maximum period of imprisonment that the Court may impose for the offence is 12 months, and
  - (b) the maximum monetary penalty that the Court may impose is 200 penalty units.
- (3) Proceedings for an offence specified in Part 2 of Schedule 7 are to be dealt with on indictment.

**Note—**

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

- (4) (Repealed)

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

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

inspector and need not contain particulars of the date on which the offence was committed.

- (4) The date on which evidence first came to the attention of an inspector is the date specified in the court attendance notice or application, unless the contrary is established.
- (5) This section applies only to proceedings that are to be dealt with summarily.
- (6) This section applies despite anything in the *Criminal Procedure Act 1986* or any other Act.
- (7) In this section:

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

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

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

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

- (1) A penalty notice officer may serve a penalty notice on a person if it appears to the officer that the person has committed an offence under this Act or the regulations, being an offence prescribed by the regulations.
- (2) A penalty notice is a notice to the effect that, if the person served does not wish to have the matter determined by a court, the person may pay, within the time and to the person specified in the notice, the penalty prescribed by the regulations for the offence if dealt with under this section.
- (3) A penalty notice may be served personally or by post.
- (4) The regulations may authorise a penalty notice also to be served by leaving the notice at premises in respect of which the offence was committed.
- (5) If the amount of the penalty prescribed for an alleged offence is paid under this section, no person is liable to any further proceedings for the alleged offence.
- (6) Payment under this section is not an admission of liability for the purposes of,

and does not affect or prejudice, any civil claim, action or proceeding arising out of the same occurrence.

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

## **Division 3 Restraining orders**

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

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

- (2) In this Division:

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

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

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

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

- (1) A person bringing proceedings (as referred to in section 378L) may apply for a restraining order in relation to property of the defendant.
- (2) An application under this section may be made to the Land and Environment Court.
- (3) On an application under this section:
  - (a) the court may, if it thinks fit, require the person making the application to give notice of the application to a person who the court has reason to believe has an interest in the property or part of the property, and
  - (b) a person to whom the court requires notice be given under paragraph (a) is entitled to appear and to adduce evidence at the hearing of the application.

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

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

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

### **378P Undertakings**

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

### **378Q Ancillary orders**

- (1) A court that makes a restraining order may make any ancillary orders that the court considers appropriate.
- (2) Without limiting the generality of subsection (1), ancillary orders may include any one or more of the following:
  - (a) an order for the examination on oath of:
    - (i) the defendant, or
    - (ii) another person,



before the court, or an officer of the court prescribed by rules of court, concerning the affairs of the defendant, including the nature and location of any property of the defendant,

- (b) an order varying the restraining order in respect of the property to which it relates,
- (c) an order varying any conditions to which the restraining order was subject.

(3) An ancillary order may be made on application:

- (a) by the applicant for the restraining order, or
- (b) by the defendant, or
- (c) with the leave of the court, by any other person.

(4) Ancillary orders may be made when or at any time after the restraining order is made. An ancillary order referred to in subsection (2) (a) may be made in advance of the restraining order.

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

(1) If:

- (a) a court has made a restraining order in respect of particular property or all of the property of the defendant, and
- (b) the court orders the payment of an amount referred to in section 378ZA or 378ZB,

there is created by force of this section, on the making of the order referred to in paragraph (b), a charge on all the property to which the restraining order applies to secure the payment to a public authority or person (which extends, for the purposes of this Division, to the Crown) of the amount referred to in section 378ZA or 378ZB.

(2) Such a charge ceases to have effect in respect of the property:

- (a) on payment by the defendant to the public authority or person of the amount concerned, or
- (b) on the sale or other disposition of the property with the consent of the court, or
- (c) on the sale of the property to a purchaser in good faith for value who, at the time of the sale, has no notice of the charge,

whichever occurs first.

- (3) Such a charge is subject to every charge or encumbrance to which the property was subject immediately before the order referred to in subsection (1) (b) was made and, in the case of land under the provisions of the *Real Property Act 1900*, is subject to every mortgage, lease or other interest recorded in the Register kept under that Act.
- (4) Such a charge is not affected by any change of ownership of the property, except as provided by subsection (2).
- (5) If:
  - (a) such a charge is created on property of a particular kind and the provisions of any law of the State provide for the registration of title to, or charges over, property of that kind, and
  - (b) the charge is so registered,a person who purchases or otherwise acquires the property after the registration of the charge is, for the purposes of subsection (2), taken to have notice of the charge.
- (6) If such a charge relates to land under the provisions of the *Real Property Act 1900*, the charge has no effect until it is registered under that Act.

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

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

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

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

amounts specified in the notice as a debt in a court of competent jurisdiction.

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

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

### **378V Contravention of restraining orders**

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

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

- (2) If:
  - (a) a restraining order is made against property, and
  - (b) the property is disposed of, or otherwise dealt with, in contravention of the restraining order, and
  - (c) the disposition or dealing was either not for sufficient consideration or not in favour of a person who acted in good faith,the person who applied for the restraining order may apply to the court that made the restraining order for an order that the disposition or dealing with the property be set aside.
- (3) If an application is made under subsection (2), the court may make an order:
  - (a) setting aside the disposition or dealing as from the day on which the disposition or dealing took place or as from the day of the order under this subsection, and
  - (b) (if appropriate) declaring the respective rights of any persons who acquired interests in the property on or after the day on which the disposition or dealing took place and before the day of the order.

### **378W Court may revoke restraining order**

- (1) The court that made a restraining order may revoke the order, on application

made to it by the person in relation to whose property it was made.

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

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

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

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

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

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

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

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

**the offender** means the person who is found to have committed the offence.

### **378Z Orders generally**

- (1) One or more orders may be made under this Division against the offender.
- (2) Orders may be made under this Division in addition to any penalty that may be imposed or any other action that may be taken in relation to the offence.
- (3) Orders may be made under this Division regardless of whether any penalty is imposed, or other action taken, in relation to the offence.

### **378ZA Orders for costs, expenses and compensation at time offence proved**

- (1) The court may, if it appears to the court that:
  - (a) the Crown or a public authority has incurred costs and expenses in connection with:
    - (i) the prevention, control, abatement or mitigation of any harm to the environment caused by the commission of the offence, or
    - (ii) making good any resulting environmental damage, or
  - (b) the Crown or another person or a public authority has, because of the commission of the offence, suffered loss of or damage to property or has incurred costs and expenses in preventing or mitigating, or in attempting to prevent or mitigate, any such loss or damage,

order the offender to pay to the Crown, public authority or person the costs and expenses so incurred, or compensation for the loss or damage so suffered, as the case may be, in such amount as is fixed by the order.
- (2) However, a court is not to make an order for payment to a person under subsection (1) to the extent that the payment would represent the value of minerals owned by that person that the offender had obtained by fossicking, prospecting operations or mining operations carried out with the consent of that person and in or in connection with the offence.
- (3) An order made by the Local Court under subsection (1) is enforceable as if it were an order made by the court when exercising jurisdiction under the *Civil Procedure Act 2005*.
- (4) An order made by the Land and Environment Court under subsection (1) is enforceable as if it were an order made by the Court in Class 4 proceedings under the *Land and Environment Court Act 1979*.
- (5) The Local Court is not to make an order under subsection (1) for the payment of an amount that exceeds the amount for which an order may be made by the court when exercising jurisdiction under the *Civil Procedure Act 2005*.

### **378ZB Recovery of costs, expenses and compensation after offence proved**

- (1) If, after the court finds the offence proved:
  - (a) the Crown or a public authority has incurred costs and expenses in connection with:
    - (i) the prevention, control, abatement or mitigation of any harm to the environment caused by the commission of the offence, or
    - (ii) making good any resulting environmental damage, or
  - (b) a person (including the Crown and a public authority) has, because of the commission of the offence, suffered loss of or damage to property or has incurred costs and expenses in preventing or mitigating, or in attempting to prevent or mitigate, any such loss or damage,

the Crown, public authority or person may recover from the offender the costs and expenses incurred or the amount of the loss or damage in the Land and Environment Court.
- (2) The amount of any such costs and expenses (but not the amount of any such loss or damage) may be recovered as a debt in a court of competent jurisdiction.
- (3) However, a person may not recover an amount that would represent the value of minerals owned by that person that the offender had obtained by fossicking, prospecting operations or mining operations carried out with the consent of that person and in or in connection with the offence.

### **378ZC Orders regarding costs and expenses of investigation**

- (1) The court may, if it appears to the court that the Crown or a public authority has reasonably incurred costs and expenses during the investigation of the offence, order the offender to pay to the Crown or the authority the costs and expenses so incurred in such amount as is fixed by the order.
- (2) An order made by the Land and Environment Court under subsection (1) is enforceable as if it were an order made by the Court in Class 4 proceedings under the [Land and Environment Court Act 1979](#).
- (3) An order made by the Local Court under subsection (1) is enforceable as if it were an order made by the court when exercising jurisdiction under the [Civil Procedure Act 2005](#).
- (4) In this section:

**costs and expenses**, in relation to the investigation of an offence, means the costs and expenses:

- (a) in taking any sample or conducting any inspection, test, measurement or analysis, or
  - (b) of transporting, storing or disposing of evidence,
- during the investigation of the offence.

### **378ZD Orders regarding other monetary benefits**

- (1) The court may order the offender to pay, as an additional penalty for committing the offence, an amount that the court is satisfied, on the balance of probabilities, represents the amount of any monetary benefits acquired by the offender, or accrued or accruing to the offender, as a result of the commission of the offence.
- (2) However, in calculating the amount of these monetary benefits, the court is to exclude any monetary benefits acquired in connection with the fossicking or prospecting for, or the mining of, privately owned minerals.
- (3) The amount of an additional penalty for an offence is not subject to any maximum amount of penalty provided elsewhere by or under this Act.
- (4) In this section:

***monetary benefits*** means monetary, financial or economic benefits.

***the court*** does not include the Local Court.

### **378ZE Additional orders**

- (1) The court may do any one or more of the following:
  - (a) order the offender to take specified action to publicise the offence (including the circumstances of the offence) and its consequences and any other orders made against the person,
  - (b) order the offender to take specified action to notify specified persons or classes of persons of the offence (including the circumstances of the offence) and its consequences and of any orders made against the person (including, for example, the publication in an annual report or any other notice to shareholders of a company or the notification of persons aggrieved or affected by the offender's conduct),
  - (c) order the offender to carry out a specified project for the rehabilitation of a current or former authorisation area,
  - (d) order the offender to carry out an audit of activities carried on by the offender,
  - (e) order the offender to pay a specified amount to the Derelict Mine Sites Fund

for the purposes of a specified project for the rehabilitation of a current or former authorisation area,

- (f) order the offender to attend, or to cause an employee or employees or a contractor or contractors of the offender to attend, a training or other course specified by the court,
- (g) order the offender to establish, for employees or contractors of the offender, a training course of a kind specified by the court,
- (h) order the offender to pay any royalty that is due and payable by the offender under this Act,
- (i) if the Director-General is a party to proceedings, order the offender to provide to the Director-General and maintain a security deposit, in a form and amount, and on such terms (if any), specified by the court, if the court orders the offender to carry out a specified work or program for the restoration or enhancement of the environment.

However, the Local Court is not authorised to make an order referred to in paragraph (c), (d), (e) or (i).

- (2) The court may, in an order under this section, fix a period for compliance and impose any other requirements the court considers necessary or expedient for enforcement of the order.
- (3) If the offender contravenes an order under subsection (1) (a) or (b), the prosecutor or a person authorised by the prosecutor may take action to carry out the order as far as may be practicable, including action to publicise or notify:
  - (a) the original contravention, its environmental and other consequences, and any other penalties imposed on the offender, and
  - (b) the contravention of the order.
- (4) The reasonable cost of taking action referred to in subsection (3) is recoverable by the prosecutor or person taking the action, in a court of competent jurisdiction, as a debt from the offender.
- (5) Sections 242C, 261F and 261G apply with respect to a security deposit provided under an order referred to in subsection (1) (i) as if it were provided under a security deposit condition.

### **378ZF Offence**

A person who fails to comply with an order under this Division (except an order under section 378ZA, 378ZB or 378ZC) is guilty of an offence.



Maximum penalty:

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

## **Division 5 Evidentiary provisions**

### **378ZG Certificate evidence of certain matters**

- (1) A document signed by the Director-General, or by an officer designated by the Director-General for the purposes of this section, and certifying any one or more of the matters specified in subsection (2) is admissible in any proceedings under this Act and is prima facie evidence of the matters so certified.
- (2) The following matters are specified for the purposes of subsection (1):
  - (a) that an instrument, a copy of which is set out in or annexed to the document, being an instrument purporting:
    - (i) to be issued, made or given for the purposes of this Act, and
    - (ii) to have been signed by the person authorised to issue, make or give the instrument, or by another person acting as delegate or on behalf of the person,  
  
was issued, made or given on a specified day,
  - (b) that a person was or was not, at a specified time or during a specified period, the holder of a specified authorisation or an authorisation of a specified kind,
  - (c) that specified land was or was not, at a specified time or during a specified period, the subject of a specified authorisation or an authorisation of a specified kind,
  - (d) that specified land was or was not, at a specified time or during a specified period, a specified authorisation area or part of a specified authorisation area,
  - (e) that an authorisation was or was not, at a specified time or during a specified period, subject to specified conditions,
  - (f) that an authorisation was, at a specified time, cancelled or suspended for a specified period or was cancelled or suspended subject to specified conditions,

- (g) that a condition was, at a specified time, revoked or varied in a specified manner or that a new condition was, at a specified time, imposed on an authorisation or on the suspension of an authorisation,
  - (h) that a person was or was not, at a specified time or during a specified period, an inspector or a royalty officer,
  - (i) that a person was or was not, at a specified time or during a specified period, a member of staff of the Department or a council,
  - (j) that information required to be furnished pursuant to this Act or the regulations was or was not received,
  - (k) that a document is a copy of part of, or an extract from, a register kept under this Act,
  - (l) that a specified amount is payable under this Act or the regulations by a specified person and has not been paid,
  - (m) that minerals of a specified value were recovered by a specified person or from specified land, at a specified time or during a specified period,
  - (n) that a specified legal or equitable interest (being a legal or equitable interest of a kind referred to in section 161), mining sublease or colliery holding was or was not registered under this Act,
  - (o) that the Crown or a public authority has incurred costs or expenses of a specified amount under section 241 or 242B,
  - (p) that the Crown or a public authority has incurred costs or expenses of a specified amount in connection with the investigation of a specified offence under this Act,
  - (q) that a specified function under this Act was delegated to a specified person under section 363 during a specified period.
- (3) For the purposes of the certification of a matter referred to in subsection (2) (h), the person who appointed the inspector or royalty officer concerned is taken to be an officer designated by the Director-General (as referred to in subsection (1)).
- (4) In the absence of information that would enable the accurate determination of an amount payable, as referred to in subsection (2) (l), or the value of minerals, as referred to in subsection (2) (m), the following provisions have effect:
- (a) the amount or value certified may be an estimate of that amount or value (based on the information available to the person making the certification),

- (b) the estimate is presumed to be accurate and cannot be challenged on the basis that insufficient information was available to enable the making of an accurate determination, but can be challenged by the provision of information that enables a more accurate estimate to be made,
- (c) if the estimate is successfully challenged and as a result a more accurate estimate is substituted, no proceedings are open to challenge merely because of the less accurate estimate and proceedings may continue to be heard and be determined on the basis of the substituted estimate.

**[259]-[266] (Repealed)**

**[267] Schedule 1 Public consultation with respect to the granting of assessment leases and mining leases**

Omit “each exempted area” wherever occurring.

Insert instead “any reserved land”.

**[268]-[272] (Repealed)**

**[273] Schedule 6**

Insert at the end of the Schedule with appropriate Part and clause numbers:

## **Part Provisions consequent on enactment of [Mining Amendment Act 2008](#)**

### **Definition**

In this Part:

**the 2008 Act** means the [Mining Amendment Act 2008](#).

### **Existing private mining**

- (1) Sections 6, 8, and 9, as in force immediately before their repeal by the 2008 Act, continue to apply to a person who, immediately before the repeal, was entitled under section 8 or 9 to prospect for or mine any privately owned minerals or coal.
- (2) Sections 20, 39, 60 and 185, as in force immediately before their repeal by the 2008 Act, continue to apply to applications for authorisations over land if, immediately before the repeal of those sections, a person was entitled under section 8 to prospect for or mine any privately owned minerals.
- (3) Sections 240 and 240A, as inserted by the 2008 Act, apply to or in respect of activities carried out under section 8 (as continued in force by this clause) in the

same way that they apply to or in respect of activities carried out under an authorisation.

- (4) Sections 261F–261I, as inserted by the 2008 Act, apply to a security lodged or required to be lodged under section 8 (as continued in force by this clause) in the same way that they apply to or in respect of a security deposit provided under a security deposit condition.
- (5) Sections 5 and 6, as inserted by the 2008 Act, do not apply to or in respect of the prospecting, mining or carrying out of mining purposes in the course of prospecting for or mining privately owned minerals by a person referred to in subclause (1).
- (6) This clause ceases to apply in respect of a person 12 months after it commences or if the person becomes the holder of an authorisation in respect of the land on which the privately owned minerals or coal are located before the expiry of that period.

#### **Existing mining purposes**

- (1) Section 6, as inserted by the 2008 Act, does not apply to or in respect of a mining purpose that was carried out, or in the course of construction, immediately before the commencement of that section.
- (2) This clause ceases to have effect in relation to a mining purpose on the earlier of the following events:
  - (a) the end of the period of 5 years following the commencement of section 6,
  - (b) if the mining purpose is abandoned for a continuous period of 12 months (other than for repair or maintenance).

#### **Declarations that activities are not prospecting or mining**

A regulation in force under section 11A (1) immediately before its substitution by the 2008 Act continues in force and is taken to have been made under that subsection as substituted by the 2008 Act.

#### **Existing applications relating to authorisations**

- (1) An application for an authorisation, or for the transfer or renewal of an authorisation, that was not determined before the commencement of this clause and that complied with this Act, as in force before its amendment by the 2008 Act, is taken to have been duly made under this Act, as amended by the 2008 Act.
- (2) Notice is not required to be given of an application referred to in subclause (1) if such notice was not required to be given before the amendment of this Act by

the 2008 Act.

### **Term of existing authorisations**

Sections 27, 45 and 71, as in force before the substitution of those sections by the 2008 Act, continue to apply to an authority in force immediately before that substitution.

### **Prospecting activities under authorisations**

Regulations may be made for or with respect to the following:

- (a) the prospecting operations that may be carried out under an authorisation in force immediately before the substitution of section 29 by the 2008 Act,
- (b) deeming particular prospecting operations, permitted under existing authorisations, to be the subject of an order by the Minister under section 29, as substituted by the 2008 Act.

### **Existing disputes subject to a warden's inquiry**

- (1) This clause applies to a dispute referred to a warden for determination under section 31, 49, 62, 165, 170, 188, 212 or 217 and not determined before the commencement of this clause.
- (2) A dispute to which this clause applies is to continue to be dealt with as if the provision of this Act under which it is being dealt with had not been amended by the 2008 Act.

### **Mining subleases**

- (1) A mining sublease that was registered, or taken to be registered, under section 161 of this Act, and in force, immediately before the commencement of section 163A of this Act must be registered by the sublessee under section 163A not later than 3 months after the commencement of that section.
- (2) A mining sublease referred to in subclause (1) ceases to be registered under section 161 on being registered under section 163A or 3 months after the commencement of that section, whichever is the earlier.

### **Existing mineral claims outside mineral claims districts**

- (1) A mineral claim over land that is outside a mineral claims district, and that was in force immediately before the commencement of this clause, is taken to be a mining lease over that land.
- (2) An application for a mineral claim over land that is outside a mineral claims district that was not determined before the commencement of this clause is

taken to be an application for a mining lease under this Act.

- (3) The regulations may make provision for or with respect to the application of this Act to a mining lease referred to in subclause (1), and may, for that purpose, modify the application of this Act or the regulations.

### **Restrictions on grant of opal prospecting licence**

Section 227, as amended by the 2008 Act, applies to and in respect of an application for an opal prospecting licence made before the commencement of that amendment in the same way as it applies to and in respect of an application for an opal prospecting licence made on or after that commencement.

### **Assessment of compensation in relation to mineral claims and opal prospecting licences**

Sections 266–267, as inserted by the 2008 Act, apply to and in respect of a mineral claim or opal prospecting licence granted before the commencement of those sections in the same way as they apply to and in respect of a mineral claim or opal prospecting licence granted after that commencement, but do not affect any compensation determined or payable before that commencement in respect of any such mineral claim or opal prospecting licence.

### **Compensation arising under mineral claim or opal prospecting licence**

The holder of a mineral claim or opal prospecting licence who, before the commencement of section 266 as substituted by the 2008 Act, had met the requirements of section 266 or 267 (as in force before the substitution) that had to be met in order to be entitled to exercise the rights conferred by the claim or licence is taken, with respect to that claim or licence, to have met the requirements imposed on the holder of an authorisation under section 266.

### **Suspended authorisations**

The provisions of this Act applying to the suspension of an authorisation, as in force before the commencement of this clause, continue to apply to or in respect of an authorisation that was the subject of a suspension immediately before that commencement.

### **Limitation of challenges to decisions with respect to authorities and opal prospecting licences**

Sections 137, 210B and 234A, as substituted or inserted by the 2008 Act, apply to an authority, mineral claim or opal prospecting licence in force immediately before the section commenced but do not apply to any decision made before that commencement.

### **Existing directions**

- (1) A direction given under section 240, and having effect immediately before the substitution of that section by the 2008 Act, continues in force and may be enforced under sections 241 and 242 of this Act, as in force before that substitution.
- (2) A direction given under section 245, and having effect immediately before the substitution of that section by the 2008 Act, continues in force and may be enforced under section 246 of this Act, as in force before that substitution.

### **Security deposits**

- (1) A condition of an authorisation in force immediately before the commencement of Part 12A of this Act that required a security deposit to be provided is taken to be a condition imposed under that Part and is taken to comply with that Part.
- (2) Part 12A applies to a security deposit provided, and not released, under this Act immediately before the commencement of that Part and any such security deposit is taken to comply with that Part.

### **Environmental management conditions and directions**

- (1) A condition imposed on an authority under Division 2 of Part 11 of this Act, and in force immediately before the commencement of this clause, continues to have effect and may be revoked or varied by the decision-maker.
- (2) For the purposes of this Act, any such condition is taken to be a condition listed in Part 1 of Schedule 7.
- (3) A condition imposed under section 70 (1) (b), as inserted by the 2008 Act, applies to a mining lease in force immediately before the commencement of that provision.
- (4) The regulations may provide for the period within which the holder of any such mining lease is required to comply with the condition and may deem existing agreements or arrangements to be rehabilitation and environmental management plans for the purposes of section 70 (1) (b).
- (5) Except as provided by this clause and the regulations, a condition imposed on an authority by an amendment made to this Act by the 2008 Act does not apply to an authority in force on the commencement of this clause.

### **Addition or variation of conditions as a consequence of planning approval**

Section 168A, as inserted by the 2008 Act, applies to an authorisation in force immediately before the commencement of that section.

### **Evidentiary certificates**

An evidentiary certificate given under section 172 of the Act before its repeal by the 2008 Act is taken to have been given under section 378ZG.

### **Lodgment fees**

A fee that, immediately before the substitution of section 382A of this Act by the 2008 Act, was a fee determined by the Minister under that section is taken to be the lodgment or application fee prescribed by the regulations for the purposes of the relevant provision of the Act or regulations, until a fee is prescribed by the regulations.

### **Matters referred to mining registrars**

Any decision or other matter referred to a mining registrar before the commencement of this clause and not finally made or otherwise finally dealt with before that commencement is to be made or otherwise dealt with by the Director-General.

### **Enforcement provisions**

Divisions 3 and 4 of Part 17A, as inserted by the 2008 Act, apply to or in respect of offences committed before the commencement of those Divisions but do not apply to or in respect of any proceedings commenced before that commencement.

#### **[274], [275] (Repealed)**

#### **[276] Dictionary, definition of “controlling body”**

Omit “an exempted area” and “*exempted area*”.

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

#### **[277], [278] (Repealed)**

#### **[279] Dictionary, definition of “exempted area”**

Omit the definition.

#### **[280]-[284] (Repealed)**

#### **[285] Dictionary**

Insert in alphabetical order:

***assessment (mineral owner) lease*** means an assessment lease granted to the owner of privately owned minerals with respect to those minerals.



**authorisation** means an authority, a small-scale title or an environmental assessment permit granted under section 252.

**authorisation area** means land that is the subject of an authorisation.

**authority area** means land the subject of an authority.

**decision-maker** means:

- (a) in relation to a mineral claim or an opal prospecting licence, or an application for or with respect to such a claim or licence—the Director-General, or
- (b) in relation to a mineral owner authority, or an application for or with respect to such an authority—the Director-General, or
- (c) in relation to any other type of authority or an application for or with respect to any other type of authority—the Minister.

**derelict mine site** means land declared as a derelict mine site under section 242A.

**Derelict Mine Sites Fund** means the fund established by section 242C.

**ecologically sustainable development** has the same meaning as it has in section 6 (2) of the [Protection of the Environment Administration Act 1991](#).

**environment** includes all aspects of the surroundings of humans, whether affecting any human as an individual or in his or her social grouping.

**environment protection legislation** has the same meaning as in the [Protection of the Environment Administration Act 1991](#).

**exploration (mineral owner) licence** means an exploration licence granted to the owner of privately owned minerals with respect to those minerals.

**full transfer**, in relation to an authority, means a transfer of the authority that relates to the whole authority area.

**head lease** means a mining lease in relation to which a mining sublease has effect under section 83A.

**land** includes land covered by water.

**Mineral Claims Districts Compensation Fund** means the fund established by section 281C.

**mineral owner authority** means an exploration (mineral owner) licence, an assessment (mineral owner) lease or a mining (mineral owner) lease.

**mining (mineral owner) lease** means a mining lease granted to the owner of

privately owned minerals with respect to those minerals.

**mining sublease** means an assignment, or purported assignment, by the holder of a mining lease to another person of rights and obligations conferred by the lease, for a limited period.

**mining sublease area** or **sublease area** means land that is the subject of a mining sublease.

**mining sublease register** means the register of mining subleases kept under section 163A.

**new authority** means the authority that is taken by section 122 (5) (b) to have been granted on a partial transfer.

**occupational health and safety legislation** means:

- (a) the [Occupational Health and Safety Act 1983](#) and the regulations made under that Act, and
- (b) the [Occupational Health and Safety Act 2000](#) and the regulations made under that Act, and
- (c) the [Coal Mines Regulation Act 1982](#) and the regulations made under that Act, and
- (d) the [Coal Mine Health and Safety Act 2002](#) and the regulations made under that Act, and
- (e) the [Mines Inspection Act 1901](#) and the regulations and any rules made under that Act.

**original authority** means the authority the partial transfer of which results in a new authority being taken, by section 122 (5) (b), to have been granted.

**partial transfer**, in relation to an authority, means a transfer of an authority only in so far as part of the authority area is concerned.

**premises** includes:

- (a) a building or structure, or
- (b) land or a place (whether enclosed or built on or not), or
- (c) a mobile plant, vehicle, vessel or aircraft.

**public authority** means a public authority constituted by or under an Act, and includes:

- (a) a Government Department, and

- (b) a statutory body representing the Crown, a State owned corporation within the meaning of the *State Owned Corporations Act 1989* and a subsidiary (within the meaning of that Act), and
- (c) a council, and
- (d) a member of staff or other person who exercises functions on behalf of a public authority.

**record** includes a plan, specifications, map, report, book and other document (whether in writing, in electronic form or otherwise).

**rehabilitation** means the treatment or management of disturbed land or water for the purpose of establishing a safe and stable environment.

**related corporation**, in relation to the holder of, or applicant or tenderer for or with respect to, an authorisation that is a corporation, means a corporation that is, with respect to that holder, applicant or tenderer, a related body corporate within the meaning of the *Corporations Act 2001* of the Commonwealth.

**reserved land** means an area constituted by land:

- (a) reserved, dedicated, appropriated, resumed or acquired for public purposes (except land reserved for a temporary common or a commonage), whether vested in the Crown or in any person as trustee for public purposes, or
- (b) held under a lease for water supply by virtue of a special lease or otherwise, or
- (c) transferred, granted or vested in trust by the Crown for the purpose of a race-course, cricket-ground, recreation reserve, park or permanent common or for any other public purpose, or
- (d) prescribed by the regulations for the purposes of this definition.

**transfer**, in relation to an authority, means a full or partial transfer of the authority.

**transferee**, in relation to a partial transfer of an authority, means the holder of the new authority.

## Schedule 2 Amendment of other Acts and instrument

(Section 4)

### 2.1-2.4

(Repealed)

## **2.4A Land and Environment Court Act 1979 No 204**

### **Section 21 Class 5—environmental planning and protection summary enforcement**

Insert after section 21 (hc):

(hd) proceedings referred to in section 378H (1) (a) of the *Mining Act 1992* in relation to offences arising under that Act,

## **2.5-2.7**

(Repealed)

## **2.8 Petroleum (Onshore) Act 1991 No 84**

### **[1] (Repealed)**

### **[2] Sections 29 and 29A**

Omit section 29. Insert instead:

## **29 Rights of holders of exploration licence**

- (1) An exploration licence authorises only:
  - (a) the conduct, on the land comprised in the licence and in accordance with the conditions of the licence, of prospecting of a kind determined by the Minister for the purposes of this section by order published in the Gazette, and
  - (b) any other kinds of prospecting authorised by the Minister on or after granting the licence.
- (2) The holder of an exploration licence may apply in writing to the Minister for a variation of the licence to authorise other kinds of prospecting to be carried out.
- (3) An application must:
  - (a) be made in the approved form and manner (if any), and
  - (b) contain any information that is prescribed by the regulations, and
  - (c) be accompanied by the fee (if any) prescribed by the regulations.
- (4) The Minister may:
  - (a) vary the licence in accordance with the application and make any variations to the conditions of the licence that the Minister considers appropriate (including a condition referred to in section 75 or 76), or

- (b) refuse the application.
- (5) The Minister is to give the applicant written notice of the outcome of the application.
- (6) Any variation to the conditions of the licence takes effect on the date on which written notice of the variation is served on the applicant or any later date that is specified in the notice.
- (7) Section 74 applies to the Minister's determination of an application under this section in the same way as it applies to a decision about whether or not to grant a petroleum title.

### **29A Review of determinations under section 29**

- (1) An applicant for a variation of a licence under section 29 may, within 30 days (or such longer period as may be prescribed) after being served with written notice of the determination of the application, apply to the Minister for a review of the determination.
- (2) The making of an application for review of a determination does not operate to stay the determination.
- (3) On a review the Minister may confirm or change the determination.
- (4) If the Minister changes a determination, the changed determination replaces the earlier determination as from the date of the review.
- (5) An application under this section must:
  - (a) be made in the approved form and manner (if any), and
  - (b) contain any information prescribed by the regulations, and
  - (c) be accompanied by the fee (if any) prescribed by the regulations.
- (6) The Minister is to give the applicant written notice of the outcome of any application under this section.
- (7) A decision on a review may not be further reviewed under this section.

## **2.9 Protection of the Environment Operations Act 1997 No 156**

### **Schedule 1 Schedule of EPA-licensed activities**

Omit "or subject to a section 8 notice" from the item relating to mines in Part 1.