

Western Australia

Mining Amendment Act 2004

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Mining Amendment Act 2004

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Western Australia

Mining Amendment Act 2004

No. 39 of 2004

An Act to amend the *Mining Act 1978* and the *Mining Amendment Act 1996* and for related purposes.

[Assented to 3 November 2004]

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This Act may be cited as the *Mining Amendment Act 2004*.

2. Commencement

- (1) This Act comes into operation on a day fixed by proclamation.
- (2) Different days may be fixed under subsection (1) for different provisions.

3. The Act amended

The amendments in this Act, other than Part 11, are to the *Mining Act 1978**.

[* *Reprinted as at 7 September 2001.*
*For subsequent amendments see Western Australian
Legislation Information Tables for 2003, Table 1, p. 253.*]

Part 2 — Amendments about prospecting licences

4. Section 43 amended

Section 43(2) is amended by inserting after “section 56A” —

“

or a prospecting licence granted in respect of an application under section 56B

”.

5. Section 45 amended and savings provision

(1) After section 45(1) the following subsections are inserted —

“

(1a) Notwithstanding subsection (1) the Minister may, if satisfied that a prescribed ground for extension exists, extend the term of a prospecting licence —

- (a) by one period of 4 years; and
- (b) if the licence has retention status, by a further period or periods of 4 years.

(1b) An application for the extension of the term of a prospecting licence under subsection (1a) (an “**extension application**”) shall be made within the prescribed time and in the prescribed manner.

(1c) If an extension application is made in respect of a prospecting licence and the term of the licence would but for this subsection expire, the licence continues in force in respect of the land the subject of the extension application until the application is determined.

(1d) If —

- (a) an extension application is made in respect of a prospecting licence the term of which has been extended under subsection (1a)(a); and

- (b) an application for retention status in respect of the prospecting licence —
 - (i) is pending when the extension application is made; or
 - (ii) is made at the same time as the extension application,the extension application shall not be determined until the application for retention status has been determined.
 - (1e) If the holder of a prospecting licence transfers the licence after making an extension application in respect of the licence, the extension application continues in the name of the transferee of the licence as if the transferee had made it.
- ”.
- (2) Despite the amendment made by subsection (1), section 45 of the *Mining Act 1978* as in force immediately before the commencement of this section continues to apply to and in relation to —
 - (a) any prospecting licence in force under that Act immediately before the commencement; and
 - (b) any prospecting licence granted under that Act after the commencement in respect of an application made before the commencement.

6. Section 46 amended and transitional provision

- (1) Section 46 is amended as follows:
 - (a) after paragraph (a) by inserting the following paragraph —
 - “
 - (aa) that no ground disturbing equipment will be used by the holder when prospecting on the

land the subject of the prospecting licence
unless —

- (i) the holder has lodged in the prescribed manner a programme of work in respect of that use; and
- (ii) the programme of work has been approved in writing by the Minister or a prescribed official;

”;

(b) in paragraph (b) —

- (i) by deleting “the State Mining Engineer” in the first place where it occurs and inserting instead —
“ a prescribed official ”;
- (ii) by deleting “the State Mining Engineer” in the second place where it occurs and inserting instead —
“ the prescribed official ”.

- (2) Section 46(aa) of the *Mining Act 1978* as inserted by subsection (1) does not apply to a prospecting licence granted under that Act before the day on which this section comes into operation.

7. Section 56B inserted

After section 56A the following section is inserted in Part IV Division 1 —

“

56B. Certain licence holders to have right to apply for further prospecting licence

(1) In this section —

“**relevant licence**” means a prospecting licence the term of which expires within 12 months after the

day on which section 7 of the *Mining Amendment Act 2004* comes into operation.

- (2) Despite sections 18, 23 and 27 but subject to the other provisions of this Act, the holder of a relevant licence has, while the licence continues in force, the right to apply for a prospecting licence in respect of the whole or any part of the land the subject of the relevant licence.
- (3) Where the holder of a relevant licence exercises the right conferred by subsection (2) and the term of the relevant licence would but for this subsection expire, the relevant licence shall continue in force in respect of the land the subject of the application for a prospecting licence until the application is determined.
- (4) If the holder of a relevant licence transfers the licence after making an application for a prospecting licence in the exercise of the right conferred by subsection (2), the application continues in the name of the transferee of the licence as if the transferee had made it.

”.

Part 3 — Amendments about special prospecting licences

8. Section 56A amended

(1) Section 56A(2) is amended as follows:

- (a) by deleting “Within 14 days after lodging an application for a special prospecting licence under subsection (1) the applicant shall” and inserting instead —

“

Unless subsection (5a) applies, an applicant for a special prospecting licence shall, within the prescribed period,

”;

- (b) by inserting after “relates” —

“

, and subsections (3) to (5) apply in respect of that application

”.

(2) After section 56A(5) the following subsections are inserted —

“

(5a) If at the time when an applicant for a special prospecting licence marked out the land to which his application relates —

- (a) a special prospecting licence was in force in respect of land the subject of the primary tenement; or
- (b) another application for a special prospecting licence in respect of land the subject of the primary tenement had been made, but had not been determined, under this section,

the applicant shall, within the prescribed period, lodge at the office of the mining registrar the written consent

of the holder of the primary tenement to the grant of his application.

- (5b) If written consent to the grant of an application is lodged in accordance with subsection (5a), the mining registrar may, subject to this Act, grant the application as provided for in subsection (6).

”.

- (3) Section 56A(6) is amended by deleting “, the warden”.
- (4) Section 56A(7)(c) is amended by deleting “3” and inserting instead —
“ 10 ”.
- (5) Section 56A(7b) is amended as follows:
- (a) by deleting “special prospecting licence, or”;
 - (b) by deleting “licence, shall” and inserting instead —
“ licence shall ”.
- (6) Section 56A(8) is amended as follows:
- (a) by deleting “if — ” and inserting instead —
“ subject to subsection (7b), ”;
 - (b) by deleting paragraphs (a) and (b) and “or” after paragraph (a).
- (7) After section 56A(8) the following subsection is inserted —
“
- (8aa) Sections 74, 74A and 75 apply to an application for a mining lease under subsection (8).

”.

9. Section 70 amended

(1) Section 70(2) is amended as follows:

- (a) by deleting “Within 14 days after lodging an application for a special prospecting licence under subsection (1) the applicant shall” and inserting instead —

“

Unless subsection (5a) applies, an applicant for a special prospecting licence shall, within the prescribed period,

”;

- (b) by inserting after “relates” —

“

, and subsections (3) to (5) apply in respect of the application

”.

(2) After section 70(5) the following subsections are inserted —

“

- (5a) If, at the time when an applicant for a special prospecting licence marked out the land to which his application relates, the grant of the application would have resulted in the number of special prospecting licences in respect of the primary tenement exceeding one for each 200 hectares of the primary tenement, the applicant shall, within the prescribed period, lodge at the office of the mining registrar the written consent of the holder of the primary tenement to the grant of the application.

- (5b) If written consent to the grant of an application is lodged in accordance with subsection (5a), the mining registrar may, subject to this Act, grant the application as provided for in subsection (6).

”.

s. 10

- (3) Section 70(6) is amended by deleting “, the warden”.
- (4) Section 70(7)(c) is amended by deleting “3” and inserting instead —
“ 10 ”.
- (5) Section 70(7b) is amended as follows:
 - (a) by deleting “special prospecting licence, or a”;
 - (b) by deleting “licence, shall” and inserting instead —
“ licence shall ”;
 - (c) by deleting “licences or”.
- (6) Section 70(8) is amended as follows:
 - (a) by deleting “if — ”;
 - (b) by deleting paragraphs (a) and (b) and “or” after paragraph (a);
 - (c) by inserting after “Minister may” —
“ , subject to subsection (7b), ”.
- (7) After section 70(8) the following subsection is inserted —
“
(8aa) Sections 74, 74A and 75 apply to an application for a mining lease under subsection (8).
”.

10. Section 85B amended

- (1) Section 85B(5)(c) is amended by deleting “3” and inserting instead —
“ 10 ”.
- (2) Section 85B(7) is amended as follows:
 - (a) by deleting “, if — ”;
 - (b) by deleting paragraphs (a) and (b) and “or” after paragraph (a).

(3) After section 85B(7) the following subsection is inserted —

“

(7a) Sections 74, 74A and 75 apply to an application for a mining lease under subsection (7).

”.

11. Transitional provision

(1) In this section —

“commencement” means the commencement of this Part;

“old provisions” means sections 56A, 70 and 85B of the *Mining Act 1978* as in force immediately before the commencement.

(2) Despite the amendments made by this Part, the old provisions continue to apply to and in relation to an application for a special prospecting licence or a mining lease for gold under the *Mining Act 1978* that is pending immediately before the commencement.

Part 4 — Amendments about exploration licences

12. Section 57 amended

- (1) Section 57(2) is amended by inserting after “70 blocks” —
“ unless subsection (2aa) applies ”.
- (2) After section 57(2) the following subsection is inserted —
“
 - (2aa) If the area of land referred to in subsection (2) is in an area of the State designated under section 57A(1) it shall not be more than 200 blocks.”.

13. Section 57A inserted

After section 57 the following section is inserted —

“

57A. Designation of areas for purposes of s. 57(2aa)

- (1) The Minister may, by notice published in the *Gazette*, designate one or more areas of the State for the purposes of section 57(2aa).
- (2) The Minister may, by notice published in the *Gazette*, vary or cancel a designation under subsection (1).
- (3) A notice under this section comes into operation on the day on which the notice is published in the *Gazette* or such later day as is specified in the notice.
- (4) The variation or cancellation of a designation under subsection (2) does not affect the operation of any exploration licence granted before the variation or cancellation takes effect.
- (5) If —

- (a) an application for an exploration licence is made in respect of an area of land that is in an area of the State designated under subsection (1) (a “**designated area**”); and
- (b) before the application is determined the designation is varied or cancelled under subsection (2) with the result that the area of land to which the application relates ceases to be in a designated area,

then, despite that variation or cancellation, section 57(2aa) applies as if the area of land were in a designated area.

”.

14. Section 61 amended

- (1) Section 61(2) is amended as follows:

- (a) after “Minister may” by inserting —

“

, if satisfied that a prescribed ground for extension exists,

”;

- (b) by deleting paragraphs (a) and (b), and “and” after paragraph (a), and inserting instead —

“

- (a) by one period of 5 years; and
- (b) by a further period or periods of 2 years,

”.

- (2) Section 61(3) is repealed and the following subsections are inserted instead —

“

- (3) An application for the extension of the term of an exploration licence under subsection (2) shall be made

within the prescribed time and in the prescribed manner.

- (3a) If an application for the extension of the term of an exploration licence is made under this section and the term of the licence would but for this subsection expire, the licence shall continue in force in respect of the land the subject of the application until the application is determined.

”.

15. Section 63 amended and transitional provision

- (1) Section 63 is amended as follows:

- (a) after paragraph (a) by inserting the following paragraph —

“

- (aa) will not use ground disturbing equipment when exploring for minerals on the land the subject of the exploration licence unless —

- (i) the holder has lodged in the prescribed manner a programme of work in respect of that use; and
(ii) the programme of work has been approved in writing by the Minister or a prescribed official;

”;

- (b) in paragraph (b) —

- (i) by deleting “the State Mining Engineer” in the first place where it occurs and inserting instead —

“ a prescribed official ”;

- (ii) by deleting “the State Mining Engineer” in the second place where it occurs and inserting instead —

“ the prescribed official ”.

- (2) Section 63(aa) of the *Mining Act 1978* as inserted by subsection (1) does not apply to an exploration licence granted under that Act before the day on which this section comes into operation.

16. Section 65 amended

- (1) Section 65(1) to (3a) are repealed and the following subsections are inserted instead —

“

- (1) In this section —

“**end day**” means the day on which the 5 year period referred to in section 61(1) ends;

“**surrender day**”, in relation to a surrender, means —

- (a) if the surrender is lodged under subsection (3), the end day;
- (b) if the surrender is lodged under subsection (3c), the day that is 12 months after the end day; or
- (c) if the surrender is lodged in compliance with a requirement under subsection (4), the day on which the surrender is registered.
- (2) This section applies in relation to an exploration licence if —
- (a) the term of the licence has been extended under section 61; or
- (b) an application under section 61 for the extension of the term of the licence has been made but has not been determined.
- (3) Subject to subsection (3a), on or before the end day the holder of an exploration licence granted in respect of more than one block shall lodge a surrender for registration in respect of —

s. 16

- (a) 40% of the number of the blocks that are subject to the licence; or
 - (b) if 40% of that number is not a whole number, the nearest whole number of the blocks.
- (3a) Subsection (3) does not apply if —
- (a) a deferral has been granted under subsection (3b); or
 - (b) an application for deferral under subsection (3c) has been made but has not been determined.
- (3b) The Minister may, if satisfied that a prescribed ground for deferral exists, defer the requirement in subsection (3).
- (3c) An application for deferral shall be made by the holder of an exploration licence on or before the end day in the prescribed manner.
- (3d) If a deferral is granted under subsection (3b), the holder of the exploration licence shall lodge the surrender for registration on or before the day that is 12 months after the end day.
- ”.
- (2) Section 65(4) is repealed and the following subsections are inserted instead —
- “
- (4) If —
 - (a) the holder of an exploration licence fails to lodge a surrender in accordance with subsection (3) or (3d); or
 - (b) a deferral under subsection (3b) is refused,

the Minister may, by notice in writing, require the holder to lodge the surrender for registration within a period specified in the notice.

- (4a) A surrender under this section takes effect on the surrender day.
- (4b) The blocks that remain subject to an exploration licence after a surrender under this section are to form not more than 3 discrete areas each consisting of —
 - (a) a single graticular section; or
 - (b) a number of graticular sections each having a side in common with at least one other graticular section in that area.
- (4c) If, before the surrender day, the holder of an exploration licence —
 - (a) is granted a mining lease or general purpose lease in respect of a part of the land the subject of the exploration licence (the “**granted land**”); or
 - (b) surrenders a part of the land the subject of the exploration licence (the “**surrendered land**”),

then, in calculating the area of land that is required to be surrendered under this section, the area of granted land or surrendered land shall be taken into account as though it were an area of land surrendered in satisfaction of that requirement.

”.

17. Section 68 amended

- (1) Section 68(1) is amended by deleting the penalty provision.
- (2) Section 68(2) is amended by deleting the penalty provision.
- (3) After section 68(3) the following subsection is inserted —

“

- (4) Notwithstanding section 154(1), a holder of an exploration licence who fails to comply with subsection (1), (2) or (3) does not commit an offence against this Act.

”.

18. Section 69 amended

Section 69(1) is amended by deleting “relinquished” in both places where it occurs and inserting instead —

“ surrendered ”.

19. Transitional and savings provisions

- (1) In this section —

“commencement” means the commencement of this Part;

“old provisions” means the *Mining Act 1978* as in force immediately before the commencement;

“relevant licence” means —

- (a) an exploration licence granted under the *Mining Act 1978* that is in force immediately before the commencement; or
- (b) an exploration licence granted under the *Mining Act 1978* after the commencement in respect of an application made before the commencement.

- (2) Despite the amendments made by this Part, the old provisions (other than sections 63A, 65(1a) and 65(4)) continue to apply to and in relation to a relevant licence.

- (3) If the holder of a relevant licence fails to comply with the requirements for surrender in section 65(1) or (1b) of the old provisions, the Minister may, by notice in writing, require the holder to lodge the surrender for registration within a period specified in the notice.

- (4) Section 63A of the *Mining Act 1978* applies to and in relation to a relevant licence as if it contained a provision to the effect that the licence is liable to forfeiture if the holder of the licence fails to comply with a requirement under subsection (3).
- (5) Despite the amendments made by section 16, section 65(1a) of the old provisions continues to apply to and in relation to a relevant licence as if —
- (a) “licence — ” were replaced by —
“ licence ”;
 - (b) paragraphs (a) and (b), and “or” after paragraph (a), were deleted; and
 - (c) “the Minister may exempt” were replaced by —
“
the Minister may, if satisfied that a ground for exemption exists, exempt
”.
- (6) For the purposes of the application of section 65(1a) of the old provisions as modified by subsection (5) a ground for exemption exists if a prescribed ground for deferral exists under section 65(3b) of the *Mining Act 1978* as inserted by section 16.

Part 5 — Amendments about retention status

20. Section 8 amended

- (1) Section 8(1) is amended by inserting in the appropriate alphabetical positions —

“

“**identified mineral resource**” means a deposit of minerals identified in the prescribed manner;

“**retention status**” has a meaning affected by subsection (5);

”.

- (2) After section 8(4) the following subsection is inserted —

“

- (5) For the purposes of this Act —

(a) a prospecting licence has retention status if an approval under section 54 has effect in relation to the licence; and

(b) an exploration licence has retention status if an approval under section 69B has effect in relation to the licence.

”.

21. Section 50 amended

- (1) Section 50 is amended by inserting before “During” the subsection designation “(1)”.

- (2) At the end of section 50 the following subsection is inserted —

“

- (2) In the case of a prospecting licence that has retention status, expenditure conditions prescribed for the purposes of subsection (1) —

(a) shall provide for a reduction calculated in the prescribed manner of the amount of

expenditure required during the year of the term of the licence in which retention status is approved; and

- (b) shall not require expenditure during any subsequent year of the term of the licence.

”

22. Sections 53 to 55B inserted

After section 52 the following sections are inserted —

“

53. Application for retention status

- (1) In this section —
“**prospecting licence**” does not include a prospecting licence that is a primary tenement for the purposes of Division 2A.
- (2) The holder of a prospecting licence may apply to the Minister for approval of retention status under section 54.
- (3) An application under subsection (2) —
- (a) shall be in writing;
 - (b) shall be made in the prescribed manner;
 - (c) shall contain the prescribed information;
 - (d) shall be accompanied by any map, statement or other information required by the regulations; and
 - (e) shall be accompanied by the prescribed application fee.
- (4) For the purposes of subsection (3)(d), but without limiting section 162(5), the regulations may require a statement or other information to be in the form of a statutory declaration.

- (5) If the holder of a prospecting licence transfers the licence after making an application under subsection (2) in respect of the licence, the application continues in the name of the transferee of the licence as if the transferee had made it.

54. Approval of retention status

- (1) The Minister may approve retention status for the whole or any part of the land the subject of a prospecting licence if satisfied that —
 - (a) there is an identified mineral resource located in, on or under that land; and
 - (b) the mining of that identified mineral resource is impracticable because —
 - (i) the resource is uneconomic or subject to marketing problems although the resource may reasonably be expected to become economic or marketable in the future;
 - (ii) the resource is required to sustain the future operations of an existing or proposed mining operation; or
 - (iii) there are existing political, environmental or other difficulties in obtaining requisite approvals.
- (2) An approval shall be in writing.
- (3) An approval takes effect on the day on which notice of the approval is published in the *Gazette* or on a later day specified in the notice.
- (4) The area of land to which an approval applies shall be an area that, in the opinion of the Minister, is sufficient to include —

- (a) the land in, on or under which the identified mineral resource is located; and
 - (b) such other land as may be required for future mining operations in respect of that identified mineral resource.
- (5) The area of land to which an approval applies may be less than the area of land in respect of which the approval was sought.
- (6) If retention status is approved for part of the land the subject of a prospecting licence, the holder of the prospecting licence shall mark out in the prescribed manner the boundaries of the land covered by the approval as soon as practicable after the day on which the approval takes effect.
- (7) If retention status is approved for part of the land the subject of a prospecting licence, the land not covered by the approval ceases to be the subject of the licence on the day on which the approval takes effect.

55. Consultation with other Ministers

- (1) Before approving retention status under section 54 for land of a class referred to in section 24(1), the Minister shall consult and obtain the recommendations of the relevant responsible Minister under section 24(8).
- (2) Before approving retention status under section 54 for land in a marine management area, marine nature reserve or marine park, the Minister shall consult and obtain the recommendations of the other Ministers referred to in section 24A(6).
- (3) Before approving retention status under section 54 for land of a class referred to in section 25(1)(a), (b) or (c), the Minister shall consult and obtain the

recommendations of the other Ministers referred to in section 25(2)(b).

- (4) Before approving retention status under section 54 for land of the class referred to in section 25(1)(d), the Minister shall consult and obtain the recommendations of the other Minister referred to in section 25(3)(b).

55A. Programme of work

- (1) On the approval of retention status under section 54, or at any subsequent time, the Minister may impose on the holder of the prospecting licence a condition requiring the holder to comply with a specified programme of work in respect of the land the subject of the licence within a specified period.
- (2) Before imposing a condition under subsection (1), the Minister may require the holder of the licence to submit to the Minister a draft programme of work in a form approved by the Minister and the holder shall comply with that requirement.
- (3) A condition imposed under subsection (1) may be cancelled or varied by the Minister at any time.
- (4) A condition imposed under subsection (1) —
 - (a) may be endorsed on the prospecting licence, for which purpose the holder of the licence shall produce the licence on demand; and
 - (b) whether or not so endorsed, on notice of the imposition of the condition being given in writing to the holder of the licence shall for all purposes have effect as a condition to which the licence is subject.
- (5) In subsection (1) —

“specified” means specified in writing by the Minister.

55B. Holder of prospecting licence with retention status may be required to apply for mining lease

- (1) The Minister may at any time, by notice in writing, require the holder of a prospecting licence that has retention status to show cause why a mining lease should not be applied for in respect of the whole or any part of the land the subject of the prospecting licence.
- (2) Where —
- (a) the holder of a prospecting licence fails to show cause within the time specified in the notice referred to in subsection (1); or
 - (b) the Minister is of the opinion that the holder of a prospecting licence has shown insufficient cause,

the Minister may, by notice in writing, require that holder to apply in accordance with this Act for a mining lease in respect of the whole or any part of the land the subject of the prospecting licence within a period of 60 days from the giving of that notice.

”.

23. Section 62 amended

- (1) Section 62 is amended by inserting before “During” the subsection designation “(1)”.
- (2) At the end of section 62 the following subsection is inserted —
- “
- (2) In the case of an exploration licence that has retention status, expenditure conditions prescribed for the purposes of subsection (1) —
 - (a) are to provide for a reduction calculated in the prescribed manner of the amount of expenditure required during the year of the term

of the licence in which retention status is approved; and

- (b) are not to require expenditure during any subsequent year of the term of the licence.

”.

24. Sections 69A to 69E inserted

After section 69 the following sections are inserted —

“

69A. Application for retention status

- (1) In this section —
“**exploration licence**” does not include an exploration licence that is a primary tenement for the purposes of Division 2A.
- (2) The holder of an exploration licence may apply to the Minister for approval of retention status under section 69B.
- (3) An application under subsection (2) —
 - (a) shall be in writing;
 - (b) shall be made in the prescribed manner;
 - (c) shall contain the prescribed information;
 - (d) shall be accompanied by any map, statement or other information required by the regulations; and
 - (e) shall be accompanied by the prescribed application fee.
- (4) For the purposes of subsection (3)(d), but without limiting section 162(5), the regulations may require a statement or other information to be in the form of a statutory declaration.

- (5) If the holder of an exploration licence transfers the licence after making an application under subsection (2) in respect of the licence, the application continues in the name of the transferee of the licence as if the transferee had made it.

69B. Approval of retention status

- (1) The Minister may approve retention status for the whole or any part of the land the subject of an exploration licence if satisfied that —
- (a) there is an identified mineral resource located in, on or under that land; and
 - (b) the mining of that identified mineral resource is impracticable because —
 - (i) the resource is uneconomic or subject to marketing problems although the resource may reasonably be expected to become economic or marketable in the future;
 - (ii) the resource is required to sustain the future operations of an existing or proposed mining operation; or
 - (iii) there are existing political, environmental or other difficulties in obtaining requisite approvals.
- (2) An approval shall be in writing.
- (3) An approval takes effect on the day on which notice of the approval is published in the *Gazette* or on a later day specified in the notice.
- (4) The area of land to which an approval applies —
- (a) shall be a block or blocks; and

- (b) shall be an area that, in the opinion of the Minister, is sufficient to include —
 - (i) the land in, on or under which the identified mineral resource is located; and
 - (ii) such other land as may be required for future mining operations in respect of that identified mineral resource.
- (5) The area of land to which an approval applies may be less than the area of land in respect of which the approval was sought.
- (6) If retention status is approved for part of the land the subject of an exploration licence, the land not covered by the approval ceases to be the subject of the licence on the day on which the approval takes effect.

69C. Consultation with other Ministers

- (1) Before approving retention status under section 69B for land of a class referred to in section 24(1), the Minister shall consult and obtain the recommendations of the relevant responsible Minister under section 24(8).
- (2) Before approving retention status under section 69B for land in a marine management area, marine nature reserve or marine park the Minister shall consult and obtain the recommendations of the other Ministers referred to in section 24A(6).
- (3) Before approving retention status under section 69B for land of a class referred to in section 25(1)(a), (b) or (c), the Minister shall consult and obtain the recommendations of the other Ministers referred to in section 25(2)(b).
- (4) Before approving retention status under section 69B for land of the class referred to in section 25(1)(d), the

Minister shall consult and obtain the recommendations of the other Minister referred to in section 25(3)(b).

69D. Programme of work

- (1) On the approval of retention status under section 69B, or at any subsequent time, the Minister may impose on the holder of the exploration licence a condition requiring the holder to comply with a specified programme of work in respect of the land the subject of the licence within a specified period.
- (2) Before imposing a condition under subsection (1), the Minister may require the holder of the licence to submit to the Minister a draft programme of work in a form approved by the Minister and the holder shall comply with that requirement.
- (3) A condition imposed under subsection (1) may be cancelled or varied by the Minister at any time.
- (4) A condition imposed under subsection (1) —
 - (a) may be endorsed on the exploration licence, for which purpose the holder of the licence shall produce the licence on demand; and
 - (b) whether or not so endorsed, on notice of the imposition of the condition being given in writing to the holder of the licence shall for all purposes have effect as a condition to which the licence is subject.
- (5) In subsection (1) —
“**specified**” means specified in writing by the Minister.

69E. Holder of exploration licence with retention status may be required to apply for mining lease

- (1) The Minister may at any time, by notice in writing, require the holder of an exploration licence that has

retention status to show cause why a mining lease should not be applied for in respect of the whole or any part of the land the subject of the exploration licence.

- (2) Where —
- (a) the holder of an exploration licence fails to show cause within the time specified in the notice referred to in subsection (1); or
 - (b) the Minister is of the opinion that the holder of an exploration licence has shown insufficient cause,

the Minister may, by notice in writing, require that holder to apply in accordance with this Act for a mining lease in respect of the whole or any part of the land the subject of the exploration licence within a period of 60 days from the giving of that notice.

”.

25. Section 70A replaced

Section 70A is repealed and the following section is inserted instead —

“

70A. Meaning of “primary tenement”

In this Division —

“primary tenement” means —

- (a) a prospecting licence that —
 - (i) is in force immediately before the commencement of section 25 of the *Mining Amendment Act 2004*; or
 - (ii) is granted after that commencement in respect of an application made before that commencement;

- (b) an exploration licence that —
 - (i) is in force immediately before the commencement of section 25 of the *Mining Amendment Act 2004*; or
 - (ii) is granted after that commencement in respect of an application made before that commencement;

or

- (c) a mining lease.

”.

Part 6 — Amendments about mining leases

26. Section 6 amended

After section 6(1) the following subsections are inserted —

“

- (1a) Notwithstanding subsection (1) and section 5 of the *Environmental Protection Act 1986*, in the case of an application for a mining lease accompanied by the documentation referred to in section 74(1)(ca)(ii) —
 - (a) only the applicant can refer a proposal to which the application relates under section 38(1) of that Act; and
 - (b) section 38(5) of that Act does not apply to such a proposal.
- (1b) In subsection (1a) —

“**proposal**” has the meaning given to that term in section 3(1) of the *Environmental Protection Act 1986*.
- (1c) Subsection (1a) does not apply to an application for a mining lease made pursuant to a Government agreement as defined in section 2 of the *Government Agreements Act 1979*.
- (1d) If a mining lease is granted on an application referred to in subsection (1a), nothing in that subsection affects the application of section 38 of the *Environmental Protection Act 1986* to —
 - (a) a programme of work lodged by the holder of the mining lease in compliance with the condition referred to in section 82(1)(ca); or
 - (b) a mining proposal lodged by the holder of the mining lease in compliance with the condition referred to in section 82A.

”.

27. Sections 70O and 70P inserted

Before section 71 the following sections are inserted in Part IV Division 3 —

“

70O. Definitions

(1) In this Division —

“**guidelines**” means guidelines approved by the Director General of Mines for the purposes of this Division;

“**mining proposal**” means a document that —

- (a) is in the form required by the guidelines; and
- (b) contains information of the kind required by the guidelines about proposed mining operations in, on or under the land in respect of which a mining lease is sought or granted, as the case requires;

“**significant mineralisation**” has the meaning given in subsection (2).

(2) For the purposes of this Division there is significant mineralisation in, on or under land to which an application for a mining lease relates if exploration results in respect of a deposit of minerals located in, on or under that land indicate that there is a reasonable prospect of minerals being obtained by mining operations.

70P. Guidelines to be publicly available

The Director General of Mines shall ensure that the guidelines are made available, without charge, for public inspection in the prescribed manner.

”.

28. Section 73 replaced

Section 73 is repealed and the following section is inserted instead —

“

73. Area of mining lease may be less than area sought

- (1) The area of land in respect of which a mining lease is granted may be less than the area of land in respect of which the mining lease is sought.
- (2) If the area of land in respect of which a mining lease is granted is as described in subsection (1), the holder of the lease shall mark out in the prescribed manner the boundaries of that area as soon as practicable after the grant of the lease.

”.

29. Section 74 amended

- (1) After section 74(1)(c) the following is inserted —

“

- (ca) shall be accompanied by —
 - (i) a mining proposal; or
 - (ii) a statement in accordance with subsection (1a) and a mineralisation report prepared by a qualified person;
- and

”.

- (2) After section 74(1) the following subsection is inserted —

“

- (1a) The statement referred to in subsection (1)(ca)(ii) shall set out information about the mining operations that are likely to be carried out in, on or under the land to which the application relates including information as to —

- (a) when mining is likely to commence;
- (b) the most likely method of mining; and
- (c) the location, and the area, of land that is likely to be required for the operation of plant, machinery and equipment and for other activities associated with those mining operations.

”.

(3) After section 74(4) the following subsections are inserted —

“

- (5) The Director General of Mines shall ensure that —
 - (a) any document referred to in subsection (1)(ca) that accompanies the application; and
 - (b) any document furnished by the applicant in response to a request under subsection (2),
 are made available for public inspection at reasonable times.
- (6) The regulations may require a person to pay a fee specified in the regulations —
 - (a) for inspecting a document referred to in subsection (5); or
 - (b) for obtaining a copy of the document or any part of it.

(7) In this section —

“**likely**” means reasonably likely having regard to the information available to the applicant when the application is made;

“**mineralisation report**” means a report that sets out details of exploration results in respect of a deposit of minerals located in, on or under the land to which the application relates, including details of —

- (a) the type of minerals located in, on or under that land;
- (b) the location, depth and extent of those minerals and the way in which that extent has been determined; and
- (c) analytical results obtained from samples of those minerals;

“qualified person” means a person who —

- (a) is a member of a prescribed body; and
- (b) complies with any requirement of the regulations as to relevant qualifications or experience.

”.

30. Section 74A inserted

After section 74 the following section is inserted —

“

74A. Report on significant mineralisation required for certain applications

- (1) If an application for a mining lease is accompanied by the documentation referred to in section 74(1)(ca)(ii), the Director, Geological Survey shall give the Minister a report as to whether or not there is significant mineralisation in, on or under the land to which the application relates.
- (2) For the purposes of preparing the report, the Director, Geological Survey may request the applicant to provide further information in relation to matters dealt with in the mineralisation report.
- (3) The report shall be based solely on information contained in the mineralisation report and any further

information provided by the applicant in response to a request under subsection (2).

- (4) The Director, Geological Survey shall give a copy of the report to the mining registrar and the warden.
- (5) The Director General of Mines shall ensure that the report is made available for public inspection at reasonable times.
- (6) The regulations may require a person to pay a fee specified in the regulations —
 - (a) for inspecting the report; or
 - (b) for obtaining a copy of the report or any part of it.
- (7) In this section —

“mineralisation report” means the mineralisation report that accompanied the application.

”.

31. Section 75 amended

- (1) After section 75(1) the following subsection is inserted —

“

 - (1a) A person is not entitled to lodge a notice of objection if the basis for the objection is that there is no significant mineralisation in, on or under the land to which the application relates.

”.
- (2) Section 75(2) is amended by deleting “Where” and inserting instead —

“ Subject to subsection (2a), if ”.
- (3) After section 75(2) the following subsection is inserted —

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- “
- (2a) If the application for the mining lease is accompanied by the documentation referred to in section 74(1)(ca)(ii), the mining registrar shall not forward a report under subsection (2) unless —
- (a) the mining registrar has received a copy of the section 74A report in relation to the application; and
 - (b) the section 74A report states that there is significant mineralisation in, on or under the land to which the application relates.
- ”.
- (4) Section 75(4) is amended by deleting “Where” and inserting instead —
- “ Subject to subsection (4a), if ”.
- (5) After section 75(4) the following subsection is inserted —
- “
- (4a) If the application for the mining lease is accompanied by the documentation referred to in section 74(1)(ca)(ii), the warden shall not hear the application unless —
- (a) the warden has received a copy of the section 74A report in relation to the application; and
 - (b) the section 74A report states that there is significant mineralisation in, on or under the land to which the application relates.
- ”.
- (6) Section 75(7) is amended by inserting after “subject to” —
- “ subsection (8) and the other provisions of ”.
- (7) After section 75(7) the following subsection is inserted —

“

- (8) In the case of an application for a mining lease that is accompanied by the documentation referred to in section 74(1)(ca)(ii), the Minister shall refuse to grant the mining lease if the section 74A report states that there is no significant mineralisation in, on or under the land to which the application relates.

”.

- (8) After section 75(9) the following subsection is inserted —

“

- (10) In this section —

“**section 74A report**” means the report given to the Minister under section 74A.

”.

32. Section 82 amended and transitional provision

- (1) After section 82(1)(c) the following paragraph is inserted —

“

- (ca) not use ground disturbing equipment when mining on such land unless —
- (i) the lessee has lodged in the prescribed manner a programme of work in respect of that use and the programme has been approved in writing by the Minister or a prescribed official; or
 - (ii) that use is dealt with in a relevant mining proposal;

”.

- (2) After section 82(1) the following subsections are inserted —

“

- (1a) In subsection (1)(ca)(ii) —

“**relevant mining proposal**” means —

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- (a) a mining proposal that accompanied the application for the mining lease under section 74(1)(ca); or
 - (b) a mining proposal for which there is approval as described in section 82A(2)(b).
- (1b) Without limiting or otherwise affecting the application of the other provisions of subsection (1), paragraph (ca) of that subsection does not apply to a mining lease granted pursuant to a Government agreement, as defined in section 2 of the *Government Agreements Act 1979*, in accordance with proposals approved, deemed to be approved or determined under the agreement.
- ”.
- (3) Section 82(1)(ca) of the *Mining Act 1978* as inserted by subsection (1) does not apply to a mining lease granted under that Act before the day on which this section comes into operation.

33. Section 82A inserted

After section 82 the following section is inserted —

“

82A. Condition to be included in certain mining leases

- (1) This section applies to a mining lease if —
- (a) the application for the mining lease was made under this Act, but was not determined, before the commencement of section 33 of the *Mining Amendment Act 2004*; or
 - (b) the application for the mining lease was accompanied by the documentation referred to in section 74(1)(ca)(ii).

- (2) Every mining lease to which this section applies shall be deemed to be granted subject to a condition requiring the lessee, before the lessee carries out mining operations of a prescribed kind on any part of the land the subject of the mining lease —
- (a) to lodge in the prescribed manner a mining proposal in respect of those operations; and
 - (b) to obtain written approval for the mining proposal from a prescribed official.

”.

34. Section 85 amended

Section 85(1) and (2) are each amended by inserting after “this Act” —

“

and to any conditions to which the mining lease is subject

”.

35. Transitional provision

- (1) In this section —
- “**commencement**” means the commencement of this Part;
 - “**old provisions**” means sections 74 and 75 of the *Mining Act 1978* as in force immediately before the commencement.
- (2) Despite the amendments made by this Part, the old provisions continue to apply to and in relation to an application for a mining lease under the *Mining Act 1978* that is pending immediately before the commencement.

Part 7 — Amendments about securities

36. Section 70F replaced and transitional provision

- (1) Section 70F is repealed and the following section is inserted instead —

“

70F. Security relating to retention licence

- (1) The applicant for a retention licence shall lodge at the office of the mining registrar, within the prescribed period, a security for compliance with —
 - (a) the conditions to which the retention licence, if granted, will from time to time be subject; and
 - (b) the provisions of this Part and the regulations.
- (2) The Minister may require the holder of a retention licence to lodge at the office of the mining registrar or the Department at Perth, within such period as the Minister specifies in writing, an additional security for compliance with conditions imposed in relation to the licence under section 70I.
- (3) A security referred to in subsection (1) or (2) shall be in accordance with and subject to section 126.
- (4) A retention licence shall not be granted unless a security has been lodged by the applicant for the retention licence in accordance with subsection (1).
- (5) Notwithstanding section 154(1), an applicant for a retention licence who fails to comply with subsection (1) does not commit an offence against this Act.

”.

- (2) Where, immediately before the commencement of this section, an application for a retention licence has been made, but has not been finally determined, under the *Mining Act 1978* —
- (a) the person who made the application is not required to comply with section 70F(1) of that Act as inserted by subsection (1); and
 - (b) section 70F(4) of that Act as inserted by subsection (1) does not apply in respect of the application.

37. Section 70K amended

Section 70K(bb) is amended by deleting “70F(1)” and inserting instead —

“ 70F(2) ”.

38. Section 82 amended

Section 82(1)(g) is amended by deleting “84A(1)” and inserting instead —

“ 84A(2) ”.

39. Section 84A replaced and transitional provision

- (1) Section 84A is repealed and the following section is inserted instead —

“

84A. Security relating to mining lease

- (1) The applicant for a mining lease shall lodge at the office of the mining registrar, within the prescribed period, a security for compliance with —
- (a) the conditions to which the mining lease, if granted, will from time to time be subject; and
 - (b) the provisions of this Part and the regulations.

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- (2) The Minister may require the holder of a mining lease to lodge at the office of the mining registrar or the Department at Perth, within such period as the Minister specifies in writing, an additional security for compliance with conditions imposed in relation to the lease under section 84.
- (3) A security referred to in subsection (1) or (2) shall be in accordance with and subject to section 126.
- (4) A mining lease shall not be granted unless a security has been lodged by the applicant for the mining lease in accordance with subsection (1).
- (5) Notwithstanding section 154(1), an applicant for a mining lease who fails to comply with subsection (1) does not commit an offence against this Act.

”.

- (2) Where, immediately before the commencement of this section, an application for a mining lease had been made, but had not been determined, under the *Mining Act 1978* —
 - (a) the person who made the application is not required to comply with section 84A(1) of that Act as inserted by subsection (1); and
 - (b) section 84A(4) of that Act as inserted by subsection (1) does not apply in respect of the application.

40. Section 92 amended

Section 92 is amended by deleting “(1a)”.

41. Section 126 amended

- (1) Section 126(1)(a) is amended as follows:
 - (a) in subparagraph (i) by deleting “70F or 84A” and inserting instead —
“ 70F(2) or 84A(2) ”;

- (b) by deleting subparagraph (ii) and inserting the following subparagraph instead —

“

- (ii) in the case of a security referred to in section 52(1), 60(1), 70F(1) or 84A(1), as is prescribed;

”.

- (2) After section 126(7) the following subsection is inserted —

“

- (8) Without limiting the power of the Minister in subsection (7), a security given under this section for the purposes of section 52(1), 60(1), 70F(1) or 84A(1) that is not in suit is discharged by operation of this section on the expiry of one year after the surrender, forfeiture or expiry of the mining tenement in respect of which the security was given.

”.

Part 8 — Amendments about geological samples

42. Section 8 amended

Section 8(1) is amended by inserting after the definition of “fossick” the following definition —

“

“**geological sample**” includes a drill core;

”.

43. Section 51A inserted

After section 51 the following section is inserted —

“

51A. Geological samples

The holder of a prospecting licence shall furnish to the Minister such geological samples obtained in the course of operations conducted by the holder under the licence as the Minister may request.

”.

44. Section 70H amended

Section 70H(1) is amended as follows:

- (a) after paragraph (e) by deleting “and”;
- (b) after paragraph (f) by deleting the full stop and inserting —

“

; and

- (g) furnish to the Minister such geological samples obtained in the course of operations conducted by the holder under the licence as the Minister may request.

”.

45. Section 82 amended

After section 82(1)(e) the following paragraph is inserted —

“

- (ea) furnish to the Minister such geological samples obtained in the course of operations conducted by the lessee under the lease as the Minister may request;

”.

46. Section 96 amended

After section 96(2)(ba) the following paragraph is inserted —

“

- (baa) any request under section 51A is not complied with;

”.

Part 9 — Amendments about wardens and wardens' courts

47. Section 8 amended

Section 8(1) is amended in the definition of “warden” by deleting “or deemed so to be and includes a person appointed to be an acting warden”.

48. Section 13 amended

Section 13(2) and (3) are repealed.

49. Section 14 repealed

Section 14 is repealed.

50. Section 20 amended

- (1) Section 20(1) is amended by deleting “, a warden”.
- (2) Section 20(5) is amended as follows:
 - (a) in paragraph (ea) by deleting “by order”;
 - (b) by deleting “make an order under this subsection” and inserting instead —
“ give a direction under paragraph (ea) ”;
 - (c) by deleting “by the warden”.

51. Section 28 amended

Section 28(b) is amended by deleting “by the warden”.

52. Section 29 amended

Section 29(4) is repealed and the following subsection is inserted instead —

“

- (4) If a question arises as to whether something is a substantial improvement for the purposes of

subsection (2)(d), the question is to be determined by the warden and the warden's determination is final and conclusive and not subject to appeal.

”.

53. Section 30 amended

(1) Section 30(1) is amended by deleting “in writing to a warden”.

(2) Section 30(2) is amended by deleting “contain —”, paragraphs (a) and (b), and “and” after paragraph (a), and inserting instead —

“

contain a description of the private land concerned that is sufficient to enable the land to be identified.

”.

(3) Section 30(3) is amended by inserting after “warden” —

“ or a prescribed official ”.

(4) Section 30(4) is amended as follows:

(a) by inserting after “warden” —

“ or a prescribed official ”;

(b) by deleting “him” and inserting instead —

“ the Director General of Mines ”.

(5) Section 30(5) and (6) are repealed and the following subsections are inserted instead —

“

(5) A sum fixed under subsection (4) shall be a sum that, in the opinion of the warden or prescribed official, would provide reasonable compensation to the owner and the occupier of the private land to which the permit concerned relates for any damage likely to be caused by the holder of the permit during the currency of the permit.

- (6) The owner or the occupier of the private land to which a permit relates may apply to the warden's court within the prescribed period for payment of all or part of a sum paid by the holder of the permit under subsection (4).
- (6a) If the warden's court is satisfied, on an application made under subsection (6), that the applicant has suffered damage caused by the holder of the permit during the currency of the permit, the warden's court may order that all or part of the sum be paid to the applicant.
- (6b) If an order is made under subsection (6a) that all of the sum be paid to the applicant, the Director General of Mines shall give effect to the order.
- (6c) If an order is made under subsection (6a) that part of the sum be paid to the applicant, the Director General of Mines shall —
- (a) give effect to the order; and
 - (b) pay the balance of the sum to the holder of the permit.
- (6d) If —
- (a) no application is made under subsection (6); or
 - (b) an application made under subsection (6) is refused, withdrawn or discontinued,
- the Director General of Mines shall pay the sum to the holder of the permit.

”.

(6) After section 30(7) the following subsection is inserted —

“

(8) In this section —

“**prescribed official**” means a person who holds or acts in an office or position in the Department that is prescribed for the purposes of this section.

”.

54. Section 32 amended

Section 32(2) is amended by deleting “the warden” and inserting instead —

“ a warden or a prescribed official ”.

55. Section 33 amended

After section 33(2) the following subsection is inserted —

“

(2a) If a warden makes an order for the payment of costs under subsection (2), those costs are recoverable in accordance with the regulations.

”.

56. Section 42 amended

(1) Section 42(2) is amended by inserting after “prescribed time” —

“ , or any notice of objection is withdrawn, ”.

(2) Section 42(3) is amended as follows:

(a) by inserting before “the warden shall” —

“ and the notice of objection is not withdrawn, ”;

(b) by deleting “in open court”.

57. Section 47 amended

- (1) Section 47(1) is amended by deleting “order” in the first place where it occurs and inserting instead —

“ require ”.

- (2) Section 47(2) is repealed and the following subsection is inserted instead —

“

- (2) A survey required under subsection (1) shall be —

(a) arranged in accordance with the regulations;
and

(b) paid for by such party or parties to the dispute
as the warden or the Minister determines.

”.

58. Section 58 amended

- (1) Section 58(2) is amended as follows:

- (a) by deleting the paragraph designation “(a)”;
- (b) by redesignating paragraph (b) as subsection (2a);
- (c) by deleting “order” in the first place where it occurs and inserting instead —
“ require ”;
- (d) by deleting paragraph (c).

- (2) Before section 58(3) the following subsection is inserted —

“

- (2b) A survey required under subsection (2a) shall be —

(a) arranged in accordance with the regulations;
and

(b) paid for by such party or parties to the dispute
as the warden or the Minister determines.

”.

59. Section 59 amended

- (1) Section 59(2) is amended by inserting after “prescribed time” —
“ , or any notice of objection is withdrawn, ”.
- (2) Section 59(4) is amended as follows:
 - (a) by inserting before “the warden shall” —
“ and the notice of objection is not withdrawn, ”;
 - (b) by deleting “in open court”.

60. Section 67A amended

Section 67A(4) is amended by deleting “, whether or not the Minister refers the matter to the warden for a recommendation”.

61. Section 70D amended

- (1) Section 70D(2) is amended by inserting after “prescribed time” —
“ , or any notice of objection is withdrawn, ”.
- (2) Section 70D(4) is amended as follows:
 - (a) by inserting before “the warden shall” —
“ and the notice of objection is not withdrawn, ”;
 - (b) by deleting “in open court”.

62. Section 70G amended

- (1) Section 70G(1) is amended by deleting “order” in the first place where it occurs and inserting instead —
“ require ”.
- (2) Section 70G(2) is repealed and the following subsection is inserted instead —
“
 - (2) A survey required under subsection (1) shall be —

- (a) arranged in accordance with the regulations;
and
- (b) paid for by such party or parties to the dispute
as the warden or the Minister determines.

”.

63. Section 75 amended

- (1) Section 75(2) is amended by inserting after “prescribed time” —
“ , or any notice of objection is withdrawn, ”.
- (2) Section 75(4) is amended as follows:
 - (a) after paragraph (b) by inserting —
“ and the notice of objection is not withdrawn, ”;
 - (b) by deleting “in open court”.

64. Section 97A amended

- (1) Section 97A(1) is amended by deleting “to the warden”.
- (2) Section 97A(5) is amended by deleting “in open court”.

65. Section 98 amended

- (1) Section 98(1) is amended by deleting “to the warden”.
- (2) Section 98(3) is amended by deleting “in open court”.
- (3) Section 98(9) is amended by deleting “of the order made by the
warden” and inserting instead —
“ after the penalty is imposed ”.

66. Section 102 amended

Section 102(5)(a) is amended by deleting “in open court”.

67. Section 105A amended

- (1) Section 105A(3) is amended by deleting “in open court”.

(2) After section 105A(3) the following subsection is inserted —

“

(3a) Each ballot under subsection (3) is to be conducted in public.

”.

68. Section 130 amended

Section 130 is amended by deleting “before the warden”.

69. Section 131 amended

Section 131 is amended by deleting “, not being a person appointed under section 13(2),”.

70. Section 132 amended

(1) Section 132(1) is amended by deleting “either the warden’s court or the warden.” and inserting instead —

“ the warden’s court. ”.

(2) Section 132(2) is amended by deleting “all proceedings under this Act” and inserting instead —

“

any action, suit or other proceeding within the jurisdiction of a warden’s court

”.

(3) Section 132(3) is amended as follows:

(a) by deleting “his” in the 3 places where it occurs and inserting instead —

“ the ”;

(b) by deleting “he” and inserting instead —

“ the court ”.

71. Section 134 amended

- (1) Section 134(1)(d) is deleted.
- (2) Section 134(2) is amended as follows:
 - (a) by deleting “warden” in the first 3 places where it occurs and inserting instead —
“ court ”;
 - (b) by inserting after “taxed” —
“ by the warden or the mining registrar ”;
 - (c) by deleting the passage beginning “but an order” and ending “frivolous or vexatious”.
- (3) Section 134(5) is amended as follows:
 - (a) by deleting “or the warden, as the case may require,”;
 - (b) by deleting “or a Judge thereof”.

72. Section 135 amended

- (1) Section 135(1) is amended as follows:
 - (a) by deleting “arising under this Act the warden, or in his absence the mining registrar if the parties so agree,” and inserting instead —
“
relating to a matter within the jurisdiction of a
warden’s court, the warden’s court
”;
 - (b) by deleting the comma after “dispute”;
 - (c) by deleting “he” and inserting instead —
“ it ”.
- (2) Section 135(2) is amended as follows:
 - (a) by deleting “warden or mining registrar” and inserting instead —
“ warden’s court ”;

- (b) by deleting “by a warden in a warden’s court” and inserting instead —
“ in the court ”.
- (3) Section 135(3) is amended as follows:
 - (a) by deleting “warden or mining registrar, as the case requires,” and inserting instead —
“ warden’s court ”;
 - (b) by deleting “him” and inserting instead —
“ it ”;
 - (c) by deleting “his” and inserting instead —
“ its ”.
- (4) Section 135(4) is repealed.

73. Section 137 amended

- (1) Section 137(1) is repealed and the following subsection is inserted instead —
“
 - (1) A warden’s court must ensure that evidence given in proceedings before it is recorded in the manner prescribed in the rules of court or the regulations.”.
- (2) Section 137(2) and (3) are repealed.
- (3) Section 137(4) is amended as follows:
 - (a) by deleting “wherein the evidence of a witness” and inserting instead —
“ in which evidence ”;
 - (b) by deleting “thereof” and inserting instead —
“ of that evidence in the prescribed form ”.
- (4) Section 137(5) is amended as follows:

- (a) by deleting “who” and inserting instead —
“ presiding in the court that ”;
- (b) by deleting “, and shall be recorded in a register kept for the purpose”.

74. Section 138 amended

Section 138(4) is amended as follows:

- (a) by deleting “warden” in the first place where it occurs and inserting instead —
“ warden’s court ”;
- (b) by deleting “his” in both places where it occurs and inserting instead —
“ its ”;
- (c) by deleting “the warden” and inserting instead —
“ it ”.

75. Section 142 amended

- (1) Section 142(1) is amended by inserting after “proceedings” in the first place where it occurs —
“ in a warden’s court ”.
- (2) Section 142(2) is amended as follows:
 - (a) by inserting after “proceedings” in the first place where it occurs —
“ in a warden’s court ”;
 - (b) by deleting “mining registrar and a warden respectively have” and inserting instead —
“ warden’s court has ”;
 - (c) by deleting “any” in the third place where it occurs and inserting instead —
“ such ”.

- (3) Section 142(5) is amended by deleting “mining registrar, or the warden, as the case may be,” and inserting instead —

“ warden’s court ”.

76. Sections 144 and 145 repealed

Sections 144 and 145 are repealed.

77. Section 146 amended

- (1) Section 146(1) is amended by deleting “The warden” and inserting instead —

“ A warden’s court ”.

- (2) Section 146(2) is amended by deleting “him” and inserting instead —

“ the court ”.

- (3) Section 146(6) is amended by deleting “warden who” and inserting instead —

“ warden’s court which ”.

- (4) Section 146(7) is amended by deleting “he” in both places where it occurs and inserting instead —

“ it ”.

78. Section 147 amended

- (1) Section 147(1) is amended by deleting “section” and inserting instead —

“ sections 135(2) and ”.

- (2) Section 147(3) is amended by deleting “upon the warden and”.

- (3) Section 147(4) and (5) are repealed.

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- (4) Section 147(6) is amended by deleting “he” and inserting instead —

“ it ”.

79. Section 148 amended

Section 148(4) is amended by deleting “and served upon the warden”.

80. Section 151 amended

Section 151 is amended as follows:

- (a) by deleting “Part — ” and inserting instead —
“ Part ”;
- (b) by deleting the paragraph designation “(a)”;
- (c) by deleting “final;” and inserting instead —
“ final. ”;
- (d) by deleting paragraphs (b) and (c).

81. Section 156 amended

Section 156(1)(b)(i) is amended by deleting “or acting warden,”.

82. Sections 160C and 160D inserted

After section 160B the following sections are inserted —

“

160C. No right of appeal from certain decisions of warden, mining registrar or Minister

No appeal lies under this Act —

- (a) except as provided in Part IV, in respect of a decision, order or recommendation of a warden or mining registrar on —
 - (i) an application for a mining tenement;

- (ii) an application for forfeiture of a mining tenement; or
- (iii) an application for exemption from expenditure or other conditions;
- (b) in respect of a decision or order of the Minister on —
 - (i) an application for a mining tenement;
 - (ii) an application for forfeiture of a mining tenement; or
 - (iii) an application for exemption from expenditure or other conditions;
 or
- (c) in respect of a determination of a warden or mining registrar if a provision of this Act provides that the determination is final and conclusive and not subject to appeal.

160D. Persons before whom affidavit may be sworn

An affidavit to be used in a warden's court or before a warden or a mining registrar may be sworn before —

- (a) a commissioner for taking affidavits in the Supreme Court;
- (b) a warden;
- (c) a mining registrar;
- (d) a justice;
- (e) a public notary as defined in the *Public Notaries Act 1979*; or
- (f) a prescribed official.

”.

83. Section 161 amended

After section 161(3) the following subsection is inserted —

“

- (4) In any proceedings —
- (a) a document purporting to be a copy of a judgment, order or decision of a warden or a warden's court, or of a document filed or lodged in proceedings under this Act, and purporting to be certified by —
 - (i) a warden;
 - (ii) a mining registrar; or
 - (iii) a prescribed official,to be such a copy, is admissible as a true copy of the judgment, order, decision or document; and
 - (b) judicial notice is to be taken of the signature of a person referred to in paragraph (a)(i), (ii) or (iii) on a certificate under that paragraph.

”.

84. Section 162 amended

- (1) Section 162(2) is amended as follows:
- (a) in paragraph (ka)(iii) by deleting “warden's court” and inserting instead —
“ warden ”;
 - (b) after paragraph (r) by inserting the following paragraphs —
“
 - (ra) without limiting paragraph (a), prescribe and regulate the powers, functions and duties of the warden in proceedings in respect of an application or objection under Part IV (“**Part IV proceedings**”), including powers to order costs and require security for costs;”

- (rb) prescribe and regulate the practice and procedure to be followed in Part IV proceedings;
- (rc) prescribe a scale of costs for Part IV proceedings and provide for the taxation and recovery of costs in those proceedings;

”.

(2) After section 162(3) the following subsection is inserted —

“

- (4) Regulations made under subsection (2)(ra) may apply the provisions of sections 142 and 146 with such modifications as are prescribed.

”.

85. Various references to “warden” changed to “warden’s court”

In each place listed in the Table to this section “warden” is deleted and the following is inserted instead —

“ warden’s court ”.

Table

s. 115(3)(b)	s. 146(3)
s. 123(3)(a)	s. 146(4)
s. 124(1)	s. 146(5)(a)
s. 132(3)	s. 146(7)
s. 134(3)(i)	s. 147(6)
s. 143 (2 places)	s. 148(4)
s. 146(2)	s. 148(6) (2 places)

86. Transitional provision

If, on the commencement of this Part, an application or objection in respect of a mining tenement has been made, but has not been determined, under Part IV of the *Mining Act 1978*,

the application or objection is to be dealt with and determined under that Act as if this Part had not come into operation.

Part 10 — Other amendments to the *Mining Act 1978***87. Section 8 amended**

Section 8(1) is amended by inserting in the appropriate alphabetical positions the following definitions —

“

“Director, Geological Survey” means the person for the time being holding or acting in the office of Director, Geological Survey in the Department;

“ground disturbing equipment” means —

- (a) mechanical drilling equipment;
- (b) a backhoe, bulldozer, grader or scraper; or
- (c) any other machinery of a kind prescribed for the purposes of this definition;

“prescribed official” means the holder of an office in the Department that is prescribed, or is of a class prescribed, for the purposes of the provision in which the term is used;

”.

88. Section 20 amended

Section 20(2) is amended by deleting paragraph (e), and “and” after it, and inserting instead —

“

- (e) to camp on Crown land, for the purpose of prospecting, in such manner and subject to such conditions as may be prescribed; and

”.

89. Section 63A amended

Section 63A is amended as follows:

- (a) in paragraph (aa) by inserting after “60(1a)” —

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“ 65(4), 69E(2) or 115B(2) ”;

- (b) after paragraph (b) by inserting the following paragraph —

“

- (baa) any request under section 68(1) or (2) in relation to the exploration licence is not complied with;

”.

90. Section 70H amended and transitional provision

- (1) Section 70H(1) is amended as follows:

- (a) before paragraph (a) by inserting the following paragraph —

“

- (aa) not use ground disturbing equipment when exploring for minerals on the land the subject of the licence unless —
- (i) the holder has lodged in the prescribed manner a programme of work in respect of that use; and
 - (ii) the programme of work has been approved in writing by the Minister or a prescribed official;

”;

- (b) in paragraph (a) —

- (i) by deleting “the State Mining Engineer” in the first place where it occurs and inserting instead —

“ a prescribed official ”;

- (ii) by deleting “the State Mining Engineer” in the second place where it occurs and inserting instead —

“ the prescribed official ”.

- (2) Section 70H(1)(aa) of the *Mining Act 1978* as inserted by subsection (1) does not apply to a retention licence granted under that Act before the day on which this section comes into operation.

91. Section 90 replaced

Section 90 is repealed and the following section is inserted instead —

“

90. Application of certain provisions to general purpose leases

- (1) Section 6(1a), (1c) and (1d) apply, with such modifications as the circumstances require, to and in relation to a general purpose lease as if —
- (a) a reference in those subsections to a mining lease were a reference to a general purpose lease; and
 - (b) the reference in subsection (1d)(a) to the condition referred to in section 82(1)(ca) were a reference to a condition prescribed by the regulations for the purposes of section 89.
- (2) Section 74 applies, with such modifications as the circumstances require, to and in relation to a general purpose lease as if —
- (a) a reference in that section to a mining lease were a reference to a general purpose lease; and
 - (b) in subsection (1)(ca)(ii) “and a mineralisation report prepared by a qualified person” were deleted.

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- (3) Section 75 applies, with such modifications as the circumstances require, to and in relation to a general purpose lease as if —
 - (a) a reference in that section to a mining lease were a reference to a general purpose lease; and
 - (b) the amendments made to that section by section 31 of the *Mining Amendment Act 2004* had not come into operation.
- (4) Sections 76, 79, 80, 82A, 83, 84, 84A, 104 and 105 apply, with such modifications as the circumstances require, to and in relation to a general purpose lease as if a reference in those sections to a mining lease were a reference to a general purpose lease.

”.

92. Section 95 amended

Section 95(2) is repealed.

93. Section 96 amended

Section 96(2)(bb) is amended by inserting after “52(1a)” —
“ , 55B(2) or 115B(2) ”.

94. Section 102 amended

- (1) Section 102(2)(h) is deleted and the following paragraph is inserted instead —

“

(h) that —

- (i) the mining tenement is one of 2 or more mining tenements (“**combined reporting tenements**”) the subject of arrangements approved under section 115A(4) for the filing of

combined mineral exploration reports;
and

- (ii) the aggregate exploration expenditure for the combined reporting tenements would have been such as to satisfy the expenditure requirements for the mining tenement concerned had that aggregate exploration expenditure been apportioned between the combined reporting tenements.

”.

(2) After section 102(2) the following subsection is inserted —

“

(2a) In subsection (2)(h) —

“aggregate exploration expenditure” means expenditure —

- (a) on, or in connection with, exploration for minerals on the combined reporting tenements; and
- (b) worked out in a manner specified in the regulations.

”.

95. Section 105A amended

Section 105A(4)(b) is amended as follows:

- (a) in subparagraph (i) by inserting after “subparagraph” —
“ (ia), ”;
- (b) after subparagraph (i) by inserting the following subparagraph —

“

- (ia) where the land concerned is land to which section 65(6) applies, lodging

that application at the office of the
mining registrar;

”.

96. Sections 114B and 114C inserted

After section 114A the following sections are inserted —

“

114B. Continuation of liability after expiry, surrender or forfeiture of mining tenement

The expiry, surrender or forfeiture of a mining tenement does not affect the liability of the person who was the holder of the mining tenement immediately before its expiry, surrender or forfeiture —

- (a) to pay any rent, fee, royalty, penalty, or other money on any other account, payable on or before the date of expiry, surrender or forfeiture under or in relation to the mining tenement;
- (b) to comply with any obligation imposed on or before that date under or in relation to the mining tenement; or
- (c) for any act done or default made on or before that date under or in relation to the mining tenement.

114C. Right to enter land to carry out remedial work after expiry, surrender or forfeiture of mining tenement

- (1) In this section —

“**former holder**”, in relation to a mining tenement, means the person who was the holder of the mining tenement immediately before its expiry, surrender or forfeiture;

“**remedial work**” means work necessary for compliance by the former holder of a mining

tenement with an obligation referred to in section 114B(b).

- (2) Where a mining tenement expires or is surrendered or forfeited, the former holder of the mining tenement may enter and re-enter the land that was the subject of the mining tenement with such agents, employees, vehicles, machinery and equipment as may be necessary or expedient for the purpose of carrying out remedial work on that land.

”.

97. Section 115B inserted and consequential amendments

- (1) After section 115A the following section is inserted —

“

115B. Verification of expenditure amounts in operations reports

- (1) In this section —
- “**audit amount**” means the amount of expenditure shown in an audit statement;
- “**audit statement**” means a statement containing details of expenditure during the period to which an operations report relates;
- “**expenditure**” means expenditure on or in connection with mining on a mining tenement;
- “**expenditure amount**” means the amount of expenditure during the period to which an operations report relates;
- “**operations report**” has the meaning given to that term in section 115A(1).
- (2) For the purpose of verifying the expenditure amount shown in an operations report, the Minister may, by notice in writing, require the holder of a mining

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tenement to file an audit statement, or cause an audit statement to be filed, with the Department at Perth within a period specified in the notice.

- (3) An audit statement is to be prepared and signed by —
 - (a) a person registered as an auditor, or taken to be registered as an auditor, under Part 9.2 of the Corporations Act; or
 - (b) another suitably qualified person approved by the Minister for the purposes of this section.
- (4) If the audit amount differs from the expenditure amount shown in the operations report, the Minister may determine in writing that the audit amount is to be regarded as the expenditure amount for the purposes of this Act.

”.

- (2) Section 70K is amended as follows:

- (a) after paragraph (c) by deleting “or”;
- (b) after paragraph (d) by deleting the full stop and inserting —
 - “
 - ;
 - or
- (e) the holder of the licence fails to comply with a notice under section 115B(2) requiring that person to file an audit statement or cause an audit statement to be filed.

”.

- (3) Section 82(1)(g) is amended by inserting before “in relation to the lease” —

“ or 115B(2) ”.

98. Section 118A inserted and validation and transitional provisions

- (1) After section 118 the following section is inserted —

“

118A. Tenement holder may authorise mining by third party

- (1) In this section —
“**authorisation**” means an authorisation under subsection (2).
- (2) The holder of a prospecting licence, exploration licence or mining lease (the “**relevant tenement**”) may, by instrument in writing, authorise another person to carry out mining of a kind authorised by the relevant tenement on the land the subject of the relevant tenement.
- (3) An authorisation may be given subject to conditions specified in the authorisation.
- (4) Mining carried out under an authorisation is to be regarded for the purposes of this Act as mining carried out by the holder of the relevant tenement.
- (5) Expenditure on or in connection with mining carried out under an authorisation is to be regarded for the purposes of the prescribed expenditure conditions referred to in section 50, 62 or 82(1)(c) as expenditure by the holder of the relevant tenement.
- (6) The giving of an authorisation does not affect the duties or obligations of the holder of the relevant tenement under this Act.

”.

- (2) A mining authorisation given before the commencement is, and is to be taken to have always been, as valid and effective as it

would have been if the amendment made by subsection (1) had been in effect at the time it was given.

- (3) On and after the commencement an existing mining authorisation is to be treated as an authorisation under section 118A(2) of the *Mining Act 1978* as inserted by subsection (1).
- (4) In subsections (2) and (3) —
- “**commencement**” means the commencement of this section;
 - “**existing mining authorisation**” means a mining authorisation in force immediately before the commencement;
 - “**mining authorisation**” means an instrument in writing under which the holder of a prospecting licence, exploration licence or mining lease (as those terms are defined in the *Mining Act 1978*) purports to authorise another person to carry out mining of the kind authorised by the licence or lease on the land the subject of the licence or lease.

99. Section 120AA inserted

After section 120 the following section is inserted in Part V —

“

120AA. Scheme for reversion licence applications

- (1) In this section —
- “**amending Act**” means an Act that amends this Act;
 - “**continued licence**” means —
 - (a) a prospecting licence continued in force under section 49(2);
 - (b) an exploration licence continued in force under section 67(2); or
 - (c) a retention licence continued in force under section 70L(2);

“lease application” means an application for a mining lease under this Act including an application authorised by section 49(1), 67(1) or 70L(1);

“reversion licence application” means an application for a prospecting licence or an exploration licence under this Act.

- (2) The Governor, by order published in the *Gazette*, may establish a scheme authorising any person who, on or before a day specified in the order, has made a lease application or lease applications to make one or more reversion licence applications in respect of land the subject of the lease application or lease applications.
- (3) An order under subsection (2) may provide for and in relation to —
- (a) the making of reversion licence applications and related matters including marking out and advertising;
 - (b) the operation and effect of a reversion licence application including its effect on —
 - (i) the lease application or lease applications to which it relates; and
 - (ii) any continued licence held by the applicant;
 - (c) priority as between reversion licence applications and other mining tenement applications;
 - (d) the circumstances in which objections may be made to reversion licence applications;
 - (e) the operation and effect of prospecting licences and exploration licences granted as a result of reversion licence applications;
 - (f) the refund of rent paid in respect of a lease application or lease applications if a

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prospecting licence or an exploration licence is granted as a result of a reversion licence application; and

- (g) any other matters of an incidental, supplementary, savings or transitional nature that are necessary or expedient for the purposes of the scheme referred to in subsection (2).
- (4) Without limiting subsection (3), an order under subsection (2) may provide for a reversion licence application to include land that is not the subject of the relevant lease application or lease applications.
- (5) An order under subsection (2) has effect for the period specified in the order.
- (6) The Governor, by order published in the *Gazette*, may amend or revoke an order under subsection (2).
- (7) Section 42 of the *Interpretation Act 1984* applies to an order under this section as if it were a regulation.

”.

100. Section 162 amended

(1) Section 162(2) is amended as follows:

- (a) after paragraph (g) by inserting the following paragraphs —

“

- (ga) prescribe grounds for extension for the purposes of section 45(1a) and 61(2);
- (gb) prescribe grounds for deferral for the purposes of section 65(3a);

”;

- (b) in paragraph (k) by deleting “and records” and inserting instead —

“ , and the keeping and furnishing of records, ”.

(2) After section 162(2) the following subsection is inserted —

“

(2a) Subsection (2)(x) applies to information irrespective of when —

- (a) any application or report containing the information was made or given; or
- (b) the information was supplied to the Minister, a warden or an official,

as the case may be.

”.

101. Section 163 inserted

After section 162 the following section is inserted —

“

163. Review of Act

- (1) The Minister is to carry out a review of the operation and effectiveness of this Act as amended by the *Mining Amendment Act 2004* within 6 months after the fifth anniversary of the day on which that Act received the Royal Assent.
- (2) The Minister is to prepare a report based on the review and, as soon as is practicable after the report is prepared, is to cause the report to be laid before each House of Parliament.

”.

Part 11 — Mining Amendment Act 1996 amended

102. The Act amended

The amendments in this Part are to the *Mining Amendment Act 1996**.

[* *Act No. 54 of 1996.*]

103. Section 15 amended

Section 15 is amended as follows:

- (a) in proposed section 103C(8) by inserting before “estate” —
“ legal ”;
- (b) by deleting proposed section 103E and inserting the following section instead —

“

103E. Priority of dealings

Dealings affecting the same mining tenement take priority according to the date and time of their registration.

”.

104. Section 18 amended

Section 18 is amended as follows:

- (a) by deleting proposed section 122A(2)(a), and “and” after it, and inserting instead —

“

- (a) the holder of a mining tenement has entered into an agreement with another person relating to —
 - (i) the sale of the holder’s interest in the mining tenement; or

- (ii) any other matter connected with the holder's interest in the mining tenement;
- and
- ”;
- (b) in proposed section 122A(6) by deleting “by leave” and inserting instead —
 - “ with the consent ”;
 - (c) in proposed section 122D(1) —
 - (i) by deleting “to”; and
 - (ii) by deleting “upon the order” and inserting instead —
 - “ with the consent ”;
 - (d) in proposed section 122E(1)(a) by deleting “order” and inserting instead —
 - “ direction ”;
 - (e) in proposed section 122E(1)(c) by deleting “orders.” and inserting instead —
 - “ directs. ”;
 - (f) in proposed section 122E(2)(a) by deleting “order” and inserting instead —
 - “ direction ”.

Part 12 — Transitional regulations

105. Further transitional provisions may be made

- (1) In this section —
 - “amending provision”** means a provision of this Act;
 - “commencement”** means the commencement of this section;
 - “specified”** means specified or described in the regulations;
 - “transitional matter”** means a matter that needs to be dealt with for the purpose of effecting the transition from the *Mining Act 1978* as in force before an amending provision comes into operation to that Act as in force after the amending provision comes into operation, and includes a savings or application matter.
- (2) If there is no sufficient provision in this Act for dealing with a transitional matter, regulations may be made under the *Mining Act 1978* prescribing all matters that are required, necessary or convenient to be prescribed in relation to the transitional matter.
- (3) Regulations referred to in subsection (2) may provide that specified provisions of this Act or the *Mining Act 1978* —
 - (a) do not apply; or
 - (b) apply with specified modifications,to or in relation to any matter.
- (4) Regulations referred to in subsection (2) must be made within 12 months after the commencement.
- (5) If regulations referred to in subsection (2) provide that a specified state of affairs is to be taken to have existed, or not to have existed, on and from a day that is earlier than the day on which the regulations are published in the *Gazette* but not earlier than the commencement, the regulations have effect according to their terms.

- (6) If regulations contain a provision referred to in subsection (5), the provision does not operate so as to —
- (a) affect in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the day of publication of those regulations; or
 - (b) impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the day of publication of those regulations.

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