Western Australia

Mining Act 1978

Compare between:

[28 May 2026, 09-q0-00] and [16 Nov 2026, 09-r0-00]

Western Australia

Mining Act 1978

An Act to consolidate and amend the law relating to mining and for incidental and other purposes.

Part I — Preliminary

1. Short title

This Act may be cited as the *Mining Act 1978*.

2. Commencement

(1) The long title, the heading Part I — Preliminary, section 1, this section, the heading Second Schedule, and clause 3 of the Second Schedule shall come into operation on the day on which this Act receives the Royal Assent.

(2) The remaining provisions of this Act shall come into operation on a date to be fixed by proclamation.

*[**3.** Omitted under Reprints Act 1984 s. 7(4)(f).]*

4. Transitional provisions

The transitional provisions set forth in the Second Schedule, as from time to time modified to prevent anomalies or otherwise affected by the operation of clause 15 of that Schedule, shall have effect without prejudice, except in so far as those transitional provisions are not consistent with such an application, to the application of —

(a) in so far as that Act applies, the *Interpretation Act 1918* [1] and in particular sections 15 and 16 thereof; and

(b) in any other case, the *Interpretation Act 1984* and in particular Part V thereof.

[Section 4 inserted: No. 100 of 1985 s. 3.]

5. Saving

(1) Nothing in this Act shall affect the provisions of any Act in force on the commencing date that approves or ratifies any agreement to which the State is a party and under which a party

to the agreement is authorised or required to carry out any mining operations pursuant to the agreement.

(2) Notwithstanding anything in the Second Schedule Division 1, a party to an agreement referred to in subsection (1) —

(a) who is the holder of an existing mining tenement under that agreement may continue, subject to that agreement, to exercise the rights conferred by that mining tenement; or

(b) to whom an existing right of occupancy has been granted under section 276 of the repealed Act or that agreement, or under both section 276 of the repealed Act and that agreement, as the case requires, may continue, subject to that agreement, to exercise that right of occupancy,

as though the repealed Act had not been repealed.

(3) Subject to the relevant agreement referred to in subsection (1), a person may, in accordance with this Act, apply for a mining tenement in respect of an area or part thereof that is the subject of a mineral lease granted in accordance with that agreement.

[Section 5 amended: No. 69 of 1981 s. 5; No. 51 of 2012 s. 4.]

6. Operation of this Act

(1) This Act shall be read and construed subject to the *Environmental Protection Act 1986*, to the intent that if a provision of this Act is inconsistent with a provision of that Act, the first-mentioned provision shall, to the extent of the inconsistency, be deemed to be inoperative.

(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(4) 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 under a Government agreement.

(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 or 38A 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 103AH(2)(b) or (3); or

(b) a mining development and closure proposal lodged by the holder of the mining lease in compliance with the condition referred to in section 103AL(2)(b) or (3).

(2) Notwithstanding anything in this Act —

(a) a local government is not required to hold a mining tenement to —

(i) exercise the power given to it by section 3.27 of, and clause 3 of Schedule 3.2 to, the *Local Government Act 1995*; or

(ii) remove from local government property (as defined in that Act), rock, stone, clay, sand or gravel for use in the construction of local government facilities;

and

(b) if a local government leases local government property to another person, that person is not required to hold a mining tenement to remove from that land, rock, stone, clay, sand or gravel for use in the construction of local

government facilities, unless the Minister requires that person to hold a tenement.

(3) Whenever a provision of the *Contaminated Sites Act 2003* is inconsistent with a provision of this Act or a mining tenement, the provision of the *Contaminated Sites Act 2003* prevails.

(4) The operation of this Act is subject to the *Alumina Refinery (Mitchell Plateau) Agreement Act 1971* sections 5B and 5C.

[Section 6 amended: No. 100 of 1985 s. 4; No. 77 of 1986 s. 8; No. 14 of 1996 s. 4; No. 39 of 2004 s. 26; No. 12 of 2010 s. 4; No. 31 of 2015 s. 9; No. 40 of 2020 s. 116(2); No. 31 of 2022 s. 4.]

*[**7.** Deleted: No. 122 of 1982 s. 4.]*

8. Terms used

(1) In this Act, unless the contrary intention appears —

agricultural used in relation to the purposes for which land is occupied, includes cropping or pasturing purposes;

approved form means a form approved by the Minister;

burial ground means an area of land reserved or demarcated exclusively for the purpose of burials;

commencing date means the date of the coming into operation of the provisions of this Act referred to in section 2(2);

Commonwealth land means —

(a) land in respect of which the Commonwealth holds a freehold or leasehold interest; or

(b) land that is otherwise vested in or held by the Commonwealth or vested in or held by an officer or person on behalf of the Commonwealth;

Corporations Act means the *Corporations Act 2001* of the Commonwealth;

Crown land means all land except —

(a) land that has been reserved for or dedicated to any public purpose other than —

(i) land reserved for mining or commons;

(ii) land reserved and designated for public utility for any purpose under the *Land Administration Act 1997*;

(b) land that has been lawfully granted or contracted to be granted in fee simple by or on behalf of the Crown;

(c) land that is subject to any lease granted by or on behalf of the Crown other than —

(i) a pastoral lease or a lease otherwise granted for grazing purposes only; or

(ia) a diversification lease; or

(ii) a lease for timber purposes; or

(iii) a lease of Crown land for the use and benefit of the Aboriginal inhabitants;

(d) land that is a townsite within the meaning of the *Land Administration Act 1997*;

dam means any accumulation or storage of water, whether natural or artificial;

damage, in relation to agricultural land, includes the disturbance of stock and any proper cost reasonably incurred for the purpose of rectifying that disturbance;

dealing means a transfer or mortgage of a legal interest in a mining tenement;

Department means the department of the Public Service of the State principally assisting the Minister in the administration of —

(a) this Act; or

(b) the provision of this Act in which, or in relation to which, the term is used;

designated tenement contact (DTC), in respect of a mining tenement, or an application for a mining tenement, means the person who is, or the persons who are, in accordance with the regulations, the designated tenement contact for the mining tenement or application;

Director General of Mines means the person for the time being holding or acting in the office of chief executive officer of the Department;

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

diversification lease has the meaning given in the *Land Administration Act 1997* section 92B(1);

expenditure conditions in relation to a mining tenement means the prescribed conditions applicable to a mining tenement that require the expenditure of money on or in connection with the mining tenement or the mining operations carried out thereon or proposed to be so carried out;

fossick means to search for, extract and remove rock, ore or minerals, other than gold or diamonds, in quantities not exceeding the prescribed amount and by means not prohibited under the regulations, as samples or specimens for the purpose of a mineral collection, lapidary work or a hobby interest;

geological sample includes a drill core;

Government agreement has the meaning given in the *Government Agreements Act 1979* section 2;

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

LAA Minister means the Minister to whom the administration of the *Land Administration Act 1997* is for the time being committed by the Governor;

land includes water; and also includes —

(a) the foreshore as defined in section 25(1)(a); and

(b) the sea bed and subsoil between the mean low water springs level and the inner limits of the coastal waters of the State as defined in section 16(1) and (2) of the *Offshore Minerals Act 2003*;

land under cultivation means land being used for agricultural purposes and includes any land, whether cleared or uncleared, used by a person for the grazing of stock in the ordinary course of management of the land of that person where the land so used for grazing forms the whole or a part of the land owned or occupied by that person;

lapidary work includes the selection, cutting, polishing, engraving and setting of rock or other minerals;

listed public company means a corporation that is a listed corporation within the meaning of that expression in the Corporations Act;

local government means the local government of the district in which the matter in relation to which the term is used, arose or is situated;

machinery includes all mechanical appliances of whatever kind used or intended to be used for any mining purpose;

marine management area, ***marine nature reserve*** and ***marine park*** have the meanings given to them by the *Conservation and Land Management Act 1984*;

mine, as a noun, means any place in, on or under which mining operations are carried on;

mine, as a verb, includes any manner or method of mining operations;

mineral field means a mineral field constituted under this Act or deemed so to be;

minerals means naturally occurring substances obtained or obtainable from any land by mining operations carried out on or under the surface of the land, but does not include —

(a) soil; or

(b) a substance the recovery of which is governed by the *Petroleum, Geothermal Energy and Greenhouse Gas Storage Act 1967* or the *Petroleum and Greenhouse Gas Storage (Submerged Lands) Act 1982*; or

(ba) without limiting paragraph (b), geothermal energy resources as defined in the *Petroleum, Geothermal Energy and Greenhouse Gas Storage Act 1967* section 5(1); or

(c) a meteorite as defined in the *Museum Act 1969*; or

(d) any of the following substances if it occurs on private land —

(i) limestone, rock or gravel; or

(ii) shale, other than oil shale; or

(iii) sand, other than mineral sand, silica sand or garnet sand; or

(iv) clay, other than kaolin, bentonite, attapulgite or montmorillonite;

miner's right means a miner's right issued under section 40C;

mining includes fossicking, prospecting and exploring for minerals, and mining operations;

mining development and closure proposal means a mining development and closure proposal —

(a) accompanying an application for a mining lease under section 74(1)(ca); or

(b) required in order to comply with a condition referred to in —

(i) section 103AL(2)(b) or (3); or

(ii) section 103AM(2)(b) or (3);

mining operations means any mode or method of working whereby the earth or any rock structure stone fluid or mineral bearing substance may be disturbed removed washed sifted crushed leached roasted distilled evaporated smelted combusted

or refined or dealt with for the purpose of obtaining any mineral or processed mineral resource therefrom whether it has been previously disturbed or not and includes —

(a) the removal of overburden by mechanical or other means and the stacking, deposit, storage and treatment of any substance considered to contain any mineral; and

(b) operations by means of which salt or other evaporites may be harvested; and

(c) operations by means of which mineral is recovered from the sea or a natural water supply; and

(da) operations by means of which a processed mineral resource is produced and recovered; and

(d) the doing of all acts incident or conducive to any such operation or purposes;

mining product means any material won from land by mining;

mining registrar means a mining registrar appointed in accordance with section 13(2);

mining tenement means a prospecting licence, exploration licence, retention licence, mining lease, general purpose lease or a miscellaneous licence granted or acquired under this Act or by virtue of the repealed Act; and includes the specified piece of land in respect of which the mining tenement is so granted or acquired;

occupier in relation to any land includes any person in actual occupation of the land under any lawful title granted by or derived from the owner of the land;

offsets project means —

(a) an eligible offsets project as defined in the *Carbon Credits (Carbon Farming Initiative) Act 2011* (Commonwealth) section 5; or

(b) an offsets project, as defined in the *Carbon Credits (Carbon Farming Initiative) Act 2011* (Commonwealth) section 5, if —

(i) the offsets project is the subject of an application under section 22 of that Act; and

(ii) a decision on the application has not been made;

oil shale includes naturally occurring hydrocarbons that are or may be contained in rocks from which they cannot be recovered otherwise than by mining those rocks as oil shale;

owner in relation to any land means —

(a) the registered proprietor thereof or in relation to land not being land under the *Transfer of Land Act 1893* the owner in fee simple or the person entitled to the equity of redemption thereof; or

(b) the lessee or licensee from the Crown in respect thereof; or

(c) the person who for the time being, has the lawful control and management thereof whether on trust or otherwise; or

(d) the person who is entitled to receive the rent thereof;

pastoral lease has the meaning given in the *Land Administration Act 1997* section 3(1);

prescribed means prescribed by regulations made under this Act;

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;

private land means any land, other than Commonwealth land, that has been or may hereafter be alienated from the Crown for any estate of freehold, or is or may hereafter be the subject of any conditional purchase agreement, or of any lease or concession with or without a right of acquiring the fee simple thereof (not being a pastoral lease or a lease or concession

otherwise granted by or on behalf of the Crown for grazing purposes only or for timber purposes, a diversification lease or a lease of Crown land for the use and benefit of the Aboriginal inhabitants) but —

(a) in relation to mining for minerals other than gold, silver and precious metals, for the purposes of Division 3 of Part III, does not include land alienated before 1 January 1899, except as provided in that Division; and

(b) other than in so far as the primary tenement may be treated as private land in relation to mining for gold pursuant to a special prospecting licence or mining lease under section 56A, 70 or 85B, does not include land that is the subject of a mining tenement; and

(c) no land that has been reserved for or dedicated to any public purpose shall be taken to be private land by reason only that any lease or concession is granted in relation thereto for any purpose;

processed mineral resource means a substance produced from a mineral that is under the surface of land without the mineral being removed from the land;

public purpose means any of the purposes for which land may be reserved under Part 4 of the *Land Administration Act 1997*, and any purpose declared by the Governor pursuant to that Act, by notification in the *Government Gazette* to be a public purpose within the meaning of that Act;

register means the register kept under section 103F;

registration means registration under section 103C;

related has a meaning affected by subsection (4);

repealed Act means the *Mining Act 1904* [2];

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

reversion licence application means a reversion licence application authorised by an order under section 120AA(2);

the warden or ***the mining registrar*** means the warden or the mining registrar of the mineral field or district thereof in which the subject matter in relation to which the term is used arose or is;

vehicle includes an aircraft, helicopter or air cushion vehicle;

warden means a warden of mines appointed in accordance with this Act;

warden's court means the warden's court constituted under this Act or deemed so to be for the mineral field or district thereof in which the subject matter in relation to which the term is used arose or is.

(2) Notwithstanding anything in subsection (1), the Minister may, in the event of a dispute whether a particular substance is or is not oil shale, decide whether that substance is or is not oil shale for the purposes of this Act and the *Petroleum, Geothermal Energy and Greenhouse Gas Storage Act 1967* and the Minister's decision in the matter shall be final.

(3) A reference in this Act to the owner and occupier of private land includes a reference to a person who is both the owner and occupier of private land and parts of speech in the plural number shall be construed accordingly.

(4) For the purposes of this Act a person is related to —

(a) an individual, if the person is —

(i) a spouse or de facto partner; or

(ii) a parent, grandparent or great-grandparent; or

(iii) a child, grandchild or great-grandchild; or

(iv) a sibling,

of the individual, whether the relationship is a step relationship or a relationship established by, or traced through marriage or a de facto relationship, a written law or a natural relationship; and

(b) a body corporate, if the person is a related entity (as defined in section 9 of the Corporations Act) in relation to the body corporate.

(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.

(6) A reference in this Act to a lease of Crown land for the use and benefit of the Aboriginal inhabitants includes a lease of Crown land for the social, cultural or economic benefit of Aboriginal persons.

[Section 8 amended: No. 69 of 1981 s. 6; No. 122 of 1982 s. 5; No. 100 of 1985 s. 5; No. 105 of 1986 s. 7; No. 22 of 1990 s. 4; No. 37 of 1993 s. 10(2), 12(2), 26 and 27; No. 14 of 1996 s. 4; No. 54 of 1996 s. 4; No. 5 of 1997 s. 40; No. 31 of 1997 s. 71(1) and 141; No. 10 of 2001 s. 130; No. 15 of 2002 s. 4; No. 12 of 2003 s. 4; No. 28 of 2003 s. 152; No. 39 of 2004 s. 20, 42, 47 and 87; No. 27 of 2005 s. 4; No. 35 of 2007 s. 100(2) and (3); No. 8 of 2010 s. 17; No. 12 of 2010 s. 14; (correction to reprint: Gazette 1 Jun 2012 p. 2282); No. 51 of 2012 s. 5; No. 44 of 2016 s. 20; No. 31 of 2022 s. 5; No. 4 of 2023 s. 131; No. 27 of 2023 s. 4; No. 17 of 2024 s. 405; No. 7 of 2025 s. 4.]

*[**8A.** Deleted: No. 17 of 2024 s. 406.]*

9. Gold, silver and other precious metals property of Crown

(1) Subject to this Act —

(a) all gold, silver, and any other precious metal existing in its natural condition on or below the surface of any land whether alienated or not alienated from the Crown and if alienated whenever alienated, is the property of the Crown;

(b) all other minerals existing in their natural condition on or below the surface of any land that was not alienated in fee simple from the Crown before 1 January 1899 are the property of the Crown.

(2) Notwithstanding anything in this Act or any previous enactment the owner, grantee, lessee or licensee of, or other person entitled to, any land to which this section or any corresponding provisions apply, that is not the subject of a mining tenement, is entitled to use any mineral existing in a natural state on or below the surface of the land for any agricultural, pastoral, household, road making, or building purpose, on that land.

[Section 9 amended: No. 12 of 2003 s. 5.]

9A. Effect of change of baseline

(1) If —

(a) an offshore area is covered by a mining tenement; and

(b) there is a change to the inner limit of the coastal waters of the State as defined in section 16(1) and (2) of the *Offshore Minerals Act 2003*; and

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

this Act applies, while the tenement or any successor tenement remains in force, as if the area were still within the offshore area.

(2) In subsection (1) —

offshore area means an area that comes within paragraph (b) of the definition of ***land*** in section 8(1).

(3) If —

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

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

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

(4) If —

(a) a retention licence takes effect immediately after an exploration licence expires; and

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

the retention licence is a successor tenement to the exploration licence for the purposes of subsection (1).

(5) If —

(a) a mining lease takes effect immediately after a retention licence expires; and

(b) the retention licence took effect immediately after an exploration licence expired; and

(c) the holder of the mining lease immediately after it takes effect was the holder of the retention licence immediately before it expired; and

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

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

[Section 9A inserted: No. 12 of 2003 s. 6.]

9B. Position on Earth's surface

(1) Where for the purposes of this Act, or the regulations made for the purposes of this Act, it is necessary to determine the position on the surface of the Earth of a point, line or area, that position is to be determined by reference to the prescribed Australian datum.

(1A) A datum may be prescribed for all or some of the purposes referred to in subsection (1), and different datums may be prescribed for different purposes.

(2) Regulations that prescribe a datum for the purposes referred to in subsection (1), or amend that datum or prescribe another datum to replace that datum, may make any transitional or savings provisions that are necessary or convenient to be made —

(a) in relation to mining tenements granted or acquired before the regulations take effect; or

(b) in relation to applications for mining tenements pending when the regulations take effect; or

(c) for any other purpose.

(3) Regulations referred to in subsection (2) may modify or otherwise affect the operation of this Act.

[Section 9B inserted: No. 54 of 2000 s. 5(2); amended: No. 39 of 2022 s. 4.]

Part II — Administration, mineral fields and courts

10. Minister is corporation sole

[(1) deleted]

(2) The Minister —

(a) shall be a corporation sole, with perpetual succession and shall have an official seal; and

(b) may, in his corporate name, acquire, hold, lease and otherwise dispose of real and personal property, and may sue and be sued in that name.

(3) All courts, judges and persons acting judicially shall take notice of the official seal of the Minister affixed to a document and shall presume that it was duly affixed.

[Section 10 amended: No. 7 of 2025 s. 5.]

*[**11.** Deleted: No. 7 of 2025 s. 6.]*

12. Delegation

(1) The Minister may delegate any power or duty of the Minister under another provision of this Act to a public service officer.

(2) Without limiting subsection (1), the Minister may delegate any power or duty of the Minister under Part 5A to the Commissioner of State Revenue.

(2A) The Commissioner of State Revenue may further delegate a power or duty delegated to the Commissioner under subsection (2) to a public service officer.

(3) The Director General of Mines may delegate to a public service officer any power or duty of the Director General of Mines except this power of delegation.

(3A) A person to whom a power is delegated under subsection (1) or (3) cannot further delegate that power or duty.

(4) A delegation under subsection (1), (2), (2A) or (3) must be in writing signed by the person making the delegation.

(5) A person exercising or performing a power or duty that has been delegated to the person under this section is taken to do so in accordance with the terms of the delegation unless the contrary is shown.

(6) Nothing in this section limits the ability of the Minister, the Commissioner of State Revenue or the Director General of Mines to perform a function through an officer or agent.

[Section 12 inserted: No. 31 of 2022 s. 6; amended: No. 7 of 2025 s. 7.]

13. Appointment of wardens of mines and mining registrar

(1) Any person holding office as a magistrate under the *Magistrates Court Act 2004*, may be appointed by the Governor to be a warden of mines and is thereby authorised and empowered to preside in a warden's court.

(2) A mining registrar is to be appointed under the *Public Sector Management Act 1994* Part 3.

[(3), (4) deleted]

[Section 13 amended: No. 100 of 1985 s. 7; No. 32 of 1994 s. 19; No. 39 of 2004 s. 48; No. 59 of 2004 s. 116; No. 39 of 2010 s. 89; No. 7 of 2025 s. 8.]

*[**14.** Deleted: No. 39 of 2004 s. 49.]*

15. Prohibition from adjudicating in certain matters or from using certain information

(1) A warden who acts or adjudicates in any matter in which the warden has directly or indirectly any pecuniary interest, is guilty of a crime unless —

(a) the warden declares the nature of the interest to each of the parties to the matter; and

(b) each of the parties consents to the warden so acting or adjudicating.

Penalty for this subsection: imprisonment for 2 years or a fine of $1 000.

(2) A warden or public service officer who uses official information for the purpose of personal gain commits a crime.

Penalty for this subsection: imprisonment for 2 years or a fine of $1 000.

(3) In subsection (2) —

official information means information that a person obtains in the course of, or because of, the person's office, position, employment or engagement under, or for the purposes of, this Act.

[Section 15 amended: No. 100 of 1985 s. 9; No. 70 of 2004 s. 82; No. 51 of 2012 s. 6; No. 7 of 2025 s. 9.]

16. Constitution of mineral fields and dealings with Crown land in them

(1) The Governor may, by proclamation —

(a) constitute any part of the State, including any area that comes within paragraph (b) of the definition of ***land*** in section 8(1), to be a mineral field; or

(b) divide any mineral field into districts; or

(c) alter or amend the boundaries of a mineral field or district; or

(d) abolish a mineral field or district.

(2) Any part of the State that was immediately before the commencing date a mineral field or district thereof or a goldfield or district thereof under the repealed Act, shall be deemed to be a mineral field or district thereof constituted under this Act and may be dealt with as provided in subsection (1).

(3) No Crown land that is in a mineral field shall be leased, transferred in fee simple, or otherwise disposed of under the provisions of the *Land Administration Act 1997*, without the approval of the Minister.

(4) A provision of a diversification lease over Crown land that is in a mineral field must not be varied so as to alter a purpose of the lease without the approval of the Minister.

(5) Crown land that is in a mineral field must not be identified in a diversification lease under the *Land Administration Act 1997* section 92C(4) without the approval of the Minister.

[Section 16 amended: No. 31 of 1997 s. 71(2) and 141; No. 12 of 2003 s. 7; No. 4 of 2023 s. 132.]

17. Designated tenement contact

(1) In this section —

give includes serve, send or any similar expression;

prescribed provision means a provision of this Act, or the regulations made for the purposes of this Act —

(a) under which the Minister, a warden or any official of the Department is required or permitted to give information, a document, a notice or a notification to a person who holds, or has applied for, a mining tenement; and

(b) that is prescribed for the purpose of this section.

(2) Despite anything else in this Act, a prescribed provision is taken to have been complied with if —

(a) under the prescribed provision, information, a document, a notice or a notification is required or permitted to be given to a person who holds, or has applied for, a mining tenement; and

(b) the information, document, notice or notification referred to in the provision is given to the designated tenement contact for that mining tenement or application.

[Section 17 inserted: No. 44 of 2016 s. 21; amended: No. 31 of 2022 s. 7; No. 39 of 2022 s. 5.]

Part III — Land open for mining

Division 1 — Crown land

18. Crown land open for mining

All Crown land, not being Crown land that is the subject of a mining tenement, is open for mining and as such is land —

(a) where any person may set up pegs or otherwise mark out the land pursuant to section 104 in connection with an application for a mining tenement; and

(b) where the holder of a miner's right may do the things authorised by section 40D; and

(c) which may be made the subject of an application for a mining tenement,

subject to and in accordance with this Act.

[Section 18 amended: No. 100 of 1985 s. 11; No. 51 of 2012 s. 7.]

19. Minister may exempt land from mining etc.

(1) The Minister may from time to time by instrument in writing under his hand —

(a) exempt any land, not being private land or land that is the subject of a mining tenement or of an application therefor, from —

(i) mining; or

(ii) a specified mining purpose; or

(iii) this Act; or

(iv) a specified provision of this Act;

or

(b) vary or cancel an exemption referred to in paragraph (a),

and shall cause any such instrument to be published in the *Government Gazette* as soon as is practicable after its execution by him.

(2) Each instrument made under subsection (1) has effect on and from the date thereof and shall specify the area and description of land to which the instrument relates.

(2a) An instrument made under subsection (1)(a) before the prescribed day, has effect until it is cancelled under subsection (1)(b).

(2b) An instrument made under subsection (1)(a) on or after the prescribed day, has effect until it is cancelled under subsection (1)(b) or until it expires under subsection (2c), whichever occurs first.

(2c) An instrument referred to in subsection (2b) expires at the end of the period of 2 years from its date unless it is extended for a period or periods (not exceeding 2 years at a time) by instrument in writing under the Minister's hand published in the *Government Gazette.*

(2d) In subsections (2a) and (2b) the ***prescribed day*** means the day on which section 4 of the *Mining Amendment Act 1994* commences.

(3) While any land is so exempted from mining or any specified mining purpose, or from this Act or any specified provision thereof, the land to the extent of the exemption, may be dealt with by the Minister in accordance with this section and to that extent is not subject to the other provisions of this Act.

(4) The Minister may, while any land is exempted under this section, call in such manner as he determines for applications for the grant of such mining tenements as he determines in respect of that land or a part thereof.

(5) A person applying to the Minister for the grant of a mining tenement in respect of any land or a part thereof referred to in subsection (4) shall do so in such manner as the Minister directs.

(6) On receiving an application made under subsection (5), the Minister may —

(a) grant the mining tenement applied for or another mining tenement subject to such terms and conditions as he thinks fit; or

(b) refuse that application.

(7) This Act applies to a mining tenement granted under this section as if that mining tenement had been granted under Part IV.

(8) Nothing in this section authorises or allows land to which section 24, 24A or 25 applies to be exempted from a provision of Division 2 or to be dealt with otherwise than in accordance with Division 2.

[Section 19 amended: No. 69 of 1981 s. 8; No. 100 of 1985 s. 12; No. 21 of 1993 s. 45; No. 58 of 1994 s. 4; No. 52 of 1995 s. 20; No. 5 of 1997 s. 41(2).]

20. Protection of certain Crown land

[(1)-(4) deleted]

(5) Notwithstanding that any Crown land to which this subsection refers may be marked out as or be included in a mining tenement, a mining tenement or Miner's Right does not entitle the holder thereof to prospect or fossick on, explore, or mine on or under, or otherwise interfere with, any Crown land that is —

(a) for the time being under crop, or which is situated within 100 m thereof; or

(b) used as or situated within 100 m of a yard, stockyard, garden, cultivated field, orchard, vineyard, plantation, airstrip or airfield; or

(c) situated within 100 m of any land that is in actual occupation and on which a house or other substantial building is erected; or

(d) the site of or situated within 100 m of any cemetery or burial ground; or

(da) the site of or situated within 100 m of a permanent electrical or fibre optic cable; or

(db) land under a diversification lease that is the site of, or situated within 100 m of, a substantial structure that —

(i) is being erected or commissioned; or

(ii) has been erected and is used, not being a structure previously erected and used for mining purposes by a person other than a lessee of that diversification lease;

or

(e) land under a pastoral lease or a diversification lease that is the site of, or is situated within 400 m of the outer edge of, any water works, race, dam, well or bore, not being an excavation previously made and used for mining purposes by a person other than a lessee of that pastoral lease or diversification lease,

without the written consent of the occupier, unless —

(ea) the warden in relation to any land other than land referred to in paragraph (c) or (db) otherwise directs; or

(eb) in the case of mining, it is carried out not less than 30 m below the lowest part of the natural surface of the land,

but nothing in this subsection prevents such a holder from passing and repassing over any Crown land that is situated within —

(f) 100 m of any Crown land that is —

(i) for the time being under crop; or

(ii) used as a yard, stockyard, garden, cultivated field, orchard, vineyard, plantation, airstrip or airfield; or

(iii) in actual occupation and on which a house or other substantial building is erected; or

(iv) the site of any cemetery or burial ground; or

(v) the site of a permanent electrical or fibre optic cable; or

(vi) the site of a substantial structure that is being erected or commissioned or that has been erected and is used;

or

(g) 400 m of any Crown land that is the site of any water works, race, dam, well or bore,

in order to gain access to other land (not being Crown land referred to in paragraph (f) or (g)), for the purpose of prospecting or fossicking on, exploring, mining on or under, or marking out that other land but a warden shall not give a direction under paragraph (ea) unless he is satisfied that the land is *bona fide* required for mining purposes and he is satisfied that compensation in accordance with section 123 for all loss or damage suffered or likely to be suffered by an owner or occupier of the land has been agreed upon or otherwise determined, or is assessed and settled in accordance with this Act.

(5AA) Subsection (5) does not apply to land under a diversification lease described in subsection (5)(db) unless the land is identified

in the diversification lease under the *Land Administration Act 1997* section 92C(4) for the purposes of this subsection.

(5a) The holder of a mining tenement or Miner's Right who passes or repasses over any Crown land that is situated within —

(a) 100 m of any Crown land referred to in subsection (5)(f); or

(b) 400 m of any Crown land referred to in subsection (5)(g),

in order to gain access to the other land referred to in subsection (5) for the purpose referred to therein shall —

(c) before so passing or repassing, take all reasonable and practicable steps to notify the occupier of the Crown land so situated of his intention to do so; and

(d) when so passing or repassing —

(i) take all necessary steps to prevent damage or injury to property or livestock whether resulting from fire, the presence of dogs, the discharge of firearms, the use of vehicles or any other cause; and

(ii) cause as little inconvenience as possible to the occupier of the Crown land so situated; and

(iii) comply with any reasonable request made by the occupier of the Crown land so situated in relation to the manner in which that holder so passes or repasses;

and

(e) restrict the number of occasions on which he so passes or repasses to the minimum necessary for the purpose of prospecting or fossicking on, exploring, mining operations on or under, or marking out that other land; and

(f) make good any damage caused by that passing or repassing to any improvements or livestock on the Crown land so situated,

and the occupier of the Crown land so situated is entitled to be compensated by that holder for any damage referred to in paragraph (f) that is not made good by that holder, and, in respect of land under cultivation, for any other loss or damage for which that holder is liable in accordance with section 123.

(5b) The amount of any compensation payable under subsection (5a) by the holder of the mining tenement or Miner's Right concerned to an occupier of Crown land referred to in that subsection shall be determined —

(a) by agreement between that holder and that occupier; or

(b) in default of agreement, by the warden's court on the application of that holder or that occupier.

(5c) A determination made by the warden's court under subsection (5b) is, for the purposes of section 147(1), a final determination of the warden's court.

[Section 20[3] *amended: No. 122 of 1982 s. 6; No. 100 of 1985 s. 13; No. 22 of 1990 s. 5; No. 31 of 1997 s. 141; No. 63 of 2000 s. 4; No. 15 of 2002 s. 5; No. 39 of 2004 s. 50 and 88; No. 51 of 2012 s. 8; No. 31 of 2022 s. 8; No. 4 of 2023 s. 133.]*

*[**20A-20C.** Deleted: No. 51 of 2012 s. 9.]*

21. Power to resume land

(1) Any land, including land under the surface (not being land that is the subject of a mining tenement or land on which mining operations are lawfully being carried on under an agreement in writing with the owner of the land) that in the opinion of the Governor on the recommendation of the Minister ought to be taken for the purposes of this Act is hereby authorised to be taken on behalf of the Crown pursuant to Part 9 of the *Land Administration Act 1997* as though the taking were required for a public purpose, and for that purpose the Minister or the

Minister administering that Act may cause the land to be inspected, surveyed, explored, and reported upon by such officers and workmen as he directs, all of whom may thereupon enter upon the land and carry out all necessary operations in accordance with that Act.

(2A) In subsection (1) —

land does not include Commonwealth land.

(2) At the request of a person interested in land to which subsection (1) refers, any other land that is being or is intended to be used in conjunction with that land may be, and is hereby authorised to be, taken on behalf of the Crown in accordance with that subsection if the Governor, on the recommendation of the Minister, so determines.

(3) Upon the taking of any land pursuant to this section the owner and occupier is entitled to compensation, and the amount of the compensation shall be determined in the manner prescribed by Part 10 of the *Land Administration Act 1997* but in assessing the amount of the compensation to be paid no allowance shall be made for the value of any minerals known or supposed to be on or under the land taken, other than minerals which are the property of the owner.

(4) Where it is agreed or the State Administrative Tribunal determines that damage has been sustained by a claimant by reason of the severance of the land taken from other adjoining land of the claimant, the Governor, on the recommendation of the Minister, may determine or the State Administrative Tribunal may order that in accordance with this section such adjoining land or some portion thereof shall also be taken.

[Section 21 amended: No. 100 of 1985 s. 14; No. 31 of 1997 s. 71(3)-(6); No. 55 of 2004 s. 570; No. 51 of 2012 s. 10.]

22. Effect of resumption

Where any private land is taken under section 21 pursuant to Part 9 of the *Land Administration Act 1997* that land shall for

the purposes of this Act be taken to be Crown land under and subject to this Act, but every mining tenement granted in respect of, or occupied upon the land shall notwithstanding any of the provisions of this Act to the contrary, be subject to such rent, royalty or other payment to the Crown as may be determined by the Minister in each case, and the provisions as to royalty, other than as to the amount thereof as hereinafter provided by this Act shall be applicable.

[Section 22 amended: No. 100 of 1985 s. 15; No. 31 of 1997 s. 71(7).]

Division 2 — Public reserves, etc. and Commonwealth land

[Heading amended: No. 51 of 2012 s. 11.]

23. Mining on public reserves etc. and Commonwealth land

(1) Subject to this Act, a mining tenement may be applied for in respect of the following land (not being land that is already the subject of a mining tenement) —

(a) land, or land of a class, to which section 24, 24A or 25 applies;

(b) Commonwealth land.

(2) The holder of a mining tenement in respect of such land must not carry out mining on or under that land otherwise than in accordance with a relevant consent obtained in relation to that land under section 24, 24A, 25 or 25A.

(3) A mining tenement held in relation to such land is liable to be forfeited if the holder of the tenement —

(a) contravenes this section; or

(b) is in breach of any term or condition to which a consent given under section 24, 24A, 25 or 25A is made subject.

[Section 23 inserted: No. 51 of 2012 s. 12.]

24. Classification of reserves

(1) The classes of land to which this section applies are —

(a) land that is in the South-West Division of the State as described in Schedule 1 to the *Land Administration Act 1997*, or in the local government district of Esperance or Ravensthorpe and that is reserved under Part 4 of that Act and classified as a class A reserve pursuant to that Part or so classified pursuant to any other Act; and

(b) any land comprised within —

(i) a national park, being land to which section 6(3) of the *Conservation and Land Management Act 1984* applies; or

(ii) a nature reserve, being land to which section 6(5) of the *Conservation and Land Management Act 1984* applies and which is reserved under Part 4 of the *Land Administration Act 1997* and classified as a class A reserve pursuant to that Part or so classified pursuant to any other Act; or

(iii) a nature reserve, not being land to which section 6(5) of the *Conservation and Land Management Act 1984* applies but which is reserved under Part 4 of the *Land Administration Act 1997* for the conservation of flora or fauna, or both flora and fauna, and classified as a class A reserve pursuant to that Part or so classified pursuant to any other Act;

and

(c) land reserved under Part 4 of the *Land Administration Act 1997*, not being —

(i) land to which paragraph (a) or (b) of this subsection refers;

(ii) land reserved for mining or commons;

(iii) land reserved and designated for public utility for any purpose pursuant to that Part;

(iv) land that is a townsite within the meaning of the *Land Administration Act 1997*;

and

(d) land within the South West Mineral Field that is a State forest or a timber reserve within the meaning of the *Conservation and Land Management Act 1984*; and

(da) land, not being land to which paragraph (d) refers, that is a State forest or a timber reserve within the meaning of the *Conservation and Land Management Act 1984*; and

(e) land that is a water reserve or catchment area for the purposes of the *Metropolitan Water Supply, Sewerage, and Drainage Act 1909* or of the *Country Areas Water Supply Act 1947* or any other relevant Act within the meaning of that term as defined by section 5 of the *Water Agencies (Powers) Act 1984*, or of that Act; and

(f) land to which Part III of the *Aboriginal Affairs Planning Authority Act 1972* applies; and

(fa) land dedicated under section 21 of the *Western Australian Land Authority Act 1992* or vested in or under the control of the Western Australian Land Authority established by that Act; and

(g) land that is reserved under any Act other than those Acts already referred to in this subsection.

(2A) The Governor may, from time to time, by Order in Council, apply this section to any other land or class of land specified in the Order in Council and as from the date so specified this section shall apply to the extent and in the manner specified in the Order in Council.

(2B) The Minister shall cause an Order in Council made pursuant to subsection (2A) to be laid on the table of each House of Parliament within 12 sitting days of its making and if either

House does not pass a resolution disallowing such Order in Council within 12 sitting days of that House after the Order in Council has been laid before it the order in council shall have effect from the date of its making.

(3A) Subject to subsection (4) mining may be carried out on any land referred to in subsection (1)(a) or (b) with the written consent of the Minister who may refuse his consent or who may give his consent subject to such terms and conditions as the Minister specifies in the consent.

(3B) Before giving his consent under subsection (3A) whether conditionally or unconditionally the Minister shall first consult with, and obtain the concurrence thereto, of the responsible Minister.

(4) No mining lease or general purpose lease shall be granted on any land referred to in subsection (1)(a) or (b) unless both Houses of Parliament by resolution consent thereto, and then only on such terms and conditions as are specified in the resolution.

(5A) Mining on any land referred to in subsection (1)(c) may be carried out with the written consent of the Minister who may refuse his consent or who may give his consent subject to such terms and conditions as the Minister specifies in the consent.

(5B) Before giving his consent under subsection (5A) whether conditionally or unconditionally the Minister shall first consult the responsible Minister and the local government, public body, or trustees or other persons in which the control and management of such land is vested with respect thereto, and obtain its or their recommendations thereon.

(6A) Mining may be carried out on any land referred to in subsection (1)(d) with the written consent of the Minister who may refuse his consent or who may give his consent subject to such terms and conditions as are specified in the consent.

(6B) Before giving his consent under subsection (6A), whether conditionally or unconditionally the Minister shall first consult with, and obtain the concurrence thereto, of the responsible Minister.

(7A) Mining may be carried out on any land referred to in subsection (1)(da), (e), (f), (fa) or (g) with the written consent of the Minister who may refuse his consent or who may give his consent, subject to such terms and conditions as are specified in the consent.

(7B) Before giving his consent under subsection (7A), whether conditionally or unconditionally, the Minister shall first consult the responsible Minister with respect thereto and obtain his recommendation thereon.

(7C) The giving by the Minister of his consent under subsection (7A) in relation to land referred to in subsection (1)(f) does not prevent or in any way affect the application of section 31 of the *Aboriginal Affairs Planning Authority Act 1972* to any person acting under that consent.

(8) The responsible Minister for the purposes of this section is the Minister for the time being charged with the administration of the land or the enactment to which the land is subject, and if in any case a question arises as to who is the responsible Minister under this section, the question shall be determined by the Governor whose decision shall be final.

[Section 24 amended: No. 122 of 1982 s. 7; No. 100 of 1985 s. 17; No. 105 of 1986 s. 8; No. 22 of 1990 s. 6; No. 20 of 1991 s. 57; No. 35 of 1992 s. 49; No. 73 of 1995 s. 188; No. 14 of 1996 s. 4; No. 54 of 1996 s. 5; No. 31 of 1997 s. 71(8)-(11); No. 19 of 2010 s. 51.]

24A. Mining in marine reserves

(1) Without limiting section 23, nothing in section 13A, 13B or 13C of the *Conservation and Land Management Act 1984* —

(a) prevents a mining tenement from being —

(i) held and renewed; or

(ii) applied for, granted, held and renewed,

in a marine nature reserve, marine park or marine management area; or

(b) affects the validity or effect of a mining tenement in a marine nature reserve, marine park or marine management area.

(2) Subject to subsection (4) mining may be carried out in a marine nature reserve or marine park with the written consent of the Minister who may refuse consent or who may give consent subject to such terms and conditions as the Minister specifies in the consent.

(3) Before giving consent under subsection (2), whether conditionally or unconditionally, the Minister shall first —

(a) consult, and obtain the concurrence of, the conservation Minister; and

(b) consult and obtain the recommendations of the fisheries Minister and the marine Minister.

(4) No mining lease or general purpose lease shall be granted in respect of any marine nature reserve or marine park unless both Houses of Parliament by resolution consent to the grant, and then only on such terms and conditions as are specified in the resolution.

(5) Mining in any marine management area may be carried out with the written consent of the Minister who may refuse consent or who may give consent subject to such terms and conditions as the Minister specifies in the consent.

(6) Before giving consent under subsection (5), whether conditionally or unconditionally, the Minister shall first consult and obtain the recommendations of the conservation Minister, the fisheries Minister and the marine Minister.

(7) Despite any consent given under subsection (2) or (4), nothing in this Act authorises the disturbance of —

(a) the sea bed or other land beneath waters in any restricted area in a mining tenement; or

(b) land in any restricted area in a mining tenement; or

(c) the subsoil below any sea bed or land referred to in paragraph (a) or (b), to a depth of 200 m.

(8) Subsection (7) applies only if the restricted area was a restricted area when the mining tenement was granted.

(9) In this section —

conservation Minister means the Minister for the time being charged with the administration of the *Conservation and Land Management Act 1984*;

fisheries Minister means the Minister for the time being charged with the administration of the *Fish Resources Management Act 1994*;

marine Minister means the Minister for the time being charged with the administration of the *Marine and Harbours Act 1981*;

restricted area means —

(a) any area of a marine nature reserve; or

(b) any area of a marine park which is classified by notice under section 62 of the *Conservation and Land Management Act 1984* as —

(i) a sanctuary area; or

(ii) a recreation area; or

(iii) a special purpose area which, or that part of such an area which, the conservation Minister has

declared in the classification notice to be an area where disturbance of the land, sea bed or subsoil would be incompatible with a conservation purpose specified in the classification notice.

[Section 24A inserted: No. 5 of 1997 s. 41(1); amended: No. 10 of 1998 s. 52.]

25. Mining on foreshore, sea bed, navigable waters or townsite

(1) The classes of land to which this section applies are —

(a) any part of the foreshore, being the area between the mean high water springs level of the sea and the mean low water springs level of the sea; and

(b) any part of the sea bed between the mean low water springs level of the sea and the inner limits of the coastal waters of the State as defined in section 16(1) and (2) of the *Offshore Minerals Act 2003*; and

(c) any land under navigable waters in the State; and

(d) any land that is a townsite within the meaning of the *Land Administration Act 1997*,

but this section does not apply to land that is part of a marine nature reserve, marine park or marine management area.

(2A) Mining on any land referred to in subsection (1)(a), (b) or (c) may be carried out with the written consent of the Minister who may refuse his consent or who may give his consent subject to such terms and conditions as the Minister specifies in the consent.

(2B) Before giving his consent under subsection (2A) whether conditionally or unconditionally the Minister shall first consult the Minister to whom the administration of the *Fish Resources Management Act 1994* is for the time being committed by the Governor, the Minister to whom the administration of the *Marine and Harbours Act 1981* is for the time being committed by the Governor, the LAA Minister and the Minister to whom

the administration of the *Environmental Protection Act 1986* is for the time being committed by the Governor with respect thereto and obtain their recommendations thereon.

(3A) Mining on any land referred to in subsection (1)(d) may be carried out with the written consent of the Minister who may refuse his consent or who may give his consent subject to such terms and conditions as the Minister specifies in the consent.

(3B) Before giving his consent under subsection (3A) whether conditionally or unconditionally the Minister shall first consult the LAA Minister and the local government, in respect thereto and obtain their recommendations thereon.

[Section 25 amended: No. 77 of 1986 s. 9; No. 22 of 1990 s. 7; No. 37 of 1993 s. 4; No. 14 of 1996 s. 4; No. 5 of 1997 s. 42; No. 31 of 1997 s. 71(12) and 141; No. 24 of 2000 s. 26(1); No. 12 of 2003 s. 8; No. 8 of 2010 s. 18; No. 19 of 2010 s. 51.]

25A. Mining on Commonwealth land

(1) Mining may be carried out on Commonwealth land with the written consent of the Minister who may refuse consent or who may give consent subject to such terms and conditions as the Minister specifies in the consent.

(2) Before giving consent under subsection (1), whether conditionally or unconditionally, the Minister must first consult, and obtain the concurrence of, the Minister of the Commonwealth responsible for the control and management of the land.

[Section 25A inserted: No. 51 of 2012 s. 13.]

26. Terms and conditions

(1) The terms and conditions that may be imposed pursuant to sections 24, 24A, 25 and 25A may include among others a condition that —

(a) any person carrying out mining operations on the land shall make good injury to the surface of the land or injury to anything on the surface thereof;

(b) if default is made in making good any such injury the person having the control and management of such land may carry out the work necessary to do so and recover the cost thereof in a court of competent jurisdiction from the person in default;

(c) mining operations shall be confined to such depth below the surface of the land as may be specified in the conditions;

(d) the person carrying out such mining operations shall lodge with the Minister, within such period as the Minister specifies in writing, a security to cover the probable cost of the work referred to in paragraph (b);

(e) compensation to be assessed in accordance with this Act shall be paid to the person having the control and management of the land affected for any loss or damage caused by such mining operations.

(1a) A security referred to in subsection (1)(d) shall be in accordance with and subject to section 126.

(2) In relation to any application for a mining tenement in respect of any land, or land of a class, to which section 24, 24A or 25 applies —

(a) land to which section 24(1)(a) or (b) refers may be marked out only with the consent of the Minister and the responsible Minister; and

(aa) a marine nature reserve or marine park may be marked out only with the consent of the Minister and the conservation Minister as defined in section 24A(9); and

(b) land to which section 24(1)(d) refers may be marked out only in accordance with such conditions and restrictions, if any, as are lawfully prescribed pursuant to section 128(1)(h) of the *Conservation and Land Management Act 1984*,

but otherwise the land shall be marked out as a mining tenement in accordance with this Act.

(3) The responsible Minister for the purposes of subsection (2)(a) is the person who is the responsible Minister in relation to the land as determined pursuant to section 24(8).

(4) In relation to any application for a mining tenement in respect of Commonwealth land, the Commonwealth land may be marked out only with the consent of the Minister and the Minister of the Commonwealth responsible for the control and management of the land, but otherwise the land is to be marked out as a mining tenement in accordance with this Act.

[Section 26 amended: No. 100 of 1985 s. 18; No. 5 of 1997 s. 41(2); No. 17 of 1999 s. 4; No. 51 of 2012 s. 14.]

26A. Mining tenements within townsites

(1) Where any land that is a townsite within the meaning of the *Land Administration Act 1997* is the subject of a mining tenement and the Minister considers that the land or a part of the land is required for community purposes, the Minister may, by notice in writing given to the holder of the mining tenement, require the holder to surrender the land specified in the notice to a depth of 15 m from the lowest part of the natural surface of that land, within a period of 30 days after the giving of the notice.

(2) Where the holder of a mining tenement fails to surrender land when required to do so under subsection (1), the land specified

in the notice shall, on the expiry of the period referred to in that subsection, be deemed to have been surrendered and a memorial to that effect shall be entered in the register.

(3) Where land is surrendered or deemed to have been surrendered under this section, the holder of the mining tenement in respect of that land may, while the mining tenement remains in force —

(a) with the approval of the Minister and subject to such terms and conditions as the Minister thinks fit, explore for minerals on that land;

(b) if that land ceases to be a townsite within the meaning of the *Land Administration Act 1997*, or otherwise with the approval of the Minister, apply to have that land or a part of that land reincorporated in the mining tenement.

(4) The Minister shall consider an application under subsection (3)(b) and may —

(a) grant the application, and the mining tenement shall be endorsed to reincorporate the land to which the application relates; or

(b) refuse the application.

(5) Subject to subsections (3)(a) and (4), land surrendered or deemed to have been surrendered under this section is not open for mining while the mining tenement in respect of that land remains in force.

(6) Where part of land the subject of a mining tenement is surrendered pursuant to subsection (1), section 95(4) and (5) apply, with such modifications as the circumstances require, for the purpose of that surrender.

(7) Where part of land the subject of a mining tenement is deemed to have been surrendered pursuant to subsection (2), section 95(5) applies, with such modifications as the circumstances require, for the purpose of that surrender.

(8) Where land the subject of a mining tenement is surrendered or deemed to have been surrendered under this section the holder of the mining tenement is entitled to claim and receive compensation under Part 10 of the *Land Administration Act 1997* as if the land had been taken by the Crown under that Act.

(9) Section 205 of the *Land Administration Act 1997* applies to a claim for compensation referred to in subsection (8) except that the compensation payable is limited to compensation for actual loss sustained through damage to buildings or other structures on the surface of the land.

[Section 26A inserted: No. 22 of 1990 s. 8; amended: No. 54 of 1996 s. 6; No. 31 of 1997 s. 71(13)-(16).]

Division 3 — Private land

27. Private land open for mining

(1) Subject to this Act, a mining tenement may be applied for in respect of any private land (which for the purposes of this Division does not include private land that is the subject of a mining tenement, other than in relation to mining for gold pursuant to a special prospecting licence or mining lease under section 56A, 70 or 85B in which case the land which is the subject of the application for that licence or lease is to be dealt with as private land) and such land is open for mining in accordance with this Act.

(2) This Division does not apply to the land specified in the Third Schedule.

[Section 27 amended: No. 100 of 1985 s. 19; No. 37 of 1993 s. 12(2).]

28. Unlawful entry on private land

No person shall enter or remain upon the surface of any private land for any of the purposes of this Division or those specified in section 104(1) unless he —

(a) is the owner in occupation of that private land; or

(b) is authorised to do so, by a permit issued under section 30, or by any other provision of this Act, or by virtue of a mining tenement.

[Section 28 amended: No. 39 of 2004 s. 51.]

29. Granting of mining tenements in respect of private land

(1) Subject to this Act, but notwithstanding any other Act or law, a mining tenement may be granted in respect of an area that consists of private land only or partly of private land and partly of any other land and the authority conferred thereby on the holder thereof may be exercised by that holder in respect of any such land.

(2) Except with the consent in writing of the owner and the occupier of the private land concerned, a mining tenement shall not be granted in respect of private land —

(a) which is in *bona fide* and regular use as a yard, stockyard, garden, orchard, vineyard, plant nursery or plantation or is land under cultivation; or

(b) which is the site of a cemetery or burial ground; or

(c) which is the site of a dam, bore, well or spring; or

(d) on which there is erected a substantial improvement; or

(e) which is situated within 100 m of any private land referred to in paragraph (a), (b), (c) or (d); or

(f) which is a separate parcel of land and has an area of 2 000 m^2 or less,

unless the mining tenement is granted only in respect of that part of that private land which is not less than 30 m below the lowest part of the natural surface of that private land.

[(3) deleted]

(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.

(5) The holder of a mining tenement which —

(a) has been granted wholly or partly in respect of private land referred to in subsection (2)(a), (b), (c), (d), (e) or (f); but

(b) has not been granted in respect of that portion of the private land referred to in paragraph (a) that is less than 30 m below the lowest part of the natural surface of that private land because the consents referred to in subsection (2) have not been given,

may apply to the Minister for that mining tenement to be amended by granting it in respect of the portion referred to in paragraph (b) as well as in respect of the land in respect of which that mining tenement is already granted and that portion, whilst the right so to apply subsists, is not open for mining to any other person.

(6) On receiving an application made under subsection (5), the Minister may, if he is satisfied that both the owner and the occupier of the private land referred to in paragraph (a) of that subsection have consented in writing to the grant of the mining tenement concerned in respect of the portion referred to in paragraph (b) of that subsection, grant that application.

(6a) Subsection (6b) applies to a mining tenement if it —

(a) has been granted wholly or partly in respect of private land referred to in subsection (2)(a), (b), (c), (d), (e) or (f); but

(b) has not been granted in respect of that portion of the private land (the ***relevant portion***) that is less than 30 m below the lowest part of the natural surface of that private land because the consents referred to in subsection (2) have not been given.

(6b) If during the currency of a mining tenement to which this subsection applies, the relevant portion or any part of the relevant portion ceases to be private land, the relevant portion or that part of the relevant portion, as the case requires, is, by operation of this subsection, included in the mining tenement.

(7) A mining tenement granted under this Division in respect of any private land —

(a) shall, subject to this Act, authorise the holder of that mining tenement —

(i) to carry out mining on the natural surface of the private land and at any depth thereunder; or

(ii) to carry out mining at a depth of not less than 30 m from the lowest part of the natural surface of the private land;

(b) shall comprise a right of access by a right of way, to be marked in the prescribed manner at the expense of the holder of that mining tenement, from the private land through any land, whether occupied under a mining tenement or otherwise, to the nearest practicable point of a street or road, but except with the consent in writing of the owner and the occupier of any land used as a yard, garden, orchard or cultivated field no such right of way shall be had by the holder of that mining tenement through that land;

(c) does not without the consent in writing of the owner and the occupier of the private land authorise the holder of that mining tenement to use water artificially conserved by that owner or occupier or to fell trees, strip bark or cut timber on the private land or, except in connection with mining carried out on the private land, to remove earth or rock therefrom;

(d) does not authorise the holder of that mining tenement to impound any stock or other animals belonging to or being in the custody or under the control of the owner or occupier of any land adjoining the mining tenement, or to disturb or molest any such stock or other animals in any manner whatever, or to prevent any such stock or other animals from depasturing on or over the land the subject of the mining tenement, unless that land is fenced.

[Section 29 inserted: No. 69 of 1981 s. 9; amended: No. 100 of 1985 s. 20; No. 105 of 1986 s. 9; No. 58 of 1994 s. 6; No. 39 of 2004 s. 52.]

30. Granting of permits in respect of private land

(1) A person who desires to enter on any private land to search for any mineral or to mark out a mining tenement may apply for a permit to enter on the private land.

(2) An application under subsection (1) shall be made in the prescribed manner and be in the prescribed form and shall contain a description of the private land concerned that is sufficient to enable the land to be identified.

(3) A warden or a prescribed official, on being satisfied that an application made under subsection (1) is made in good faith, may grant a permit in writing to enter on the private land concerned —

(a) for such term not exceeding 30 days from the date thereof; and

(b) subject to such conditions, not being conditions preventing the marking out of any mining tenement or the maintenance of any marks or notices relating thereto,

as he thinks fit and specifies in that permit and, where the holder of the permit marks out and applies for a mining tenement in relation to that land or any part thereof, the permit shall be deemed to continue in force, for the purpose only of repairing or maintaining the marks so set up and the notices posted thereon, until such time as the application for the mining tenement is determined.

(4) A warden or a prescribed official may, on granting a permit under subsection (3), fix a sum of money and require that sum to be paid to the Director General of Mines by the applicant for the permit before the issue thereof to the applicant.

(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.

(7) A permit under subsection (3) shall be deemed to be held subject to the condition that the holder is liable —

(a) in accordance with section 123, in respect of loss or damage arising out of the lawful exercise of the authorisation conferred by the permit; and

(b) generally for any loss or damage arising by reason of any entry on the land effected in purported pursuance of the authorisation conferred by the permit where the exercise of that authorisation contravened conditions to which the permit was subject or the entry was otherwise unlawful.

(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.

[Section 30 inserted: No. 69 of 1981 s. 10; amended: No. 100 of 1985 s. 21; No. 22 of 1990 s. 9; No. 39 of 2004 s. 53.]

31. Holder of permit to give notice to owner and occupier

(1) The holder of a permit issued under section 30 or his duly authorised employee or agent shall hand a copy of the permit to the occupier of the private land over which the permit has been

granted on the first occasion that the holder, his employee or agent enters upon that land after the issue of the permit, but if the occupier is not present on the private land on that occasion, the holder of the permit, his employee or agent shall —

(a) on entering the land on that occasion place a copy of the permit in a prominent position on the occupier's dwelling or in a prominent position at the main entrance to the land if no such dwelling is situated on the land; and

(b) in any event, within 48 hours of his first entering the land after the issue of the permit, cause a copy of the permit to be sent by prepaid registered post to the occupier at his last known place of abode or business.

(2) Where the occupier of the private land is also the owner or one of the owners of that private land, no further notice other than that required by subsection (1) is required to be served on that owner or any of the other owners of that land for the purposes of subsection (3).

(3) Where none of the owners of any private land is also in occupation of that land, the holder of a permit granted over that private land shall cause a copy of the permit to be sent, within 48 hours of his first entering the land after the issue of the permit, by prepaid registered post to one of those owners at —

(a) in the case of an owner which is a body corporate — the registered office of the body corporate; or

(b) in the case of an owner who is not a body corporate — to his last known place of abode or business.

[Section 31 amended: No. 100 of 1985 s. 22; No. 22 of 1990 s. 10.]

32. Rights conferred by a permit

(1) The holder of a permit issued under section 30 or his duly authorised employee or agent is thereby authorised —

(a) to enter upon and remain upon the surface of the private land to which the permit relates and to search thereon for any mineral and to mark out, and repair and maintain the marks set up and notices relating to the application for one or more mining tenements with respect to that land or any part thereof; and

(b) to search thereon for any mineral and detach one or more samples of any vein or lode outcropping on the surface thereof not exceeding in the aggregate 13 kg and to take therefrom such other samples as may be agreed by the owner or, where the owner is not in occupation of the private land, the occupier of the private land; and

(c) to remove from the private land such samples for the purpose of assaying or testing the value thereof,

but the holder or his duly authorised employee or agent shall not carry out any other mining on or otherwise disturb the surface of the land.

(2) Where a warden or a prescribed official refuses to grant an application for a permit under section 30 or grants the application on conditions the applicant considers unreasonable or fixes a sum of money under section 30(4) which the applicant considers excessive the applicant may within the time and in the manner prescribed appeal to the Minister against such refusal, conditions or amount as the case may be.

(3) The Minister may dismiss the appeal or uphold the appeal and grant the permit which he is hereby authorised to do.

[Section 32 amended: No. 69 of 1981 s. 11; No. 100 of 1985 s. 23; No. 39 of 2004 s. 54.]

33. Application for mining tenement by permit holder

(1) Subject to subsection (1a), where an application is made in accordance with this Act for a mining tenement that relates to private land notice of the application shall be given in the prescribed manner by the applicant to —

(a) the chief executive officer of the local government; and

(b) the owner and occupier of the private land; and

(c) each mortgagee of the land under a mortgage endorsed or noted on the title or land register or record relating to that land,

but if there is no occupier of the land, or no such occupier can be found, the notice of the application shall be affixed in some conspicuous manner on the land.

(1a) Where the application for a mining tenement relates only to that portion of the land that is not less than 30 m below the lowest part of the natural surface of the private land, it shall not be necessary to give notice of the application to the owner or occupier or to a mortgagee of the land, but no application shall be made under section 29(5) or otherwise in respect of that portion of the land that is less than 30 m below the lowest part of the natural surface unless notice is given in accordance with subsection (1) notwithstanding the prior grant of an application for a mining tenement over any portion of the land.

(1b) Where the application relates to land to which section 29(2) or (5) applies, the applicant shall be required to establish that both the owner and the occupier have consented in writing to the grant of the mining tenement concerned but otherwise, subject to the determination of the amount of any compensation payable in accordance with section 123, a mining tenement in respect of private land may be granted in accordance with this Act.

(2) The owner and occupier of the private land or any portion of that land and any mortgagee referred to in subsection (1)(c) are entitled to be heard in relation to any application in respect of

any portion of that land and if the owner or occupier objects to the granting of the mining tenement, the warden may, if in the circumstances of the case he considers it proper so to do, and irrespective of the manner in which the application for the mining tenement is disposed of, order that the applicant pay to the objector or objectors, such sum by way of costs as the warden orders.

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

(3) Nothing in subsection (2) limits or otherwise affects the other powers conferred by this Act upon a warden.

[Section 33 amended: No. 100 of 1985 s. 24; No. 14 of 1996 s. 4; No. 39 of 2004 s. 55.]

*[**34.** Deleted: No. 69 of 1981 s. 12.]*

35. Compensation to be agreed upon or determined before mining operation commences

(1) The holder of a mining tenement shall not commence any mining on the natural surface or within a depth of 30 m from the lowest part of the natural surface of any private land unless and until he has paid or tendered to the owner and the occupier thereof the amount of compensation, if any, that he is required to pay under and as ascertained in accordance with this Act, or he has made an agreement with the owner and occupier as to the amount, times and mode of the compensation, if any.

(2) Where any person to whom compensation is payable under this Act cannot be found or is dead or is otherwise incapacitated at law, any payment of compensation may be made to the Minister in trust for that person or his personal representative as the case requires.

[Section 35 amended: No. 69 of 1981 s. 13; No. 100 of 1985 s. 25.]

*[**36.** Deleted: No. 69 of 1981 s. 14.]*

37. Application to bring certain private land under this Division

(1) Any person may in manner prescribed apply to the Minister to have any private land alienated before 1 January 1899 brought within the operation of this Division for the purpose of mining for minerals other than gold, silver and precious metals.

(2) In respect of an application under subsection (1), the Minister may authorise and instruct a geologist or any other professional officer in the Department to enter, inspect and report upon the private land to which the application, relates and thereupon the geologist or the professional officer with assistants may enter and prospect the private land and do all things necessary to ascertain whether there is a reasonable likelihood of that land containing any mineral in payable quantities.

(3) If the geologist or the professional officer reports to the Minister that in the geologist's or professional officer's opinion there is a reasonable likelihood of the private land containing any mineral in payable quantities, the Minister may, with the approval of the Governor, by notice published in the *Government Gazette*, declare that at the expiration of a period specified in the notice, being a period of not less than 6 months from the date the notice is so published, the private land shall come within the operation of this Division.

(4) A copy of the notice published in the *Government Gazette* shall be served upon the owner of the private land to which the notice relates, as soon as practicable after it is so published.

[Section 37 amended: No. 19 of 2010 s. 51.]

38. Right of owner to apply for mining tenement

(1) The owner of the private land to which section 37 refers may, at any time within the period referred to in section 37(3), apply for a mining tenement in respect of the private land or any part thereof.

(2) Where within the period referred to in subsection (1) the owner of the private land fails to apply for a mining tenement with respect to the land as provided in that subsection, or if he so applies but a tenement is not granted, —

(a) the land shall come within the operation of this Division and all rent and royalties received by the Crown for any minerals won from the land shall be paid to the owner of the land less one-tenth of the amount thereof; and

(b) the Minister may grant to the person who made the application under section 37(1) for such period as he thinks fit, the prior right to the exclusion of all other persons to mark out the private land or any part thereof and/or apply for a mining tenement in respect thereof.

[Section 38 amended: No. 69 of 1981 s. 15; No. 100 of 1985 s. 26; No. 19 of 2010 s. 51.]

39. Owner to comply with mining tenement conditions

Where the owner of any private land is granted a mining tenement on an application made under section 38 he shall comply with the terms and conditions of the mining tenement and in particular the expenditure conditions applicable thereto, but no rent or royalty shall be payable by the owner with respect to the land the subject of the mining tenement or in respect of any mineral won therefrom.

Part IIIA — Miner's rights and related permits

[Heading inserted: No. 51 of 2012 s. 15.]

40A. Terms used

In this Part —

available land, in relation to a miner's right, means —

(a) Crown land or conservation land that is not the subject of a mining tenement; or

(b) Crown land or conservation land that is the subject of an exploration licence if the holder of the miner's right holds a permit under section 40E in respect of the land;

conservation land means land that is prescribed under section 40B as conservation land for the purposes of this Part.

[Section 40A inserted: No. 51 of 2012 s. 15.]

40B. Conservation land

(1) The regulations may prescribe land as conservation land for the purposes of this Part if —

(a) the land is of the class referred to in section 24(1)(c) and is not land that is classified as a class A reserve; and

(b) the care, control and management of the land is placed by order under the *Land Administration Act 1997* Part 4 with the Conservation and Parks Commission established under the *Conservation and Land Management Act 1984*.

(2) Regulations made for the purposes of subsection (1) may only be made with the concurrence of the Minister responsible for the administration of the *Conservation and Land Management Act 1984*.

[Section 40B inserted: No. 51 of 2012 s. 15; amended: No. 28 of 2015 s. 77.]

40C. Issue of miner's right

(1) The Minister, the Director General of Mines or a mining registrar may, on the application of any person and on being satisfied of the identity of the person, issue a miner's right to the person.

(2) An application for a miner's right must be accompanied by the prescribed application fee (if any).

(3) A miner's right —

(a) must be in the prescribed form; and

(b) is not limited in term; and

(c) is not transferable.

[Section 40C inserted: No. 51 of 2012 s. 15; amended: No. 44 of 2016 s. 22.]

40D. Authorisation under miner's right

(1) Subject to this Act the holder of a miner's right is authorised to do all or any of the following things —

(a) pass and repass over Crown land or conservation land with such employees and agents, vehicles, machinery and equipment as may be necessary or expedient for the purpose of prospecting and marking out any land which may be made the subject of an application for a mining tenement;

(b) prospect for minerals and conduct tests for minerals on available land for the purpose of determining whether to mark out or apply for a mining tenement in respect of any part of the land;

(c) extract or remove from available land samples or specimens of rock, ore or minerals with as little damage to the surface of the land as possible, in quantities, in total or on occasions, not exceeding the prescribed limits;

(d) keep as the holder's property or use for testing or evaluation purposes any samples and specimens of any mineral found by the holder on available land;

(e) for the purpose of prospecting and for domestic purposes and subject to the *Rights in Water and Irrigation Act 1914*, or any Act amending or replacing the relevant provisions of that Act —

(i) take and use water from any natural spring, lake, pool or watercourse situated in or flowing through available land; and

(ii) sink a well or bore on available land and take and use water from the well or bore;

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

(g) fossick by prescribed means on Crown land or conservation land with the prior written consent of —

(i) any occupier of that land; and

(ii) if the land is subject to a mining tenement, the holder of the mining tenement.

(2) Every miner's right is to be regarded as having been issued subject to the conditions that the holder of the miner's right or any other person acting in the exercise or purported exercise of an authorisation conferred or alleged to be conferred by subsection (1) —

(a) must not, on conservation land, do any of the things referred to in that subsection unless authorised to do so under the *Conservation and Land Management Act 1984*; and

(b) must not use explosives or tools, other than tools prescribed for the purposes of this paragraph or hand tools; and

(c) must cause to be filled in or otherwise made safe —

(i) all holes, pits, trenches and other disturbances on the surface of the land which were made by the person while acting in the exercise or purported exercise of the authorisation and which are likely to endanger the safety of any person or animal; and

(ii) such other holes, pits, trenches and other disturbances made, wholly or in part, by the person as the Minister may from time to time direct;

and

(d) must take all necessary steps to prevent damage or injury to property or livestock whether resulting from fire, the presence of dogs, the discharge of firearms, the use of vehicles or any other cause.

(3) The holder of a miner's right is liable to pay compensation in accordance with section 123, as may be agreed or as may be determined by the warden's court on the application of the owner or occupier of the land or of the holder of any mining tenement affected, for any loss or damage caused by, and not made good by, the holder or any other person acting in the exercise or purported exercise of an authorisation conferred or alleged to be conferred by subsection (1).

(4) A determination made by the warden's court under subsection (3) is, for the purposes of section 147(1), a final determination of the warden's court.

[Section 40D inserted: No. 51 of 2012 s. 15; amended: No. 31 of 2022 s. 9.]

40E. Permit to prospect on Crown land or conservation land subject of exploration licence

(1) The mining registrar or the holder of a prescribed office in the Department may issue a permit to prospect for minerals on Crown land or conservation land that is the subject of an exploration licence to —

(a) a natural person who is the holder of a miner's right; or

(b) 2 or 3 natural persons, each of whom is the holder of a miner's right, as joint holders of the permit.

(2) A permit cannot be issued under subsection (1) if the applicant for the permit is already the holder of a permit under this section in respect of the exploration licence to which his or her application relates.

(3) An application for a permit —

(a) must be made in the prescribed form; and

(b) must be lodged in the prescribed manner; and

(c) must be accompanied by the prescribed application fee (if any).

(4) The area of land in respect of which a permit is issued is to be specified in the permit in the prescribed manner.

(5) A permit is subject to such conditions as are imposed in accordance with the regulations and specified in the permit.

(6) In addition to any conditions that may be imposed under subsection (5) every permit is to be regarded as having been issued subject to conditions that the holder or each holder (in the case of joint holders) —

(a) must not use explosives or tools, other than hand tools, on the land the subject of the permit; and

(b) must not prospect below the prescribed depth; and

(c) must comply with the prescribed limits referred to in section 40D(1)(c); and

(d) must not prospect within 100 m of any activities that are being carried out under the authority of an exploration licence; and

(e) must not prospect on land that is the subject of a special prospecting licence under section 70.

(7) A permit is not transferable.

[Section 40E inserted: No. 51 of 2012 s. 15.]

40F. Power to remove Crown land or conservation land from operation of s. 40E

(1) The Minister may, by notice published in the *Gazette*, declare that section 40E does not apply to Crown land or conservation land that is —

(a) the subject of a specified exploration licence; or

(b) in a specified block (within the meaning of Part IV Division 2); or

(c) in a specified area of the State.

(2) The Minister may, by notice published in the *Gazette*, vary or cancel a notice under subsection (1).

(3) A notice under this section takes effect on the day on which the notice is published in the *Gazette* or such later day as is specified in the notice.

(4) A notice under this section does not affect the operation of a permit issued under section 40E before the day on which the notice takes effect.

[Section 40F inserted: No. 51 of 2012 s. 15.]

40G. Limitation on actions in tort

(1) In this section —

permit means a permit issued under section 40E;

permit land means land that is the subject of both the permit and the exploration licence concerned.

(2) The holder of a permit cannot bring an action in tort against the holder of an exploration licence for injury, loss or damage suffered by the holder of the permit as a result of —

(a) the condition of the permit land; or

(b) a thing that the holder of the exploration licence has done on the permit land under the authority of that licence.

(3) Nothing in subsection (2)(b) prevents the bringing of an action in tort if the thing was done —

(a) with the deliberate intent of causing injury, loss or damage to the holder of the permit; or

(b) with reckless disregard for the presence of the holder of the permit on the permit land.

(4) In this section a reference to the doing of a thing includes a reference to an omission to do a thing.

[Section 40G inserted: No. 51 of 2012 s. 15.]

Part IV — Mining tenements

Division 1 — Prospecting licence

*[**39A.** Deleted: No. 52 of 1995 s. 21.]*

40. Grant of prospecting licence

(1) Subject to this Act, the mining registrar or the warden, in accordance with section 42, may, on the application of any person grant to that person a licence to be known as a prospecting licence which shall be subject to such conditions as are prescribed or are imposed pursuant to section 24, 24A or 25 or are specified in the licence.

(2) The area of land in respect of which any one prospecting licence may be granted shall not exceed 200 ha.

(3) A person may be granted more than one prospecting licence.

[Section 40 amended: No. 122 of 1982 s. 8; No. 100 of 1985 s. 27; No. 58 of 1994 s. 7; No. 5 of 1997 s. 41(2).]

41. Application for prospecting licence

(1) An application for a prospecting licence —

(a) shall be made in the prescribed form; and

(b) shall be accompanied by the amount of the prescribed rent for the first year or portion thereof as prescribed; and

(c) shall be made by reference to a written description of the area of land in respect of which the licence is sought, and be accompanied by a map on which are clearly delineated the boundaries of that area; and

[(d) deleted]

(e) shall be lodged in the prescribed manner; and

(f) shall be accompanied by the prescribed application fee.

(2) Within the prescribed period the applicant shall serve such notice of the application as may be prescribed, on the owner and occupier of the land to which the application relates and on such other persons as may be prescribed.

(3) An applicant for a prospecting licence shall at the request of the mining registrar or warden furnish such further information in relation to his application, or such evidence in support thereof, as the mining registrar or warden may require but the mining registrar or warden shall not require information or evidence relating to assays or other results of any testing or sampling that the applicant may have carried out on the land the subject of his application.

[Section 41 amended: No. 122 of 1982 s. 9; No. 52 of 1983 s. 3; No. 100 of 1985 s. 28; No. 37 of 1993 s. 26; No. 58 of 1994 s. 8; No. 12 of 2010 s. 16.]

42. Determination of application for prospecting licence

(1) A person who wishes to object to the granting of an application for a prospecting licence must lodge a notice of objection.

(1A) A notice of objection must be —

(a) lodged within the prescribed time and in the prescribed manner; and

(b) accompanied by the prescribed fee.

(1B) A person is not entitled to lodge a notice of objection if the basis for the objection is that the prospecting licence, or activities authorised by it, would affect an offsets project.

(1C) Subsection (1B) does not apply in respect of an offsets project, or any part of an offsets project, situated on land held in freehold.

(2) Where no notice of objection is lodged within the prescribed time, or any notice of objection is withdrawn, the mining registrar may —

(a) grant the prospecting licence if satisfied that the applicant has complied in all respects with the provisions of this Act; or

(b) refuse the prospecting licence if not so satisfied.

(3) Where a notice of objection —

(a) is lodged within the prescribed time; or

(b) is not lodged within the prescribed time but is lodged before the mining registrar has granted or refused the prospecting licence under subsection (2) and the warden is satisfied that there are reasonable grounds for late lodgment,

and the notice of objection is not withdrawn, the warden shall hear and determine the application for the prospecting licence on a day appointed by the warden and may give any person who has lodged such a notice of objection an opportunity to be heard.

[Section 42 inserted: No. 58 of 1994 s. 9(1); amended: No. 39 of 2004 s. 56; No. 12 of 2010 s. 17; No. 39 of 2022 s. 6; No. 27 of 2023 s. 5.]

43. Prospecting licence not to include land already subject of mining tenement

(1) Where an application for a prospecting licence relates to land that is, or was when the application was made, the subject of a mining tenement, any prospecting licence granted in respect of that application shall not include that land.

(2) Subsection (1) does not apply in relation to a special prospecting licence granted under section 56A, 70 or 85B or a

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

[Section 43 inserted: No. 15 of 2002 s. 6; amended: No. 39 of 2004 s. 4; No. 27 of 2005 s. 5.]

44. Power to grant prospecting licence over all or part of land in application

Subject to section 43, a prospecting licence may be granted in respect of all or part of the land to which the application therefor relates.

[Section 44 amended: No. 100 of 1985 s. 30; No. 15 of 2002 s. 7.]

45. Term of prospecting licence

(1) A prospecting licence shall, subject to this Act, remain in force for a period of 4 years from and including the date on which it was granted, and shall then expire.

(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) When a prospecting licence is surrendered, forfeited or expires the land the subject of the prospecting licence or any part thereof shall not be marked out or applied for as a prospecting licence or an exploration licence —

(a) by or on behalf of the person who was the holder of the prospecting licence immediately prior to the date of the surrender, forfeiture or expiry; or

(b) by or on behalf of any person who had an interest in the prospecting licence immediately prior to that date; or

(c) by or on behalf of any person who is related to a person referred to in paragraph (a) or (b),

within a period of 3 months from and including that date.

(2a) For the purposes of subsection (2)(b) the holding of shares in a listed public company which held the prospecting licence in

question does not of itself constitute an interest in the prospecting licence.

[Section 45 amended: No. 122 of 1982 s. 11; No. 100 of 1985 s. 31; No. 22 of 1990 s. 11; No. 37 of 1993 s. 5; No. 15 of 2002 s. 8; No. 39 of 2004 s. 5(1).]

46. Conditions attached to every prospecting licence

In addition to any conditions that may be prescribed or imposed with respect to a prospecting licence, every prospecting licence is taken to be granted subject to the condition that the holder of the licence will prospect for minerals and to the following conditions —

(a) that all minerals of economic interest discovered in or on the land the subject of the prospecting licence be promptly reported in writing by the holder to the Minister;

[(aa) deleted]

(b) that all holes, pits, trenches and other disturbances to the surface of the land the subject of the prospecting licence that are made while prospecting, and that are likely to endanger the safety of any person or animal, will be filled in or otherwise made safe;

(c) that all necessary steps are taken by the holder to prevent damage or injury to property or livestock whether resulting from fire, the presence of dogs, the discharge of firearms, the use of vehicles or any other cause.

[Section 46 amended: No. 69 of 1981 s. 16; No. 100 of 1985 s. 32; No. 57 of 1997 s. 89(1); No. 39 of 2004 s. 6(1); No. 51 of 2012 s. 16; No. 31 of 2022 s. 10.]

*[**46A.** Deleted: No. 31 of 2022 s. 11.]*

47. Survey of area of prospecting licence not required in first instance

(1) On an application for a prospecting licence or on a prospecting licence being granted the land affected is not thereby required to be surveyed, but where a dispute arises with respect to the position of such land or the boundaries or any boundary thereof the warden or Minister may require a survey to be made of the boundaries or the boundary in order to settle the dispute.

(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.

[Section 47 amended: No. 100 of 1985 s. 33; No. 37 of 1993 s. 28(1); No. 39 of 2004 s. 57.]

48. Rights conferred by prospecting licence

A prospecting licence, while it remains in force, authorises the holder thereof, subject to this Act, and in accordance with any conditions to which the licence may be subject —

(a) to enter and re-enter the land the subject of the licence with such agents, employees, vehicles, machinery and equipment as may be necessary or expedient for the purpose of prospecting for minerals in, on or under the land;

(b) to prospect, subject to any conditions imposed under section 24, 24A or 25, for minerals, and to carry on such operations and carry out such works as are necessary for that purpose on such land including digging pits, trenches and holes, and sinking bores and tunnels to the extent necessary for the purpose in, on or under the land;

(c) to excavate, extract or remove, subject to any conditions imposed under section 24, 24A or 25, from such land, earth, soil, rock, stone, fluid or mineral bearing

substances in such amount, in total during the period for which the licence remains in force, as does not exceed the prescribed limit, or in such greater amount as the Minister may, in any case, approve in writing;

(d) to take and divert, subject to the *Rights in Water and Irrigation Act 1914*, or any Act amending or replacing the relevant provisions of that Act, water from any natural spring, lake, pool or stream situate in or flowing through such land or from any excavation previously made and used for mining purposes and subject to that Act to sink a well or bore on such land and take water therefrom and to use the water so taken for his domestic purposes and for any purpose in connection with prospecting for minerals on the land.

[Section 48 amended: No. 100 of 1985 s. 34 (as amended: No. 105 of 1986 s. 4); No. 22 of 1990 s. 13; No. 5 of 1997 s. 41(2).]

49. Holder of prospecting licence to have priority for grant of mining leases or general purpose leases

(1) The holder of a prospecting licence has —

(a) subject to this Act and to any conditions to which the prospecting licence is subject; and

(b) while the prospecting licence continues in force,

the right to apply for, and subject to section 75(9) to have granted pursuant to section 75(7), one or more mining leases or one or more general purpose leases or both in respect of any part or parts of the land the subject of the prospecting licence.

(2) Where an application for a mining lease or a general purpose lease is made by the holder of a prospecting licence in respect of any land and the term of the prospecting licence would but for this subsection expire, that licence shall continue in force in respect to the land the subject of that application until the application for a lease is determined.

(3) If, after an application is made under subsection (1) in respect of land the subject of a prospecting licence —

(a) the holder of the licence transfers the licence; or

(b) where there are 2 or more holders of the licence, a holder transfers the holder's interest in the licence,

the application continues in the name of the transferee of the licence or interest as if the transferee were the applicant or one of the applicants, as the case requires.

(4) For the purposes of subsection (3), where there are 2 or more transferees of the prospecting licence, each of the transferees is to be regarded as an applicant for an interest in the relevant mining lease or general purpose lease that corresponds to the interest held by that transferee in the licence.

[Section 49 inserted: No. 122 of 1982 s. 12; amended: No. 100 of 1985 s. 35; No. 21 of 1993 s. 45; No. 58 of 1994 s. 29(2); No. 52 of 1995 s. 22; No. 17 of 1999 s. 5.]

50. Compliance with expenditure conditions

(1) During the currency of a prospecting licence the holder thereof shall comply with the prescribed expenditure conditions relating thereto unless in accordance with this Act total or partial exemption therefrom is granted.

(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.

[Section 50 amended: No. 39 of 2004 s. 21.]

51. Reports of work and expenditure

The holder of a prospecting licence shall, at such times and in such manner as may be prescribed, file or cause to be filed a report of all work done on, and money expended in connection with, prospecting in the area the subject of the licence, during the period to which the report relates.

[Section 51 amended: No. 58 of 1994 s. 10; No. 12 of 2010 s. 18.]

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.

[Section 51A inserted: No. 39 of 2004 s. 43.]

52. Security relating to prospecting licence

(1) The applicant for a prospecting licence shall lodge in the prescribed manner and within the prescribed period a security, in respect of each prospecting licence to which the application relates, for compliance with the conditions to which the prospecting licence, if granted, will from time to time be subject and with the provisions of this Part and the regulations.

[(1a) deleted]

(2) A security referred to in subsection (1) shall be in accordance with and subject to the provisions of section 126.

(3) A prospecting licence shall not be granted unless a security has been lodged by the applicant for the prospecting licence in accordance with subsection (1).

(4) Notwithstanding section 154(1), an applicant for a prospecting licence who fails to comply with subsection (1) does not commit an offence against this Act.

[Section 52 amended: No. 122 of 1982 s. 13; No. 100 of 1985 s. 36; No. 37 of 1993 s. 26; No. 58 of 1994 s. 11; No. 17 of 1999 s. 6(1) and (2); No. 12 of 2010 s. 19; No. 31 of 2022 s. 12.]

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; and

(b) shall be made in the prescribed manner; and

(c) shall contain the prescribed information; and

(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.

[Section 53 inserted: No. 39 of 2004 s. 22.]

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; or

(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.

[Section 54 inserted: No. 39 of 2004 s. 22.]

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(2B).

(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(3B).

[Section 55 inserted: No. 39 of 2004 s. 22; amended: No. 19 of 2010 s. 51.]

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 an approved form 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) On and from giving notice in writing to the holder of the licence of the imposition of the condition, the condition has effect for all purposes as a condition to which the licence is subject.

(5) In subsection (1) —

specified means specified in writing by the Minister.

[Section 55A inserted: No. 39 of 2004 s. 22; amended: No. 31 of 2022 s. 13.]

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.

[Section 55B inserted: No. 39 of 2004 s. 22.]

56. Appeal against refusal to grant prospecting licence

(1) Where the mining registrar or the warden refuses to grant an application for a prospecting licence or grants the application on conditions the applicant considers unreasonable, the applicant may within the time and in the manner prescribed appeal to the Minister against such refusal or conditions as the case may be.

(2) The Minister may dismiss the appeal or uphold the appeal and grant the application on such conditions as he considers reasonable.

[Section 56 inserted: No. 122 of 1982 s. 15; amended: No. 21 of 1993 s. 45; No. 58 of 1994 s. 9(3) and (4); No. 52 of 1995 s. 23.]

56A. Special prospecting licences

(1) Where any land is the subject of a prospecting licence (in this section called the ***primary tenement***) then, notwithstanding section 117, a person may at any time after the expiry of 12 months from —

(a) in the case of land which was the subject of a mineral claim or dredging claim granted under the repealed Act that by the operation of the transitional provisions set forth in the Second Schedule Division 1 became subject to the primary tenement, the date of approval of the claim; and

(b) in any other case, unless subsection (1aa) applies, the date on which the primary tenement was granted,

mark out and, in accordance with section 41, apply for a prospecting licence for gold (in this section called a ***special prospecting licence***) in respect of any part of the land the subject of the primary tenement.

(1aa) If the primary tenement was granted as a result of an application under section 56B or a reversion licence application, a special prospecting licence may be marked out and applied for at any time after the date on which the primary tenement was granted.

(1a) A special prospecting licence may only be applied for by, granted to or held by a natural person.

(2) Unless subsection (5a) applies, an applicant for a special prospecting licence shall, within the prescribed period, serve notice of his application on the holder of the primary tenement as if that holder were the occupier of the land to which that application relates, and subsections (3) to (5) apply in respect of that application.

(3) If, after being served with notice of an application for a special prospecting licence, the holder of the primary tenement does not lodge an objection against that application, the mining registrar may, subject to this Act, grant that application as provided in subsection (6).

(4) If the holder of the primary tenement lodges a notice of objection to an application for a special prospecting licence —

(a) the notice of objection must be —

(i) lodged within the prescribed time and in the prescribed manner; and

(ii) accompanied by the prescribed fee;

and

(b) the warden must obtain a report from the Director, Geological Survey in respect of the prospecting carried on by the holder of the primary tenement on the land to which the application relates.

(4a) A report prepared by the Director, Geological Survey for the purposes of subsection (4)(b) is to be based solely on

information contained in reports filed by or on behalf of the holder of the primary tenement under section 51 or 115A.

(5) After hearing an objection referred to in subsection (4), the warden may refuse the application for the special prospecting licence concerned on the ground that prospecting for gold on the land to which that application relates would result in undue detriment to the prospecting being carried on by the holder of the primary tenement or he may recommend that application to the Minister, who may —

(a) refuse that application; or

(b) subject to this Act, grant that application as provided in subsection (6),

but, if the warden refuses an application under this subsection, the applicant may within the time and in the manner prescribed appeal to the Minister against that refusal and the Minister may dismiss that appeal or uphold that appeal and grant that application as provided in subsection (6).

(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 and in the prescribed manner, lodge 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).

(6) Subject to this section, the mining registrar or the Minister may grant an application for a special prospecting licence on such terms and conditions as he thinks fit, but a special prospecting licence so granted —

(a) shall not exceed 10 ha in area; and

(b) shall authorise the holder thereof to prospect only for gold; and

(c) shall not, unless the Minister otherwise directs, prevent the holder of the primary tenement from prospecting for minerals other than gold in or on the land the subject of the special prospecting licence; and

(d) does not authorise the holder thereof to excavate, extract or remove during the period for which the tenement remains in force a total amount of earth, soil, rock, stone, fluid or mineral bearing substances in excess of 500 t, except in so far as the prior written approval of the Minister may otherwise permit; and

(e) does not authorise mining to be carried out in any portion of the land that is —

(i) below a depth specified in the terms and conditions of the special prospecting licence, and any depth so specified shall be less than 50 m below the lowest part of the natural surface of the land the subject of the special prospecting licence; or

(ii) if a depth is not so specified, 50 m or more below the lowest part of the natural surface of the land the subject of the special prospecting licence, except in so far as both the prior written consent of the holder of the primary tenement and the prior written approval of the Minister may otherwise permit.

(6aa) A special prospecting licence may be granted for a period of 3 months or for any period which is a multiple of 3 months but which does not exceed 4 years.

(6a) A special prospecting licence —

(a) continues in force notwithstanding that the holder of the primary tenement may apply for and be granted a retention licence, mining lease or general purpose lease in respect to the land; but

(b) ceases (and the land in respect to which it was granted reverts to the primary tenement holder as an integral part of the tenement held by him) on the surrender, forfeiture or expiry of that special prospecting licence.

(7) No legal or equitable interest in or affecting —

(a) a special prospecting licence; or

(b) a mining lease in respect of the land or any part thereof the subject of a special prospecting licence,

is capable of being created, affected or dealt with, whether directly or indirectly, except with the prior written consent of the holder of the primary tenement, and no person shall hold or have any beneficial, legal or equitable interest in —

(c) more than 10 such special prospecting licences; or

(d) more than one such mining lease.

(7a) A reference in subsection (7) to a person includes a reference to any other person who would, for the purposes of the Corporations Act, be taken to be an associate of the first-mentioned person.

(7b) No more than one mining lease in respect of the land or any part thereof which is the subject of a special prospecting licence shall be granted in respect of the primary tenement.

(8) The holder of a special prospecting licence granted for a period of 4 years may make an application for a mining lease for gold in respect of the land or any part thereof which is the subject of

the special prospecting licence, and on an application being made the Minister may, subject to subsection (7b), grant the application for a lease in respect to that portion of the land to which the special prospecting licence relates that is less than a depth of 50 m, or such greater depth as the Minister approves with the prior written consent of the holder of the primary tenement, below the lowest part of the natural surface of the land and on such terms and conditions as the Minister thinks fit, and thereupon the area of land in respect of which that mining lease is granted shall be excised from the primary tenement (whether or not the primary tenement has in the meantime been converted into a retention licence or a mining lease).

(8aa) Sections 74, 74A and 75 apply to an application for a mining lease under subsection (8).

(8a) A mining lease granted pursuant to subsection (8) —

(a) has effect in relation to gold and any minerals occurring in conjunction with that gold;

(b) does not authorise the lessee thereof, his agents or employees to excavate, extract or remove a total amount of earth, soil, rock, stone, fluid or mineral bearing substances in excess of 750 t in any year, except in so far as both the prior written consent of the holder of the primary tenement and the prior written approval of the Minister may otherwise permit;

[(c) deleted]

(d) ceases to have effect (and the land in respect to which it was granted reverts to the primary tenement holder as an integral part of the tenement held by him) on the surrender, forfeiture or expiry of that lease.

(9) Subject to this section, the provisions of this Act relating to —

(a) prospecting licences apply to a special prospecting licence; and

(b) mining leases apply to a mining lease,

granted under this section.

(9a) Where, before the determination of an application for a special prospecting licence in respect of land, the primary tenement is surrendered or forfeited or expires, the application is, by virtue of this subsection, converted into an application for a prospecting licence in respect of that land and the provisions of this Act relating to such applications apply accordingly.

(10) On the surrender, forfeiture or expiry of the primary tenement, a special prospecting licence in respect of any land the subject of the primary tenement immediately before the date of its surrender, forfeiture or expiry is, by virtue of this subsection, converted into a prospecting licence in respect of that land and, subject to subsection (11), the provisions of this Act relating to prospecting licences apply accordingly.

(11) Where a special prospecting licence is converted into a prospecting licence, the prospecting licence remains in force, subject to this Act, for the remainder of the period for which the special prospecting licence was granted.

(12) Subsections (9a) and (10) do not apply if —

(a) the primary tenement is amalgamated with an exploration licence under section 67A(1); or

(b) prior to the surrender, forfeiture or expiry of the primary tenement the holder of the primary tenement applies for a retention licence, a mining lease or a general purpose lease and the licence or lease is subsequently granted in respect of any land the subject of the application for a special prospecting licence or the special prospecting licence, as the case requires; or

(c) prior to the surrender, forfeiture or expiry of the primary tenement the holder of the primary tenement makes an application under section 56B and a prospecting licence is granted as a result of that application in respect of any land the subject of the application for a special

prospecting licence or the special prospecting licence, as the case requires; or

(d) prior to the surrender, forfeiture or expiry of the primary tenement the holder of the primary tenement makes a reversion licence application and a prospecting licence or an exploration licence is granted as a result of that application in respect of any land the subject of the application for a special prospecting licence or the special prospecting licence, as the case requires.

[Section 56A inserted: No. 122 of 1982 s. 16; amended: No. 100 of 1985 s. 37; No. 22 of 1990 s. 14; No. 21 of 1993 s. 45; No. 37 of 1993 s. 6, 10(2) and 27; No. 58 of 1994 s. 12; No. 52 of 1995 s. 24; No. 54 of 1996 s. 7 and 23; No. 10 of 2001 s. 131; No. 15 of 2002 s. 9; No. 39 of 2004 s. 8; No. 27 of 2005 s. 6; No. 12 of 2010 s. 20; No. 51 of 2012 s. 17; No. 39 of 2022 s. 7.]

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

(1) In this section —

relevant licence means a prospecting licence applied for before 10 February 2006.

(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.

[Section 56B inserted: No. 39 of 2004 s. 7; amended: No. 51 of 2012 s. 18.]

Division 2 — Exploration licence

*[**56AA.** Deleted: No. 52 of 1995 s. 25.]*

56C. Graticular sections

(1) For the purposes of this Division, the surface of the Earth shall be deemed to be divided —

(a) by the meridian of Greenwich and by meridians that are at a distance from that meridian of 1, or a multiple of 1, minute of longitude; and

(b) by the equator and by parallels of latitude that are at a distance from the equator of 1, or a multiple of 1, minute of latitude,

into sections (in this Division called ***graticular sections***), each of which is bounded —

(c) by portions of 2 of those meridians that are at a distance from each other of 1 minute of longitude; and

(d) by portions of 2 of those parallels of latitude that are at a distance from each other of 1 minute of latitude.

(2) For the purposes of this Division —

(a) a graticular section that is wholly within the State constitutes a block; and

(b) if part of a graticular section is within the State that part of the graticular section constitutes a block.

(3) In this Division —

(a) a reference to a graticular section that constitutes a block includes a reference to a graticular section part of which constitutes a block;

(b) a reference to a part of a block includes a reference to 2 or more parts of the block;

(c) a reference to a part of a graticular section includes a reference to 2 or more parts of the graticular section.

(4) For the purposes of this Division each block shall be identified by reference to the number of the block on a plan held at the Department.

(4A) Without limiting section 9B(1A), a datum must be prescribed by the regulations for the purposes of the determination of the position on the surface of the Earth of a graticular section or a block.

(4B) Despite subsection (1), the meridians of longitude defining the eastern and western boundaries of a graticular section, and the parallels of latitude defining the northern and southern boundaries of a graticular section, are taken to be at a distance from each other that is other than 1 minute if required as a result of the prescription of a datum under subsection (4A).

(5) In subsection (2) —

State includes any area that comes within paragraph (b) of the definition of ***land*** in section 8(1).

[Section 56C inserted: No. 22 of 1990 s. 15; amended: No. 12 of 2003 s. 9; No. 39 of 2022 s. 8.]

57. Grant of exploration licence

(1) Subject to this Act the Minister may on the application of any person and after receiving a recommendation of the mining registrar or the warden in accordance with section 59, grant to that person a licence to be known as an exploration licence on such terms and conditions as the Minister may determine.

(2) The area of land in respect of which an exploration licence may be granted shall be a block or blocks but shall not be more than 70 blocks unless subsection (2aa) applies.

(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.

(2a) Where an exploration licence is granted in respect of 2 or more blocks the graticular sections that constitute those blocks shall —

(a) constitute a single area; and

(b) each have a side in common with at least one other graticular section in that area.

(2b) Where —

(a) an application is made for an exploration licence in respect of 3 or more blocks; and

(b) before the exploration licence is granted one or more of the blocks applied for becomes the subject of another mining tenement; and

(c) the exploration licence is granted in respect of 2 or more of the other blocks applied for,

the graticular sections that constitute the blocks in respect of which the licence is granted need not comply with subsection (2a)(a) and (b) if they form 2 or 3 discrete areas each consisting of —

(d) a single graticular section; or

(e) a number of graticular sections each having a side in common with at least one other graticular section in that area.

(2c) Where an application for an exploration licence is made with respect to one block, the land in respect of which the licence is granted may comprise part of the block if the rest of the block consists of land that is unavailable for exploration.

(2d) Where an application for an exploration licence is made with respect to 2 or more blocks, the land in respect of which the licence is granted may include part of a block if the rest of the block consists of land that is unavailable for exploration.

(2e) For the purposes of subsections (2c) and (2d) land is unavailable for exploration if that land is, or was when the application for the exploration licence was made, the subject of a current mining tenement (other than a miscellaneous licence).

(2ea) Where the application for the exploration licence is a reversion licence application, the reference in subsection (2e) to a current mining tenement does not include a continuing licence as defined in section 120AA(1).

(2f) Where the land in respect of which an exploration licence is granted comprises or includes part of a block —

(a) the licence is deemed to be granted in respect of that block for the purposes of subsections (2), (2a) and (2b); and

(b) that block is deemed to be subject to the licence for the purposes of section 65; and

(c) the boundaries of the land the subject of the licence shall be deemed to be the same as the boundaries of the block for the purposes of section 67A.

(2g) A person may be granted more than one exploration licence.

(2h) Where the land in respect of which an exploration licence is granted comprises or includes part of a block, no other exploration licence shall be granted in respect of that block or any part of that block.

(3) The mining registrar or the warden shall not recommend the grant of an exploration licence under this section unless he is satisfied that the applicant is able to effectively explore the land in respect of which the application has been made.

(4) Where in any particular area extensive mining is being carried on, the Minister may, from time to time, by notice published in

the *Government Gazette* declare that no application for an exploration licence shall be made or granted with respect to any land comprising the area or any land within such area as is specified in the notice.

[Section 57 amended: No. 69 of 1981 s. 17; No. 122 of 1982 s. 17; No. 100 of 1985 s. 38; No. 22 of 1990 s. 16; No. 37 of 1993 s. 7; No. 58 of 1994 s. 13 and 15(2) and (3); No. 15 of 2002 s. 10; No. 39 of 2004 s. 12; No. 27 of 2005 s. 7.]

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.

[Section 57A inserted: No. 39 of 2004 s. 13.]

58. Application for exploration licence

(1) An application for an exploration licence —

(a) shall be in the prescribed form; and

(b) shall be accompanied by a statement specifying —

(i) the proposed method of exploration of the area in respect of which the licence is sought; and

(ii) the details of the programme of work proposed to be carried out in such area; and

(iii) the estimated amount of money proposed to be expended on the exploration; and

(iv) the technical and, subject to subsection (1aa), financial resources available to the applicant;

and

(c) shall be accompanied by the amount of the prescribed rent for the first year of the term of the licence or portion thereof as prescribed; and

(d) shall be lodged in the prescribed manner; and

(e) shall be accompanied by the prescribed application fee.

(1aa) The statement under subsection (1)(b) does not have to specify the financial resources available to the applicant if —

(a) the applicant is a natural person; and

(b) the application is in respect of not more than 4 blocks; and

(c) the statement specifies that the applicant intends to utilise his or her own labour to carry out the programme of work referred to in subsection (1)(b)(ii).

[(1a) deleted]

(2) An application referred to in subsection (1) must identify the block or blocks applied for by number in accordance with section 56C(4).

(2a) On an application for an exploration licence or on an exploration licence being granted the land affected is not thereby required to be surveyed, but where a dispute arises with respect to the position of such land or the boundaries or any boundary thereof the warden or Minister may require a survey to be made of the boundaries or the boundary in order to settle the dispute.

(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.

(3) An applicant shall at the request of the mining registrar or warden furnish such further information in relation to his application, or such evidence in support thereof, as the mining registrar or warden may require but the mining registrar or warden shall not require information or evidence relating to assays or other results of any testing or sampling that the applicant may have carried out on the land the subject of his application.

(4) Within the prescribed period the applicant shall serve such notice of the application as may be prescribed on the owner and occupier of the land to which the application relates and on such other persons as may be prescribed.

[Section 58 amended: No. 100 of 1985 s. 39; No. 22 of 1990 s. 17; No. 37 of 1993 s. 26 and 28(1); No. 58 of 1994 s. 14; No. 15 of 2002 s. 11; No. 39 of 2004 s. 58; No. 12 of 2010 s. 21.]

59. Determination of application for exploration licence

(1) A person who wishes to object to the granting of an application for an exploration licence must lodge a notice of objection.

(1A) A notice of objection must be —

(a) lodged within the prescribed time and in the prescribed manner; and

(b) accompanied by the prescribed fee.

(1B) A person is not entitled to lodge a notice of objection if the basis for the objection is that the exploration licence, or activities authorised by it, would affect an offsets project.

(1C) Subsection (1B) does not apply in respect of an offsets project, or any part of an offsets project, situated on land held in freehold.

(2) Where no notice of objection is lodged within the prescribed time, or any notice of objection is withdrawn, the mining registrar shall, unless subsection (4)(b) applies, forward to the Minister a report which recommends the grant or refusal of the exploration licence and sets out the reasons for that recommendation.

(3) The mining registrar shall —

(a) recommend the grant of the exploration licence if satisfied that the applicant has complied in all respects with the provisions of this Act; or

(b) recommend the refusal of the exploration licence if not so satisfied.

(4) Where a notice of objection —

(a) is lodged within the prescribed time; or

(b) is not lodged within the prescribed time but is lodged before the mining registrar has forwarded a report to the Minister under subsection (2) and the warden is satisfied that there are reasonable grounds for late lodgment,

and the notice of objection is not withdrawn, the warden shall hear the application for the exploration licence on a day appointed by the warden and may give any person who has lodged such a notice of objection an opportunity to be heard.

(5) The warden shall as soon as practicable after the hearing of the application forward to the Minister for the Minister's consideration —

(a) the notes of evidence; and

(b) any maps or other documents referred to in the notes of evidence; and

(c) a report which recommends the grant or refusal of the exploration licence and sets out the reasons for that recommendation.

(6) On receipt of a report under subsection (2) or (5), the Minister may grant or refuse the exploration licence as the Minister thinks fit, and irrespective of whether —

(a) the report recommends the grant or refusal of the exploration licence; and

(b) the applicant has or has not complied in all respects with the provisions of this Act.

[Section 59 inserted: No. 58 of 1994 s. 15(1); amended: No. 39 of 2004 s. 59; No. 12 of 2010 s. 22; No. 39 of 2022 s. 9; No. 27 of 2023 s. 6.]

60. Security relating to exploration licence

(1) The applicant for an exploration licence shall lodge, in the prescribed manner and within the prescribed period, a security for compliance with the conditions to which the exploration licence, if granted, will from time to time be subject and with the provisions of this Part and the regulations.

[(1a) deleted]

(2) A security referred to in subsection (1) shall be in accordance with and subject to the provisions of section 126.

(3) An exploration licence shall not be granted unless a security has been lodged by the applicant for the exploration licence in accordance with subsection (1).

(4) Notwithstanding section 154(1), an applicant for an exploration licence who fails to comply with subsection (1) does not commit an offence against this Act.

[Section 60 amended: No. 100 of 1985 s. 41; No. 37 of 1993 s. 26; No. 58 of 1994 s. 16; No. 17 of 1999 s. 7(1) and (2); No. 12 of 2010 s. 23; No. 31 of 2022 s. 14.]

61. Term of exploration licence

(1) An exploration licence shall, subject to this Act, remain in force for a period of 5 years from and including the date on which it was granted, and shall then expire.

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

(a) by one period of 5 years; and

(b) by a further period or periods of 2 years,

as to the whole or any part of the land the subject of that exploration licence on such terms and conditions as the Minister thinks fit.

(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.

(4) If the holder of an exploration licence transfers the licence after making an application for the extension of the term of the licence under subsection (2), the application continues in the

name of the transferee of the licence as if the transferee had made it.

[Section 61 amended: No. 122 of 1982 s. 18; No. 12 of 1987 s. 4; No. 37 of 1993 s. 26; No. 58 of 1994 s. 17; No. 17 of 1999 s. 8; No. 39 of 2004 s. 14.]

62. Expenditure conditions

(1) During the currency of an exploration licence the holder thereof shall comply with the prescribed expenditure conditions relating thereto, unless in accordance with this Act total or partial exemption therefrom is granted.

(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.

[Section 62 amended: No. 39 of 2004 s. 23.]

63. Conditions attached to exploration licence

Every exploration licence is taken to be granted subject to the condition that the holder thereof will explore for minerals and —

(a) will promptly report in writing to the Minister all minerals of economic interest discovered in, on or under the land the subject of the exploration licence; and

[(aa) deleted]

(b) will fill in or otherwise make safe all holes, pits, trenches and other disturbances to the surface of the land the subject of the exploration licence that are made

while exploring for minerals, and that are likely to endanger the safety of any person or animal; and

(c) will take all necessary steps to prevent damage or injury to property or livestock whether resulting from fire, the presence of dogs, the discharge of firearms, the use of vehicles or any other cause.

[Section 63 amended: No. 69 of 1981 s. 18; No. 100 of 1985 s. 42; No. 39 of 2004 s. 15(1); No. 51 of 2012 s. 19; No. 31 of 2022 s. 15.]

*[**63AA.** Deleted: No. 31 of 2022 s. 16.]*

63A. When exploration licence liable to forfeiture

An exploration licence is liable to forfeiture if —

(a) the prescribed rent or royalty in respect thereof is not paid in accordance with this Act; or

(aa) any requirement under section 65(4), 69E(2), 103AV(1) or 115B(2) in relation to the exploration licence is not complied with; or

(b) the terms and conditions of the exploration licence are not complied with, including —

(i) the prescribed expenditure conditions referred to in section 62; and

(ii) any conditions to which the licence is taken to be subject under section 63, 103AE(1) or 103AG(3), (4) or (5); and

(iii) any conditions imposed under section 69D(1) or 103AU(1);

or

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

(ba) a report required under section 68(3) or 115A in relation to the land the subject of the exploration licence is not filed in accordance with this Act; or

(c) the holder of the exploration licence is convicted of an offence against this Act.

[Section 63A inserted: No. 69 of 1981 s. 19; amended: No. 100 of 1985 s. 43; No. 58 of 1994 s. 18; No. 17 of 1999 s. 7(3); No. 39 of 2004 s. 89; No. 27 of 2005 s. 8; No. 31 of 2022 s. 17.]

64. Consent to dealing in exploration licence

(1) During the first year of the term for which an exploration licence is granted, a legal or equitable interest in or affecting the exploration licence shall not be transferred or otherwise dealt with, whether directly or indirectly, unless —

(a) the dealing or other transaction in or affecting the interest arises in the due administration of the estate or affairs of a holder —

(i) who is dead; or

(ii) who is a person who is an insolvent under administration within the meaning of the Corporations Act; or

(iii) who is otherwise incapacitated at law; or

(iv) which is in the course of being wound up (not being a voluntary winding up);

or

(b) prior written consent to the dealing or other transaction in or affecting the interest is given by the Minister or an officer of the Department acting with the authority of the Minister.

(2) Nothing in subsection (1) prevents, or affects the validity of, any agreement made in contemplation of a dealing or other transaction to which that subsection applies where the agreement expressly provides that the consent required by that subsection is to be obtained as a condition of the dealing or other transaction.

[Section 64 inserted: No. 100 of 1985 s. 44; amended: No. 37 of 1993 s. 27; No. 54 of 1996 s. 8; No. 10 of 2001 s. 132.]

65. Surrender of certain areas subject to exploration licence

(1) In this section —

end day, in relation to an exploration licence, means —

(a) the day (the ***anniversary day***) that is 6 years after the day on which the licence was granted; or

(b) if, on the anniversary day, an application for retention status under section 69A in respect of the whole or part of the land the subject of the licence has been made but not determined, the day on which that application is determined;

surrender day, in relation to a surrender, means —

(a) if the surrender is lodged under subsection (3), the end day; or

[(b) deleted]

(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) On or before the end day the holder of an exploration licence granted in respect of more than 10 blocks must lodge a surrender for registration in respect of —

(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 to the holder of an exploration licence for which retention status has been approved under section 69B(1).

(4) If the holder of an exploration licence fails to lodge a surrender in accordance with subsection (3), the Minister must, 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 6 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.

(5) A surrender under this section shall be endorsed on the public plans of the Department —

(a) at the office of the Department at Perth; and

(b) at the office of the mining registrar for the mineral field or district thereof in which the land is situate.

(6) Notwithstanding that a surrender has taken effect under this section any land the subject of the surrender shall not be —

(a) marked out in connection with a mining tenement unless and until notification has been given in the prescribed manner of the proposed endorsement of plans for the purposes of paragraph (b); or

(b) included in an application for a mining tenement unless and until the plans referred to in subsection (5) have been endorsed in the prescribed manner.

[Section 65 amended: No. 69 of 1981 s. 20; No. 100 of 1985 s. 45; No. 12 of 1987 s. 5; No. 22 of 1990 s. 19; No. 57 of 1997 s. 89(2); No. 15 of 2002 s. 12; No. 39 of 2004 s. 16; No. 27 of 2005 s. 9; No. 51 of 2012 s. 20.]

66. Rights conferred by exploration licence

An exploration licence, while it remains in force, authorises the holder thereof, subject to this Act, and in accordance with any conditions to which the licence may be subject —

(a) to enter and re-enter the land the subject of the licence with such agents, employees, vehicles, machinery and equipment as may be necessary or expedient for the purpose of exploring for minerals in, on or under the land;

(b) to explore, subject to any conditions imposed under section 24, 24A or 25, for minerals, and to carry on such operations and carry out such works as are necessary for that purpose on such land including digging pits,

trenches and holes, and sinking bores and tunnels to the extent necessary for the purpose in, on or under the land;

(c) to excavate, extract or remove, subject to any conditions imposed under section 24, 24A or 25, from such land, earth, soil, rock, stone, fluid or mineral bearing substances in such amount, in total during the period for which the licence remains in force, as does not exceed the prescribed limit, or in such greater amount as the Minister may, in any case, approve in writing;

(d) to take and divert, subject to the *Rights in Water and Irrigation Act 1914*, or any Act amending or replacing the relevant provisions of that Act water from any natural spring, lake, pool or stream situate in or flowing through such land or from any excavation previously made and used for mining purposes and subject to that Act to sink a well or bore on such land and take water therefrom and to use the water so taken for his domestic purposes and for any purpose in connection with exploring for minerals on the land.

[Section 66 amended: No. 100 of 1985 s. 46; No. 22 of 1990 s. 20; No. 5 of 1997 s. 41(2).]

67. Holder of exploration licence to have priority for grant of mining leases or general purpose leases

(1) The holder of an exploration licence has —

(a) subject to this Act and to any conditions to which the exploration licence is subject; and

(b) while the exploration licence continues in force,

the right to apply for, and subject to section 75(9) to have granted pursuant to section 75(7), one or more mining leases or one or more general purpose leases or both in respect of any part or parts of the land the subject of the exploration licence.

(2) Where an application for a mining lease or a general purpose lease is made by the holder of an exploration licence in respect of any land and the term of the exploration licence would but for this subsection expire, that licence shall continue in force in respect to the land the subject of that application until the application for a lease is determined.

(3) If, after an application is made under subsection (1) in respect of land the subject of an exploration licence —

(a) the holder of the licence transfers the licence; or

(b) where there are 2 or more holders of the licence, a holder transfers the holder's interest in the licence,

the application continues in the name of the transferee of the licence or interest as if the transferee were the applicant or one of the applicants, as the case requires.

(4) For the purposes of subsection (3), where there are 2 or more transferees of the exploration licence, each of the transferees is to be regarded as an applicant for an interest in the relevant mining lease or general purpose lease that corresponds to the interest held by that transferee in the licence.

[Section 67 inserted: No. 122 of 1982 s. 19; amended: No. 100 of 1985 s. 47; No. 105 of 1986 s. 10; No. 21 of 1993 s. 45; No. 58 of 1994 s. 29(2); No. 52 of 1995 s. 26; No. 17 of 1999 s. 9.]

67A. Holder of exploration licence may apply to amalgamate secondary tenement

(1) Where a person is the holder of both an exploration licence and a secondary tenement the person or an agent of the person may, without marking out the land, apply in writing to the Minister in the prescribed manner for the secondary tenement to be amalgamated with the exploration licence.

(2) The holder of an exploration licence or an agent of the holder may, without marking out the land, apply in writing to the

Minister in the prescribed manner for a secondary tenement to be amalgamated with the exploration licence where the secondary tenement was surrendered or forfeited, or expired, after the application for the exploration licence was made but before the exploration licence was granted.

(3) The holder of an exploration licence or an agent of the holder may, without marking out the land, apply in writing to the Minister in the prescribed manner for a secondary tenement to be amalgamated with the exploration licence where the secondary tenement is surrendered or forfeited, or expires.

(4) On receiving an application under subsection (1), (2) or (3), the Minister may —

(a) grant the application and amend the exploration licence to include the land the subject of the secondary tenement, in such manner and on such conditions as the Minister thinks fit; or

(b) refuse the application.

(5) Where an application is made under subsection (1) and the term of the secondary tenement would but for this subsection expire, the secondary tenement shall continue in force with respect to the land that is the subject of the application until the application is determined.

(6) Notwithstanding anything in section 45(2), 69(1) or 85A(1), an application by the holder of an exploration licence who was also the holder of the secondary tenement immediately before the date of its surrender, forfeiture or expiry may be made —

(a) under subsection (2) at any time after the granting of the exploration licence; and

(b) under subsection (3) at any time after the surrender, forfeiture or expiry of the secondary tenement.

(6a) Section 105A applies, with all necessary changes, in relation to a person who makes an application under subsection (2) or (3) as if a reference in that section —

(a) to an applicant included a reference to such a person;

(b) to an application for a mining tenement included a reference to an application under subsection (2) or (3);

(c) to compliance with the initial requirement included, in relation to an application under subsection (2) or (3), a reference to lodging the application in the prescribed manner.

(7) In this section —

secondary tenement, in relation to an exploration licence —

(a) means a mining tenement (other than a retention licence) situated wholly within the boundaries (whether or not any of those boundaries are common boundaries) of the land the subject of the exploration licence; and

(b) where the exploration licence was granted in respect of an application made on or after the commencement of section 16 of the *Mining Amendment Act 1990*, includes any part of a mining tenement (other than a retention licence) situated within the boundaries (whether or not any of those boundaries are common boundaries) of the land the subject of the exploration licence.

(8) This section does not affect the operation of section 40(1)(b) and (c) of the *Mining Amendment Act 1990*.

[Section 67A inserted: No. 37 of 1993 s. 8; amended: No. 58 of 1994 s. 19; No. 15 of 2002 s. 13; No. 39 of 2004 s. 60; No. 12 of 2010 s. 24.]

68. Holder of exploration licence to keep geological records

(1) The holder of an exploration licence shall keep complete and detailed records of the surveys and other operations conducted pursuant to the licence and shall, at the written request of the Minister, produce the records for the inspection of the Minister and the Director, Geological Survey.

(2) The holder of an exploration licence shall furnish the Minister with such information relating to the surveys and other operations conducted by the holder pursuant to the licence and such geological samples obtained in the course of those operations as the Minister may request.

(3) The holder of an exploration licence shall at such times and in such manner as may be prescribed, file or cause to be filed a report of all work done on, and money expended in connection with, exploration in the area the subject of the licence during the period to which the report relates.

(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.

[Section 68 amended: No. 58 of 1994 s. 20; No. 39 of 2004 s. 17; No. 12 of 2010 s. 25.]

69. Land the subject of exploration licence not to be again marked out for a certain period

(1) When an exploration licence is surrendered or forfeited, or expires, or any part of the land the subject of the licence is surrendered in accordance with section 65, the land the subject of the licence or the part so surrendered shall not be marked out or applied for as a prospecting licence or an exploration licence —

(a) by or on behalf of the person who was the holder of the exploration licence immediately prior to the date of the surrender, forfeiture or expiry; or

(b) by or on behalf of any person who had an interest in the exploration licence immediately prior to that date; or

(c) by or on behalf of any person who is related to a person referred to in paragraph (a) or (b),

within a period of 3 months from and including that date.

(2) For the purposes of subsection (1) the holding of shares in a listed public company which held the exploration licence in question does not of itself constitute an interest in the exploration licence.

[Section 69 amended: No. 100 of 1985 s. 48; No. 22 of 1990 s. 21; No. 15 of 2002 s. 14; No. 39 of 2004 s. 18.]

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; and

(b) shall be made in the prescribed manner; and

(c) shall contain the prescribed information; and

(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.

[Section 69A inserted: No. 39 of 2004 s. 24.]

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; or

(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.

[Section 69B inserted: No. 39 of 2004 s. 24.]

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(2B).

(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(3B).

[Section 69C inserted: No. 39 of 2004 s. 24; amended: No. 19 of 2010 s. 51.]

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 an approved form 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) On and from giving notice in writing to the holder of the licence of the imposition of the condition, the condition has effect for all purposes as a condition to which the licence is subject.

(5) In subsection (1) —

specified means specified in writing by the Minister.

[Section 69D inserted: No. 39 of 2004 s. 24; amended: No. 31 of 2022 s. 18.]

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.

[Section 69E inserted: No. 39 of 2004 s. 24.]

70. Special prospecting licence on an exploration licence

(1) Where any land is the subject of an exploration licence (in this section called the ***primary tenement***) then, notwithstanding section 117, a person may at any time after the expiry of 12 months from —

(a) in the case of land which was the subject of a mineral claim or dredging claim granted under the repealed Act that by the operation of the transitional provisions set forth in the Second Schedule Division 1 became subject to the primary tenement, the date of approval of the claim; and

(b) in any other case, unless subsection (1aa) applies, the date on which the primary tenement was granted,

mark out and, in accordance with section 41, apply for a prospecting licence for gold (in this section called a ***special prospecting licence***) in respect of any part of the land the subject of the primary tenement.

(1aa) If the primary tenement was granted as a result of a reversion licence application, a special prospecting licence may be marked out and applied for at any time after the date on which the primary tenement was granted.

(1a) A special prospecting licence may only be applied for by, granted to or held by a natural person.

(2) Unless subsection (5a) applies, an applicant for a special prospecting licence shall, within the prescribed period, give notice thereof to the holder of the primary tenement as if such holder were the occupier of the land to which the application relates, and subsections (3) to (5) apply in respect of the application.

(3) Where, after being served with notice of the application for the special prospecting licence, the holder of the primary tenement does not lodge an objection against the application the mining registrar may, subject to this Act, grant the application as provided in subsection (6).

(4) If the holder of the primary tenement lodges a notice of objection against the application for the special prospecting licence —

(a) the notice of objection must be —

(i) lodged within the prescribed time and in the prescribed manner; and

(ii) accompanied by the prescribed fee;

and

(b) the warden must obtain a report from the Director, Geological Survey in respect of the exploration carried on by the holder of the primary tenement on the land to which the application relates.

(4a) A report prepared by the Director, Geological Survey for the purposes of subsection (4)(b) is to be based solely on information contained in reports filed by or on behalf of the holder of the primary tenement under section 68(3) or 115A.

(5) After hearing the objection of the holder of the primary tenement the warden may refuse the application for the special prospecting licence on the ground that prospecting for gold on the land to which the application relates would result in undue detriment to the exploration being carried on by the holder of the primary tenement or he may recommend the application to

the Minister who may refuse the application or subject to this Act, grant it as provided in subsection (6), but where the warden refuses an application under this subsection, the applicant may within the time and in the manner prescribed appeal to the Minister against such refusal and the Minister may dismiss the appeal or uphold the appeal and grant the application as provided in subsection (6).

(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 ha of the primary tenement, the applicant shall, within the prescribed period and in the prescribed manner, lodge 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).

(6) Subject to this section the mining registrar or Minister may grant the application on such terms and conditions as he thinks fit but a special prospecting licence granted pursuant to this section —

(a) shall not exceed 10 ha in area; and

(b) shall authorise the holder to prospect only for gold; and

(c) shall not unless the Minister otherwise directs, prevent the holder of the primary tenement from exploring for minerals other than gold in or on the land the subject of the special prospecting licence and the primary tenement; and

(d) does not authorise the holder thereof to excavate, extract or remove during the period for which the tenement remains in force a total amount of earth, soil, rock, stone, fluid or mineral bearing substances in excess of

500 t, except in so far as the prior written approval of the Minister may otherwise permit; and

(e) does not authorise mining to be carried out in any portion of the land that is —

(i) below a depth specified in the terms and conditions of the special prospecting licence, and any depth so specified shall be less than 50 m below the lowest part of the natural surface of the land the subject of the special prospecting licence; or

(ii) if a depth is not so specified, 50 m or more below the lowest part of the natural surface of the land the subject of the special prospecting licence, except in so far as both the prior written consent of the holder of the primary tenement and the prior written approval of the Minister may otherwise permit.

(6aa) A special prospecting licence may be granted for a period of 3 months or for any period which is a multiple of 3 months but which does not exceed 4 years.

(6a) A special prospecting licence —

(a) continues in force notwithstanding that the holder of the primary tenement may apply for and be granted a retention licence, mining lease or general purpose lease in respect to the land; but

(b) ceases (and the land in respect to which it was granted reverts to the primary tenement holder as an integral part of the tenement held by him) on the surrender, forfeiture or expiry of that special prospecting licence.

(7) No legal or equitable interest in or affecting —

(a) a special prospecting licence; or

(b) a mining lease in respect of the land or any part thereof the subject of a special prospecting licence,

is capable of being created, affected or dealt with, whether directly or indirectly, except with the prior written consent of the holder of the primary tenement, and no person shall hold or have any beneficial, legal or equitable interest in —

(c) more than 10 such special prospecting licences; or

(d) more than one such mining lease.

(7a) A reference in subsection (7) to a person includes a reference to any other person who would, for the purposes of the Corporations Act, be taken to be an associate of the first-mentioned person.

(7b) A mining lease in respect of the land or any part thereof which is the subject of a special prospecting licence shall not be granted in respect of the primary tenement where the number of such leases granted in respect of that primary tenement exceeds one for each 200 ha of the primary tenement.

(8) The holder of a special prospecting licence granted for a period of 4 years may make an application for a mining lease for gold in respect of the land or any part thereof which is the subject of the special prospecting licence, and on an application being made the Minister may, subject to subsection (7b), grant the application for a lease in respect to that portion of the land to which the special prospecting licence relates that is less than a depth of 50 m, or such greater depth as the Minister approves with the prior written consent of the holder of the primary tenement, below the lowest part of the natural surface of the land and on such terms and conditions as the Minister thinks fit, and thereupon the area of land in respect of which the mining lease is granted shall be excised from the primary tenement (whether or not the primary tenement has in the meantime been converted into a retention licence or a mining lease).

(8aa) Sections 74, 74A and 75 apply to an application for a mining lease under subsection (8).

(8a) A mining lease granted pursuant to subsection (8) —

(a) has effect in relation to gold and any minerals occurring in conjunction with that gold; and

(b) does not authorise the lessee thereof, his agents or employees to excavate, extract or remove a total amount of earth, soil, rock, stone, fluid or mineral bearing substances in excess of 750 t in any year, except in so far as both the prior written consent of the holder of the primary tenement and the prior written approval of the Minister may otherwise permit; and

[(c) deleted]

(d) ceases to have effect (and the land in respect to which it was granted reverts to the primary tenement holder as an integral part of the tenement held by him) on the surrender, forfeiture or expiry of that lease.

(9) Subject to this section, the provisions of this Act relating to a prospecting licence, or mining lease apply to a special prospecting licence or mining lease granted pursuant to this section.

(9a) Where, before the determination of an application for a special prospecting licence in respect of land, the primary tenement is surrendered or forfeited or expires, the application is, by virtue of this subsection, converted into an application for a prospecting licence in respect of that land and the provisions of this Act relating to such applications apply accordingly.

(10) On the surrender, forfeiture or expiry of the primary tenement, a special prospecting licence in respect of any land the subject of the primary tenement immediately before the date of its surrender, forfeiture or expiry is, by virtue of this subsection, converted into a prospecting licence in respect of that land and,

subject to subsection (11), the provisions of this Act relating to prospecting licences apply accordingly.

(11) Where a special prospecting licence is converted into a prospecting licence, the prospecting licence remains in force, subject to this Act, for the remainder of the period for which the special prospecting licence was granted.

(12) Subsections (9a) and (10) do not apply if —

(a) the primary tenement is amalgamated with an exploration licence under section 67A(1); or

(b) prior to the surrender, forfeiture or expiry of the primary tenement the holder of the primary tenement applies for a retention licence, a mining lease or a general purpose lease and the licence or lease is subsequently granted in respect of any land the subject of the application for a special prospecting licence or the special prospecting licence, as the case requires; or

(c) prior to the surrender, forfeiture or expiry of the primary tenement the holder of the primary tenement makes a reversion licence application and a prospecting licence or an exploration licence is granted as a result of that application in respect of any land the subject of the application for a special prospecting licence or the special prospecting licence, as the case requires.

[Section 70 amended: No. 100 of 1985 s. 49; No. 22 of 1990 s. 22; No. 21 of 1993 s. 45; No. 37 of 1993 s. 9, 10(2) and 27; No. 73 of 1994 s. 4; No. 58 of 1994 s. 21; No. 52 of 1995 s. 27; No. 54 of 1996 s. 10 and 23; No. 10 of 2001 s. 133; No. 15 of 2002 s. 15; No. 39 of 2004 s. 9; No. 27 of 2005 s. 10; No. 12 of 2010 s. 26; No. 51 of 2012 s. 21; No. 39 of 2022 s. 10.]

Division 2A — Retention licence

[Heading inserted: No. 37 of 1993 s. 10(1).]

70A. Term used: 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;

or

(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.

[Section 70A inserted: No. 39 of 2004 s. 25.]

70B. Grant of retention licence

(1) Subject to this Act, the Minister may, on the application of the holder of a primary tenement, after receiving a recommendation of the mining registrar or the warden in accordance with section 70D, grant to that person a licence to be known as a retention licence in respect of the whole or any part of the land the subject of the primary tenement on such terms and conditions as the Minister considers reasonable.

(2) The holder of a primary tenement may be granted more than one retention licence.

(3) Where the applicant for a retention licence is the holder of 2 or more primary tenements, a retention licence may be granted in respect of the whole or any part of the land within the boundaries of those tenements.

(4) The land in respect of which a retention licence is granted —

(a) shall be of an area that, in the opinion of the Minister, is sufficient to include —

(i) the land in, on or under which an 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;

and

(b) may be of an area that is less than the area of land in respect of which the retention licence is sought.

[Section 70B inserted: No. 37 of 1993 s. 10(1); amended: No. 58 of 1994 s. 24(2).]

70C. Application for retention licence

(1) An application for a retention licence —

(a) shall be in the prescribed form; and

(b) shall be accompanied by the amount of the prescribed rent for the first year of the term of the licence or portion thereof as prescribed; and

(c) shall be accompanied by the prescribed application fee; and

(d) shall be lodged in the prescribed manner; and

(e) shall be accompanied by a statement specifying —

(i) the details of the programme of work (if any) proposed to be carried out in the area in respect of which the licence is sought; and

(ii) the estimated amount of money (if any) proposed to be expended on such work.

(2A) An applicant is to lodge within the prescribed time and in the prescribed manner a statutory declaration made by the applicant to the effect that —

(a) there is an identified mineral resource in the area in respect of which the licence is sought; and

(b) mining of that identified mineral resource is for the time being impracticable for one or more of the reasons referred to in subsection (2) (that reason or those reasons being set out in the statutory declaration).

(2) For the purposes of subsection (2A)(b) mining of an identified mineral resource may be impracticable because —

(a) the identified mineral resource is uneconomic or subject to marketing problems although that resource may reasonably be expected to become economic or marketable in the future; or

(b) the identified mineral resource is required to sustain the future operations of an existing or proposed mining operation; or

(c) there are existing political, environmental or other difficulties in obtaining requisite approvals.

(3) An applicant shall at the request of the mining registrar or warden furnish such further information in relation to the application, or such evidence in support of the application, as the mining registrar or warden may require but the mining registrar or warden shall not require information or evidence relating to assays or other results of any testing or sampling that

the applicant may have carried out on the land the subject of the application.

(4) Within the prescribed period the applicant shall serve such notice of the application as may be prescribed on the owner and occupier of the land to which the application relates and on such other persons as may be prescribed.

(5) The application shall be made by reference to a written description of the area of the land in respect of which the licence is sought, and be accompanied by a map on which are clearly delineated the boundaries of that area.

(6) Where an application is made by the holder of a primary tenement and the term of the primary tenement would but for this subsection expire, the primary tenement shall continue in force in respect of the land the subject of the application until —

(a) the retention licence is granted; or

(b) if the retention licence is refused, the expiry of a period of 30 days after that refusal.

(7) If, after an application is made under subsection (1) in respect of land the subject of a primary tenement —

(a) the holder of the tenement transfers the tenement; or

(b) where there are 2 or more holders of the tenement, a holder transfers the holder's interest in the tenement,

the application continues in the name of the transferee of the tenement or interest as if the transferee were the applicant or one of the applicants, as the case requires.

(8) For the purposes of subsection (7), where there are 2 or more transferees of the primary tenement, each of the transferees is to be regarded as an applicant for an interest in the relevant

retention licence that corresponds to the interest held by that transferee in the primary tenement.

[Section 70C inserted: No. 37 of 1993 s. 10(1); amended: No. 58 of 1994 s. 23; No. 17 of 1999 s. 10; No. 12 of 2010 s. 27.]

70D. Determination of application for retention licence

(1) A person who wishes to object to the granting of an application for a retention licence must lodge a notice of objection.

(1A) A notice of objection must be —

(a) lodged within the prescribed time and in the prescribed manner; and

(b) accompanied by the prescribed fee.

(1B) A person is not entitled to lodge a notice of objection if the basis for the objection is that the retention licence, or activities authorised by it, would affect an offsets project.

(1C) Subsection (1B) does not apply in respect of an offsets project, or any part of an offsets project, situated on land held in freehold.

(2) Where no notice of objection is lodged within the prescribed time, or any notice of objection is withdrawn, the mining registrar shall, unless subsection (4)(b) applies, forward to the Minister a report which recommends the grant or refusal of the retention licence and sets out the reasons for that recommendation.

(3) The mining registrar shall —

(a) recommend the grant of the retention licence if satisfied that the applicant has complied in all respects with the provisions of this Act; or

(b) recommend the refusal of the retention licence if not so satisfied.

(4) Where a notice of objection —

(a) is lodged within the prescribed time; or

(b) is not lodged within the prescribed time but is lodged before the mining registrar has forwarded a report to the Minister under subsection (2) and the warden is satisfied that there are reasonable grounds for late lodgment,

and the notice of objection is not withdrawn, the warden shall hear the application for the retention licence on a day appointed by the warden and may give any person who has lodged such a notice of objection an opportunity to be heard.

(5) The warden shall as soon as practicable after the hearing of the application forward to the Minister for the Minister's consideration —

(a) the notes of evidence; and

(b) any maps or other documents referred to in the notes of evidence; and

(c) a report which recommends the grant or refusal of the retention licence and sets out the reasons for that recommendation.

(6) On receipt of a report under subsection (2) or (5), the Minister may, subject to subsection (7), grant or refuse the retention licence as the Minister thinks fit, and irrespective of whether —

(a) the report recommends the grant or refusal of the retention licence; and

(b) the applicant has or has not complied in all respects with the provisions of this Act.

(7) The Minister shall not grant a retention licence unless the Minister is satisfied that mining of an identified mineral resource on the land in respect of which the retention licence is sought is for the time being impracticable for one or more of the reasons referred to in section 70C(2).

(8) Before granting or refusing a retention licence the Minister may require the applicant to furnish such further information in relation to the application, or such evidence in support of the application, as the Minister thinks fit.

(9) Before granting a retention licence the Minister may require the applicant to mark out in the prescribed manner the land in respect of which the retention licence is sought.

[Section 70D inserted: No. 58 of 1994 s. 24(1); amended: No. 39 of 2004 s. 61; No. 12 of 2010 s. 28; No. 39 of 2022 s. 11; No. 27 of 2023 s. 7.]

70E. Term of retention licence and renewal

(1) Subject to this Act, a retention licence remains in force for such period not exceeding 5 years as is specified in the licence and then expires.

(2) The Minister may, on receipt of an application made within the prescribed time and in the prescribed manner, renew or further renew a retention licence for a period not exceeding 5 years.

(3) If an application for renewal 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.

(4) If the holder of a retention licence transfers the licence after making an application for renewal under this section, the application continues in the name of the transferee of the licence as if the transferee had made it.

[Section 70E inserted: No. 37 of 1993 s. 10(1); amended: No. 17 of 1999 s. 11.]

70F. Security relating to retention licence

(1) The applicant for a retention licence shall lodge, in the prescribed manner and 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) deleted]

(3) A security referred to in subsection (1) 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.

[Section 70F inserted: No. 39 of 2004 s. 36(1); amended: No. 12 of 2010 s. 29; No. 31 of 2022 s. 19.]

70G. Survey of area of retention licence not required in first instance

(1) On an application for a retention licence or on a retention licence being granted the land affected is not thereby required to be surveyed, but where a dispute arises with respect to the position of that land or the boundaries or any boundary of that land the warden or the Minister may require a survey to be made of the boundaries or the boundary in order to settle the dispute.

(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.

[Section 70G inserted: No. 37 of 1993 s. 10(1); amended: No. 39 of 2004 s. 62.]

70H. Conditions attached to retention licence

(1) Every retention licence is taken to be granted subject to the conditions that the holder of the licence must —

[(aa) deleted]

(a) fill in or otherwise make safe all holes, pits, trenches and other disturbances to the surface of the land the subject of the retention licence that are made while exploring for minerals, and that are likely to endanger the safety of any person or animal; and

(b) take all necessary steps to prevent damage or injury to property or livestock whether resulting from fire, the presence of dogs, the discharge of firearms, the use of vehicles or any other cause; and

[(c) deleted]

(d) comply with the expenditure conditions (if any) applicable to such land; and

(e) not transfer or mortgage a legal interest in such land or any part thereof without the prior written consent of the Minister, or of an officer of the Department acting with the authority of the Minister; and

(f) lodge, in the prescribed manner, such periodical reports and returns as may be prescribed; 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.

(2) The Minister may at any time cancel or vary —

[(a) deleted]

(b) expenditure conditions referred to in subsection (1)(d).

[Section 70H inserted: No. 37 of 1993 s. 10(1); amended: No. 54 of 1996 s. 11; No. 17 of 1999 s. 12(2) and (3); No. 39 of 2004 s. 44 and 90(1); No. 12 of 2010 s. 30; No. 51 of 2012 s. 22; No. 31 of 2022 s. 20.]

*[**70I.** Deleted: No. 31 of 2022 s. 21.]*

70IA. Programme of work

(1) On the granting of a retention licence, or at any subsequent time, the Minister may impose on the holder of the 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 applicant for the licence or the holder of the licence, as the case requires, to submit to the Minister a draft programme of work in an approved form and the applicant or the holder, as the case requires, shall comply with that requirement.

(3) A condition imposed under subsection (1) may be cancelled or varied by the Minister at any time.

(3A) On and from giving notice in writing to the holder of the licence of the imposition of the condition, the condition has effect for all purposes as a condition to which the licence is subject.

(4) In subsection (1) —

specified means specified in writing by the Minister.

[Section 70IA inserted: No. 17 of 1999 s. 12(1); amended: No. 31 of 2022 s. 22.]

70J. Rights conferred by retention licence

A retention licence, while it remains in force, authorises the holder of the licence, subject to this Act, and in accordance with any conditions to which the licence may be subject —

(a) to enter and re-enter the land the subject of the licence with such agents, employees, vehicles, machinery and equipment as may be necessary or expedient for the purpose of further exploring for minerals in, on or under the land;

(b) to further explore, subject to any conditions imposed under section 24, 24A or 25, for minerals, and to carry on such operations and carry out such works as are necessary for that purpose on such land including digging pits, trenches and holes, and sinking bores and tunnels to the extent necessary for the purpose in, on or under the land;

(c) to excavate, extract or remove, subject to any conditions imposed under section 24, 24A or 25, from such land, earth, soil, rock, stone, fluid or mineral bearing substances in such amount, in total during the period for which the licence remains in force, as does not exceed the prescribed limit, or in such greater amount as the Minister may, in any case, approve in writing;

(d) to take and divert, subject to the *Rights in Water and Irrigation Act 1914*, or any Act amending or replacing the relevant provisions of that Act, water from any natural spring, lake, pool or stream situate in or flowing through such land or from any excavation previously made and used for mining purposes, and, subject to that Act, to sink a well or bore on such land and take water therefrom and to use the water so taken for the holder's

domestic purposes and for any purpose in connection with exploring for minerals on the land.

[Section 70J inserted: No. 37 of 1993 s. 10(1); amended: No. 5 of 1997 s. 41(2).]

70K. When retention licence liable to forfeiture

A retention licence is liable to forfeiture if —

(a) the prescribed rent or royalty in respect of the licence is not paid in accordance with this Act; or

(b) the terms and conditions of the licence are not complied with, including —

(i) any conditions to which the licence is taken to be subject under section 70H, 103AE(1) or 103AG(3), (4) or (5); and

(ii) any conditions imposed under section 70IA(1) or 103AU(1);

or

(ba) a report required under section 70H(1)(f) or 115A in relation to the land the subject of the retention licence is not filed in accordance with this Act; or

(bb) the holder of the licence fails to comply with a requirement under section 103AV(1) to lodge a security; or

(c) the holder of the licence is convicted of an offence against this Act; or

(d) the holder of the licence fails to comply with a notice under section 70M(2) requiring that person to apply for a mining lease in respect of the whole or any part of the land the subject of the licence; 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.

[Section 70K inserted: No. 37 of 1993 s. 10(1); amended: No. 58 of 1994 s. 26; No. 17 of 1999 s. 12(4); No. 39 of 2004 s. 37 and 97(2); No. 31 of 2022 s. 23.]

70L. Holder of retention licence to have priority for grant of mining lease or general purpose lease

(1) The holder of a retention licence has —

(a) subject to this Act and to any conditions to which the retention licence is subject; and

(b) subject to satisfactory compliance with any conditions imposed under section 70IA(1) or 103AU(1); and

(c) while the retention licence remains in force,

the right to apply for, and subject to section 75(9) to have granted pursuant to section 75(7), one or more mining leases or one or more general purpose leases or both in respect of any part or parts of the land the subject of the retention licence.

(2) Where an application for a mining lease or a general purpose lease is made by the holder of a retention licence in respect of any land and the term of the retention licence would but for this subsection expire, that licence shall continue in force in respect of the land the subject of the application until the application for a lease is determined.

(3) If, after an application is made under subsection (1) in respect of land the subject of a retention licence —

(a) the holder of the licence transfers the licence; or

(b) where there are 2 or more holders of the licence, a holder transfers the holder's interest in the licence,

the application continues in the name of the transferee of the licence or interest as if the transferee were the applicant or one of the applicants, as the case requires.

(4) For the purposes of subsection (3), where there are 2 or more transferees of the retention licence, each of the transferees is to be regarded as an applicant for an interest in the relevant mining

lease or general purpose lease that corresponds to the interest held by that transferee in the licence.

[Section 70L inserted: No. 37 of 1993 s. 10(1); amended: No. 58 of 1994 s. 29(3); No. 17 of 1999 s. 12(5) and 13; No. 31 of 2022 s. 24.]

70M. Holder of retention licence to show cause why mining lease should not be applied for

(1) The Minister may at any time by notice in writing require the holder of a retention licence 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 retention licence.

(2) Where —

(a) the holder of a retention 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 retention licence has shown insufficient cause,

the Minister may by notice in writing require that person 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 retention licence within a period of 60 days from the giving of that notice.

[Section 70M inserted: No. 37 of 1993 s. 10(1).]

70N. Land subject of retention licence not to be again marked out for certain period

(1) Where a retention licence is surrendered or forfeited, or expires, the land the subject of the retention licence or any part of that land shall not be marked out or applied for as a prospecting licence or an exploration licence by or on behalf of —

(a) the person who was the holder of the retention licence immediately prior to the date of the surrender, forfeiture or expiry; or

(b) any person who had an interest in the retention licence immediately prior to that date,

within a period of 3 months from and including that date.

(2) For the purposes of subsection (1) the holding of shares in a listed public company which held the retention licence in question does not of itself constitute an interest in the retention licence.

[Section 70N inserted: No. 37 of 1993 s. 10(1).]

Division 3 — Mining lease

70O. Significant mineralisation

In 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 on the land.

[Section 70O inserted: No. 31 of 2022 s. 25.]

*[**70P.** Deleted: No. 31 of 2022 s. 25.]*

71. Grant of mining lease

Subject to this Act, the Minister may, on the application of any person, after receiving a recommendation of the mining registrar or the warden in accordance with section 75, grant to the person a lease to be known as a mining lease on such terms and conditions as the Minister considers reasonable.

[Section 71 amended: No. 122 of 1982 s. 20; No. 58 of 1994 s. 29(4).]

72. Person may be granted more than one mining lease

Any person may be granted more than one mining lease.

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.

[Section 73 inserted: No. 39 of 2004 s. 28.]

74. Application for mining lease

(1) An application for a mining lease —

(a) shall be in the prescribed form; and

(b) shall be accompanied by the amount of the prescribed rent for the first year of the term of the lease or portion thereof as prescribed; and

(c) shall be accompanied by the prescribed application fee; and

(ca) shall be accompanied by —

(i) a mining development and closure proposal lodged in accordance with section 103AN(2); or

(ii) a statement in accordance with subsection (1a) and a mineralisation report prepared by a qualified person; or

(iii) a statement in accordance with subsection (1a) and a resource report;

and

(d) shall be lodged in the prescribed manner.

(1AA) Instead of accompanying an application for a mining lease under subsection (1)(ca), a mining development and closure proposal may be lodged within the prescribed time and in the prescribed manner and, if so lodged, is to be treated for the

purposes of this Division as a mining development and closure proposal that accompanied the application for the mining lease under section 74(1)(ca).

(1a) The statement referred to in subsection (1)(ca)(ii) and (iii) 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; and

(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.

(2) The applicant shall at the request of the mining registrar or warden furnish such further information in relation to the application, or such evidence in support thereof, as the mining registrar or warden may require but the mining registrar or warden shall not require any information or evidence relating to assays or other results of any testing or sampling that the applicant may have carried out on the land the subject of his application.

(3) Within the prescribed period the applicant shall serve such notice of the application as may be prescribed on the owner and occupier of the land to which the application relates and on such other persons as may be prescribed.

(4) The application shall be made by reference to a written description of the area of the land in respect of which the lease is sought, and be accompanied by a map on which are clearly delineated the boundaries of that area.

(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 —

JORC Code means the *Australasian Code for Reporting of Exploration Results, Mineral Resources and Ore Reserves* prepared by the Joint Ore Reserves Committee of the Australasian Institute of Mining and Metallurgy, the Australian Institute of Geoscientists and the Minerals Council of Australia as in force from time to time;

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; and

(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;

resource report means a report —

(a) that sets out details of the mineral resources located in, on or under the land to which the application relates; and

(b) that complies with the JORC Code; and

(c) that has been made to the Australian Securities Exchange Limited.

[Section 74 amended: No. 100 of 1985 s. 50; No. 37 of 1993 s. 26 and 28(1); No. 58 of 1994 s. 28; No. 39 of 2004 s. 29; No. 12 of 2010 s. 31; No. 51 of 2012 s. 23; No. 31 of 2022 s. 26.]

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.

[Section 74A inserted: No. 39 of 2004 s. 30.]

75. Determination of application for mining lease

(1) A person who wishes to object to the granting of an application for a mining lease must lodge a notice of objection.

(1AA) A notice of objection must be —

(a) lodged within the prescribed time and in the prescribed manner; and

(b) accompanied by the prescribed fee.

(1A) A person is not entitled to lodge a notice of objection if the basis for the objection is that —

(a) there is no significant mineralisation in, on or under the land to which the application relates; or

(b) the mining lease, or activities authorised by it, would affect an offsets project.

(1B) Subsection (1A)(b) does not apply in respect of an offsets project, or any part of an offsets project, situated on land held in freehold.

(2) Subject to subsection (2a), if no notice of objection is lodged within the prescribed time, or any notice of objection is withdrawn, the mining registrar shall, unless subsection (4)(b) applies, forward to the Minister a report which recommends the grant or refusal of the mining lease and sets out the reasons for that recommendation.

(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.

(3) The mining registrar shall —

(a) recommend the grant of the mining lease if satisfied that the applicant has complied in all respects with the provisions of this Act; or

(b) recommend the refusal of the mining lease if not so satisfied.

(4) Subject to subsection (4a), if a notice of objection —

(a) is lodged within the prescribed time; or

(b) is not lodged within the prescribed time but is lodged before the mining registrar has forwarded a report to the Minister under subsection (2) and the warden is satisfied that there are reasonable grounds for late lodgment,

and the notice of objection is not withdrawn, the warden shall hear the application for the mining lease on a day appointed by the warden and may give any person who has lodged such a notice of objection an opportunity to be heard.

(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.

(5) The warden shall as soon as practicable after the hearing of the application forward to the Minister for the Minister's consideration —

(a) the notes of evidence; and

(b) any maps or other documents referred to in the notes of evidence; and

(c) a report which recommends the grant or refusal of the mining lease and sets out the reasons for that recommendation.

(6) On receipt of a report under subsection (2) or (5), the Minister may, subject to subsection (7), grant or refuse the mining lease as the Minister thinks fit, and irrespective of whether —

(a) the report recommends the grant or refusal of the mining lease; and

(b) the applicant has or has not complied in all respects with the provisions of this Act.

(7) In the case of an application for a mining lease made by the holder of —

(a) a prospecting licence under section 49; or

(b) an exploration licence under section 67; or

(c) a retention licence under section 70L,

the Minister shall, subject to subsection (8) and the other provisions of this Act, grant to that holder one or more mining leases —

(d) in respect of any part or parts of the land the subject of the prospecting licence, exploration licence or retention licence, as the case requires; and

(e) on such terms and conditions as the Minister considers reasonable.

(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.

(9) Subsection (7) does not apply to an application for a mining lease if all or part of the land to which that application relates falls within one or more of the classes of land referred to in section 24(1) or is in a marine nature reserve, marine park or marine management area.

(10) In this section —

section 74A report means the report given to the Minister under section 74A.

[Section 75 inserted: No. 58 of 1994 s. 29(1); amended: No. 52 of 1995 s. 29; No. 5 of 1997 s. 41(2); No. 39 of 2004 s. 31 and 63; No. 12 of 2010 s. 32; No. 39 of 2022 s. 12; No. 27 of 2023 s. 8.]

76. Priorities as to mining tenements

Subject to the provisions of sections 56A, 70 and 85B as regards the special prospecting licences and mining leases therein referred to and section 94A as regards miscellaneous licences, where an application for a mining lease includes any portion of land included in a current mining tenement held by a person other than the applicant, any mining lease granted on the application shall not include any such portion of land.

[Section 76 amended: No. 100 of 1985 s. 52; No. 22 of 1990 s. 23; No. 37 of 1993 s. 12(2).]

*[**77.** Deleted: No. 122 of 1982 s. 22.]*

78. Term of leases, options and renewals

(1) Subject to this Act, a mining lease shall remain in force —

(a) for an initial term of 21 years; and

(b) where application for renewal is made in the prescribed manner during the final year of the term of that lease or if section 111A(1)(d) applies, as from the expiry of the preceding term for a further term of 21 years, as of right but subject in respect of that further term to the provisions of this Act and the regulations thereunder as in force on and after the date of renewal.

(2) Subject to subsection (1), the Minister may, from time to time upon receipt of an application made in the prescribed manner, renew or further renew a mining lease for successive terms but so that no such term exceeds a period of 21 years.

(3) If an application for renewal is made under this section and the term of the lease would but for this subsection expire, that lease shall continue in force in respect of the land the subject of that application until the application is determined.

(4) If, after an application for renewal is made under this section —

(a) the holder of the mining lease transfers the lease; or

(b) where there are 2 or more holders of the mining lease, a holder transfers the holder's interest in the lease,

the application continues in the name of the transferee of the lease or interest as if the transferee were an applicant or one of the applicants, as the case requires.

[Section 78 inserted: No. 100 of 1985 s. 53; amended: No. 1 of 1986 s. 5; No. 57 of 1997 s. 89(3); No. 17 of 1999 s. 14.]

79. Approval of application

(1) Where a person has applied for a mining lease and has been notified in writing by or on behalf of the Minister that the Minister has granted the mining lease to which the application relates, the applicant shall be deemed to be the holder of the lease comprising the land in respect of which the lease is granted as from the date of the written notification.

(2) Where a written notification is given under subsection (1) the term of the lease shall commence from the date of the written notification.

80. Surveys of mining leases

(1) Land the subject of a mining lease shall be surveyed, but it shall not be necessary for the survey to be carried out prior to the granting of the lease.

[(2) deleted]

[Section 80 inserted: No. 100 of 1985 s. 54; amended: No. 37 of 1993 s. 28(1).]

*[**81.** Deleted: No. 100 of 1985 s. 55.]*

82. Covenants and conditions of lease

(1) Every mining lease shall contain and be subject to the prescribed covenants by the lessee and in particular is taken to be granted subject to the conditions that the lessee shall —

(a) pay the rents and royalties due under the lease at the prescribed time and in the prescribed manner;

(b) use the land in respect of which the lease is granted only for mining purposes in accordance with this Act;

(ba) arrange and pay for a survey of such land within the prescribed time and in the prescribed manner;

(bb) where the lease is surrendered in part, arrange and pay for a re-survey of such land within the prescribed time and in the prescribed manner;

(c) comply with the prescribed expenditure conditions applicable to such land unless partial or total exemption therefrom is granted in such manner as is prescribed;

[(ca) deleted]

(d) not transfer or mortgage a legal interest in such land or any part thereof without the prior written consent of the

Minister, or of an officer of the Department acting with the authority of the Minister;

(e) lodge, in the prescribed manner, such periodical reports and returns as may be prescribed;

(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;

(f) promptly report in writing to the Minister details of all minerals of economic significance discovered in, on or under the land the subject of the mining lease;

[(ga) deleted]

(g) be liable to have the lease forfeited if —

(i) the lessee contravenes any of the covenants or conditions to which the lease is subject; or

(ii) the lessee fails to comply with any requirement under section 103AV(1) or 115B(2) in relation to the lease; or

(iii) a report required under paragraph (e) or section 115A(2) in relation to the land the subject of the lease is not filed in accordance with this Act.

[(1a), (1b) deleted]

(2) Every mining lease shall contain a provision that after receiving the warden's recommendation for forfeiture of a lease for breach of any covenant or condition of the lease by the lessee, the Minister may, as he thinks fit, impose a penalty not exceeding $50 000 as an alternative to the forfeiture of the lease.

(3) Where any penalty imposed as an alternative to forfeiture of the lease pursuant to subsection (2) is not paid within the time specified by the Minister, or within 30 days of written notice of the penalty being given by the Minister to the lessee if no other

time is specified by the Minister, the lease shall thereupon be forfeited.

[Section 82 amended: No. 100 of 1985 s. 56; No. 22 of 1990 s. 38; No. 37 of 1993 s. 28(1); No. 58 of 1994 s. 30; No. 54 of 1996 s. 12; No. 17 of 1999 s. 15(2); No. 15 of 2002 s. 28; No. 39 of 2004 s. 32(1), (2), 38, 45 and 97(3); No. 12 of 2010 s. 9 and 33; No. 51 of 2012 s. 24; No. 31 of 2022 s. 27.]

*[**82A.** Deleted: No. 31 of 2022 s. 28.]*

83. Issue of mining leases

(1) Every mining lease —

(a) shall be dated as of the day of the notification by the Minister under section 79; and

(b) shall be executed by the Minister.

(2) Where a mining lease has been executed under subsection (1) —

(a) the mining lease shall be endorsed with the word "original" on its front page; and

(b) a copy of the mining lease shall be —

(i) endorsed with the word "duplicate" on its front page; and

(ii) issued to the lessee on payment of the prescribed fee.

[Section 83 amended: No. 37 of 1993 s. 11.]

*[**84AA, 84.** Deleted: No. 31 of 2022 s. 29.]*

84A. Security relating to mining lease

(1) The applicant for a mining lease shall lodge, in the prescribed manner and 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.

[(2) deleted]

(3) A security referred to in subsection (1) 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.

[Section 84A inserted: No. 39 of 2004 s. 39(1); amended: No. 12 of 2010 s. 34; No. 31 of 2022 s. 30.]

85. Rights of holder of mining lease

(1) Subject to this Act and to any conditions to which the mining lease is subject, a mining lease authorises the lessee thereof and his agents and employees on his behalf to —

(a) work and mine the land in respect of which the lease was granted for any minerals; and

(b) take and remove from the land any minerals and dispose of them; and

(c) take and divert subject to the *Rights in Water and Irrigation Act 1914*, or any Act amending or replacing the relevant provisions of that Act, water from any natural spring, lake, pool or stream situate in or flowing

through such land or from any excavation previously made and used for mining purposes, and subject to that Act to sink a well or bore on such land and take water therefrom and to use the water so taken for his domestic purposes and for any purpose in connection with mining for minerals on the land; and

(d) do all acts and things that are necessary to effectually carry out mining operations in, on or under the land.

(2) Subject to this Act and to any conditions to which the mining lease is subject, the lessee of a mining lease —

(a) is entitled to use, occupy, and enjoy the land in respect of which the mining lease was granted for mining purposes; and

(b) owns all minerals lawfully mined from the land under the mining lease.

(3) The rights conferred by this section are exclusive rights for mining purposes in relation to the land in respect of which the mining lease was granted.

[Section 85 amended: No. 100 of 1985 s. 58; No. 39 of 2004 s. 34.]

85A. Land the subject of mining lease not to be again marked out for a certain period

(1) Where a mining lease is surrendered or forfeited, or expires, the land the subject of the lease or any part of that land shall not be marked out or applied for as a prospecting licence or an exploration licence by or on behalf of —

(a) the person who was the holder of the mining lease immediately prior to the date of the surrender, forfeiture or expiry; or

(b) any person who had an interest in the mining lease immediately prior to that date; or

(c) any person who is related to a person referred to in paragraph (a) or (b),

within a period of 3 months from and including that date.

(2) For the purposes of subsection (1) the holding of shares in a listed public company which held the mining lease in question does not of itself constitute an interest in the mining lease.

[Section 85A inserted: No. 37 of 1993 s. 12(1); amended: No. 15 of 2002 s. 16.]

85B. Special prospecting licence on a mining lease

(1) Where any land is the subject of a mining lease (in this section called the ***primary tenement***) then, notwithstanding section 117, a person may at any time mark out and, in accordance with section 41, apply for a prospecting licence for gold (in this section called a ***special prospecting licence***) in respect of any part of the land the subject of the primary tenement.

(1a) A special prospecting licence may only be applied for by, granted to or held by a natural person.

(2) An application for a special prospecting licence shall be accompanied by the written consent of the holder of the primary tenement to the granting of the special prospecting licence.

(3) Subject to this section, the mining registrar may, if the mining registrar is satisfied that the holder of the primary tenement has consented in writing to the granting of the special prospecting licence, grant a special prospecting licence on such terms or conditions as the mining registrar thinks fit, but a special prospecting licence so granted —

(a) shall not exceed 10 ha in area; and

(b) authorises the holder of the special prospecting licence to prospect only for gold; and

(c) does not, unless the Minister otherwise directs, prevent the holder of the primary tenement from prospecting for minerals other than gold in or on the land the subject of the special prospecting licence; and

(d) does not authorise the holder of the special prospecting licence to excavate, extract or remove during the period for which the mining tenement remains in force a total amount of earth, soil, rock, stone, fluid or mineral bearing substances in excess of 500 t, except in so far as the prior written approval of the Minister may otherwise permit; and

(e) does not authorise mining to be carried out in any portion of the land that is —

(i) below a depth specified in the terms and conditions of the special prospecting licence, and any depth so specified shall be less than 50 m below the lowest part of the natural surface of the land the subject of the special prospecting licence; or

(ii) if a depth is not so specified, 50 m or more below the lowest part of the natural surface of the land the subject of the special prospecting licence, except in so far as both the prior written consent of the holder of the primary tenement and the prior written approval of the Minister may otherwise permit.

(3a) A special prospecting licence may be granted for a period of 3 months or for any period which is a multiple of 3 months but which does not exceed 4 years.

(4) A special prospecting licence —

(a) continues in force notwithstanding that the holder of the primary tenement may apply for and be granted a retention licence, mining lease or general purpose lease in respect of the land; but

(b) ceases (and the land in respect of which it was granted reverts to the holder of the primary tenement as an integral part of the mining tenement held by that person) on the surrender, forfeiture or expiry of that special prospecting licence.

(5) No legal or equitable interest in or affecting —

(a) a special prospecting licence; or

(b) a mining lease in respect of the land or any part of the land the subject of a special prospecting licence,

is capable of being created, affected or dealt with, whether directly or indirectly, except with the prior written consent of the holder of the primary tenement, and no person shall hold or have any beneficial, legal or equitable interest in —

(c) more than 10 such special prospecting licences; or

(d) more than one such mining lease.

(6) A reference in subsection (5) to a person includes a reference to any other person who would, for the purposes of the Corporations Act, be taken to be an associate of the first-mentioned person.

(7) The holder of a special prospecting licence granted for a period of 4 years may make an application for a mining lease for gold in respect of the land or any part of the land which is the subject of the special prospecting licence, and on an application being made the Minister may grant the application for a lease in respect of that portion of the land to which the special prospecting licence relates that is less than a depth of 50 m, or such greater depth as the Minister approves with the prior written consent of the holder of the primary tenement, below the lowest part of the natural surface of the land and on such terms and conditions as the Minister thinks fit, and thereupon the area of land in respect of which that mining lease is granted shall be excised from the primary tenement.

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

(8) A mining lease granted pursuant to subsection (7) —

(a) has effect in relation to gold and any minerals occurring in conjunction with that gold; and

(b) does not authorise the holder of the mining lease or any agents or employees of the holder to excavate, extract or remove a total amount of earth, soil, rock, stone, fluid or mineral bearing substances in excess of 750 t in any year, except in so far as both the prior written consent of the holder of the primary tenement and the prior written approval of the Minister may otherwise permit; and

(c) ceases to have effect (and the land in respect of which it was granted reverts to the holder of the primary tenement as an integral part of the tenement held by that person) on the surrender, forfeiture or expiry of that lease.

(9) Subject to this section, the provisions of this Act relating to —

(a) prospecting licences apply to a special prospecting licence; and

(b) mining leases apply to a mining lease,

granted under this section.

(9a) Where, before the determination of an application for a special prospecting licence in respect of land, the primary tenement is surrendered or forfeited or expires, the application is, by virtue of this subsection, converted into an application for a prospecting licence in respect of that land and the provisions of this Act relating to such applications apply accordingly.

(10) On the surrender, forfeiture or expiry of the primary tenement, a special prospecting licence in respect of any land the subject of the primary tenement immediately before the date of its surrender, forfeiture or expiry is, by virtue of this subsection, converted into a prospecting licence in respect of that land and,

subject to subsection (11), the provisions of this Act relating to prospecting licences apply accordingly.

(11) Where a special prospecting licence is converted into a prospecting licence, the prospecting licence remains in force, subject to this Act, for the remainder of the period for which the special prospecting licence was granted.

(12) Subsections (9a) and (10) do not apply if —

(a) the primary tenement is amalgamated with an exploration licence under section 67A(1); or

(b) prior to the surrender, forfeiture or expiry of the primary tenement the holder of the primary tenement applies for a retention licence, a mining lease or a general purpose lease and the licence or lease is subsequently granted in respect of any land the subject of the special prospecting licence.

[Section 85B inserted: No. 37 of 1993 s. 12(1); amended: No. 58 of 1994 s. 31; No. 54 of 1996 s. 13 and 23; No. 10 of 2001 s. 134; No. 15 of 2002 s. 17; No. 39 of 2004 s. 10.]

Division 4 — General purpose lease

*[**85C.** Deleted: No. 52 of 1995 s. 30.]*

86. Grant of general purpose lease

(1) Subject to this Act, the Minister may, on the application of any person, after receiving a recommendation of the mining registrar or the warden, grant to such person a lease to be known as a general purpose lease for use by him in respect to mining operations on such terms and conditions as the Minister considers reasonable.

(2) Any such person may be granted more than one general purpose lease.

(3) The area of land in respect of which any one general purpose lease may be granted shall not exceed 10 ha, unless the Minister

is satisfied that a larger area of land is required for the purposes of the lease, and shall be limited to such depth below the natural surface of the land as may be specified in the lease or, where no depth is so specified, to 15 m below the lowest part of the natural surface of the land.

(4) An application for the grant of a general purpose lease in respect of any land —

(a) shall be made, and may be objected to, in like manner to an application for a mining lease; and

(b) shall be determined in the same manner as an application for a mining lease.

(5) An application for the grant of a general purpose lease in respect of an area of land which exceeds 10 ha shall be accompanied by a statement specifying the reasons why such an area of land is required for the purposes of the lease.

[Section 86 amended: No. 100 of 1985 s. 59; No. 58 of 1994 s. 32; No. 17 of 1999 s. 16.]

87. Purposes for which general purpose lease may be granted

(1) A general purpose lease entitles the lessee thereof and his agents and employees to the exclusive occupation of the land in respect of which the general purpose lease was granted for one or more of the following purposes —

(a) for erecting, placing and operating machinery thereon in connection with the mining operations carried on by the lessee in relation to which the general purpose lease was granted;

(b) for depositing or treating thereon minerals or tailings obtained from any land in accordance with this Act;

(c) for using the land for any other specified purpose directly connected with mining operations.

(2) The purpose or purposes for which a general purpose lease is granted shall be specified in the lease.

[Section 87 amended: No. 100 of 1985 s. 60.]

88. Term of general purpose lease

(1) Subject to this Act, a general purpose lease remains in force —

(a) where it is granted in relation to a particular mining lease and contains no other provision for expiry, until —

(i) it is surrendered or forfeited; or

(ii) the date of surrender, forfeiture or expiry of the mining lease (or any renewal thereof) in relation to which it was granted or 21 years from the date deemed pursuant to section 79 to be the date on which the term of the general purpose lease commenced or, if any other date of commencement is specified in the general purpose lease, the specified date, whichever is the longer period;

or

(b) in any other case, for a period of 21 years or until it is sooner surrendered or forfeited.

(2) Notwithstanding subsection (1), on receipt of an application made in the prescribed manner during the final year of the term of the lease, the Minister —

(a) shall renew the term of the lease as to the whole of the land the subject of the lease —

(i) for one further period of 21 years; and

(ii) on the terms and conditions to which the lease was subject before its renewal;

and

(b) may, in the case of a lease renewed under paragraph (a), renew or further renew the term of the lease as to the whole or any part of the land the subject of the lease —

(i) for a period not exceeding 21 years; and

(ii) on such terms and conditions as the Minister thinks fit.

(3) Where an application for a renewal of a general purpose lease is made in respect of any land and the term of that lease would but for this subsection expire, that lease shall continue in force in respect to the land the subject of that application until the application for a renewal is determined.

(4) If, after an application for renewal is made under this section —

(a) the holder of the general purpose lease transfers the lease; or

(b) where there are 2 or more holders of the general purpose lease, a holder transfers the holder's interest in the lease,

the application continues in the name of the transferee of the lease or interest as if the transferee were an applicant or one of the applicants, as the case requires.

[Section 88 inserted: No. 100 of 1985 s. 61; amended: No. 105 of 1986 s. 11; No. 12 of 1987 s. 6; No. 17 of 1999 s. 17.]

89. Form of general purpose lease

A general purpose lease shall be in the prescribed form and shall contain such covenants, terms and conditions as are prescribed and specified therein and such additional terms and conditions as the Minister may, from time to time, in writing specify.

[Section 89 amended: No. 100 of 1985 s. 62.]

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 section 6(1a), (1c) and (1d)(b) to a mining lease were a reference to a general purpose lease; and

(b) section 6(1d)(a) were replaced by the following —

(a) a programme of work lodged by the holder of the general purpose lease in compliance with a condition prescribed for the purposes of section 89; or

(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) section 74(1)(ca)(ii) and (iii) were replaced by the following —

(ii) a statement in accordance with subsection (1a);

(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, 83, 84A, 103AL, 103AN, 103AO, 103AP, 103AQ, 103AR, 103AS, 103AT, 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.

[Section 90 inserted: No. 39 of 2004 s. 91; amended: No. 31 of 2022 s. 31.]

Division 5 — Miscellaneous licences

*[**90A.** Deleted: No. 52 of 1995 s. 31.]*

91. Grant of miscellaneous licence

(1) Subject to this Act, and in the case of a miscellaneous licence for water to the *Rights in Water and Irrigation Act 1914*, or any Act amending or replacing the relevant provisions of that Act, the mining registrar or the warden, in accordance with section 42 (as read with section 92), may, on the application of any person, grant in respect of any land a licence, to be known as a miscellaneous licence, for any one or more of the purposes prescribed.

(2) A person may be granted more than one miscellaneous licence.

(3) A miscellaneous licence shall —

(a) be in the prescribed form; and

(b) authorise the holder to do such matters and things as are specified in the licence.

[(4), (5) deleted]

(6) A miscellaneous licence shall not be granted unless the purpose for which it is granted is directly connected with mining.

(7) Sections 18, 23 and 27 do not prevent a miscellaneous licence from being applied for or granted in respect of land that is the subject of another mining tenement.

(8) If a miscellaneous licence is granted in respect of land that is subject to another mining tenement the miscellaneous licence and the other mining tenement apply concurrently with respect to that land.

(9) Before an application for a miscellaneous licence is determined a copy of the application shall, within the prescribed time, be given to the local government and to such other persons as may be prescribed.

(10) The local government is entitled to be heard on the application and may submit to the mining registrar or the warden, as the case requires, any terms and conditions to which it considers the miscellaneous licence, if granted, should be subject.

[Section 91 inserted: No. 58 of 1994 s. 33; amended: No. 14 of 1996 s. 4; No. 35 of 1998 s. 4(1) and (2); No. 15 of 2002 s. 18; No. 51 of 2012 s. 26.]

91A. Term and renewal of existing licence or licence granted in respect of existing application

(1) This section applies to a miscellaneous licence that is —

(a) in force on the commencement; or

(b) granted on or after the commencement in respect of an application made under section 91 before the commencement.

(2) Subject to this Act, a licence to which this section applies remains in force for —

(a) a period of 5 years from the day on which it is or was granted; or

(b) in the case of a licence referred to in subsection (1)(a) that was renewed before the commencement, the period for which it was so renewed.

(3) Notwithstanding subsection (2), on receipt of an application made in the prescribed manner during the final year of the term of the licence, the Minister —

(a) may renew the term of the licence as to the whole or any part of the land the subject of the licence —

(i) for one further period not exceeding 5 years; and

(ii) on such terms and conditions as the Minister thinks fit;

and

(b) shall, in the case of a licence renewed under paragraph (a), renew or further renew the term of the licence as to the whole of the land the subject of the licence —

(i) for a period that is the same as the period for which the licence was renewed under paragraph (a); and

(ii) on the terms and conditions to which the licence was subject before its renewal.

(4) If an application for renewal is made under this section 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 application until the application is determined.

(5) If the holder of a licence to which this section applies transfers the licence after making an application for renewal under this section, the application continues in the name of the transferee of the licence as if the transferee had made it.

(6) In this section and section 91B —

commencement means the commencement of the *Mining Amendment Act 1998*.

[Section 91A inserted: No. 35 of 1998 s. 5.]

91B. Term and renewal of licence granted in respect of new application

(1) This section applies to a miscellaneous licence granted in respect of an application made under section 91 on or after the commencement.

(2) Subject to this Act, a licence to which this section applies remains in force for a period of 21 years.

(3) Notwithstanding subsection (2), on receipt of an application made in the prescribed manner during the final year of the term of the licence, the Minister —

(a) shall renew the term of the licence as to the whole of the land the subject of the licence —

(i) for one further period of 21 years; and

(ii) on the terms and conditions to which the licence was subject before its renewal;

and

(b) may, in the case of a licence renewed under paragraph (a), renew or further renew the term of the licence as to the whole or any part of the land the subject of the licence —

(i) for a period not exceeding 21 years; and

(ii) on such terms and conditions as the Minister thinks fit.

(4) If an application for renewal is made under this section 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 application until the application is determined.

(5) If the holder of a licence to which this section applies transfers the licence after making an application for renewal under this section, the application continues in the name of the transferee of the licence as if the transferee had made it.

[Section 91B inserted: No. 35 of 1998 s. 5.]

92. Provisions applying to all miscellaneous licences

Sections 41, 42, 44, 46, 47 and 52 apply, with such modifications as the circumstances require, to and in relation to a miscellaneous licence as though in those provisions a reference to a prospecting licence was to be construed as a reference to a miscellaneous licence.

[Section 92 inserted: No. 100 of 1985 s. 64; amended: No. 22 of 1990 s. 25; No. 58 of 1994 s. 34; No. 17 of 1999 s. 6(3); No. 39 of 2004 s. 40; No. 31 of 2022 s. 32.]

93. Map to accompany application

[(1) deleted]

(2) An application for the grant of the miscellaneous licence shall be made by reference to a written description of the area of land in respect of which the miscellaneous licence is sought, and be accompanied by a map on which are clearly delineated the boundaries of that area.

[Section 93 amended: No. 100 of 1985 s. 65; No. 58 of 1994 s. 35; No. 51 of 2012 s. 27.]

94. Terms and conditions

(1) A miscellaneous licence is subject to the terms and conditions prescribed.

(2) In addition to the terms and conditions prescribed in relation to a miscellaneous licence, the mining registrar or the warden, as the case requires, may make a miscellaneous licence subject to such further terms and conditions as he thinks fit and specifies in that licence.

(3) Where the mining registrar or the warden refuses an application for a miscellaneous licence or grants the application on conditions the applicant considers unreasonable, the applicant may within the time and in the manner prescribed appeal to the Minister against such refusal or conditions as the case may be.

(4) The Minister may dismiss the appeal or uphold the appeal and grant the application on such conditions as he considers reasonable.

[Section 94 amended: No. 100 of 1985 s. 66; No. 21 of 1993 s. 45; No. 58 of 1994 s. 36; No. 52 of 1995 s. 32.]

94A. Grant of mining tenement on land in a miscellaneous licence

(1) Sections 18, 23, 27, 43 and 76 do not prevent another mining tenement from being marked out, applied for or granted in respect of land that is the subject of a miscellaneous licence.

(2) Notwithstanding section 43 or 76, if another mining tenement is granted in respect of land that is subject to a miscellaneous licence the other mining tenement and the miscellaneous licence apply concurrently with respect to that land.

[Section 94A inserted: No. 22 of 1990 s. 26; amended: No. 15 of 2002 s. 19.]

94B. Surrender, forfeiture or expiry of concurrent tenement

Subject to this Act, if —

(a) under section 91(8) or 94A(2), 2 or more mining tenements apply concurrently with respect to land; and

(b) one of the mining tenements is surrendered or forfeited or expires,

the land continues to be subject to the other mining tenement or tenements.

[Section 94B inserted: No. 22 of 1990 s. 26; amended: No. 58 of 1994 s. 37.]

[Division 5A (s. 94C-94P) deleted: No. 52 of 1995 s. 33.]

Division 6 — Surrender and forfeiture of mining tenements

95. Surrender of mining tenement

(1) Subject to this Act, the holder of a mining tenement may surrender the tenement in whole or in part by lodging a surrender for registration.

[(2), (3) deleted]

(4) Where a mining tenement is being surrendered as to part only, the form of surrender shall be prepared by reference to a written description of the area of the part to be surrendered, and be accompanied by a map on which are clearly delineated the respective boundaries of that mining tenement and of the part of that mining tenement which is being surrendered.

(5) Where part of a mining tenement is surrendered, notification thereof shall be endorsed as prescribed on the mining tenement, for which purpose the holder shall produce his copy of the document on demand, and thereafter the rent payable in respect thereof shall be reduced as provided for in the regulations.

(6) Notwithstanding anything to the contrary in this Act other than section 26A(3) and (4), where a mining tenement is surrendered, whether under this section or under section 26A or 65, in whole or in part, every right, title and interest held under the mining tenement in respect of —

(a) the whole of the land the subject of that tenement; or

(b) that part of that land which is being surrendered,

as the case requires, absolutely ceases and determines in the case of —

(c) a conditional surrender, on the date on which the surrender becomes absolute;

(d) a surrender other than a conditional surrender or a surrender under section 26A(2) or 65, on the date the surrender is registered;

(e) a surrender under section 26A(2), on the expiry of the period referred to in section 26A(1);

(f) a surrender under section 65, on the date on which the surrender becomes effective under that section.

[Section 95 amended: No. 52 of 1983 s. 5; No. 100 of 1985 s. 67; No. 105 of 1986 s. 12; No. 22 of 1990 s. 27; No. 54 of 1996 s. 14; No. 39 of 2004 s. 92.]

95A. Exploration licence — surrender of part of block

(1) In this section —

block has the same meaning as it has in Part IV Division 2.

(2) The holder of an exploration licence shall not, under section 95(1), surrender part of a block that is subject to the licence without the prior approval of the Minister or an officer of the Department authorised by the Minister to give such approval.

(3) Where part of a block that is subject to an exploration licence is surrendered under section 95(1), the rest of the block that remains subject to the licence is deemed to be a block for the purposes of this Act.

[Section 95A inserted: No. 15 of 2002 s. 20.]

96. Forfeiture of certain mining tenements

(1) The warden may upon the application of —

(a) the Minister or any mining registrar or other officer of the Department authorised by the Minister in writing in that behalf; or

(b) any person,

made in the prescribed form and in the prescribed manner, make an order for the forfeiture of any prospecting licence or a miscellaneous licence granted or acquired under this Act or by virtue of the repealed Act.

(1a) An authorisation under subsection (1)(a) may be given to a specified officer or to officers of a specified class, or may be given to the holder or holders for the time being of a specified office or class of office.

(2) An order for forfeiture may be made in relation to a mining tenement to which subsection (1) applies if —

(a) the prescribed rent or royalty in respect thereof is not paid in accordance with this Act; or

(b) any term or condition to which the mining tenement is subject, including any conditions referred to in sections 46, 50, 103AE(1), 103AG(3), (4) and (5), 103AI(2), (3) and (5), 103AM(2), (3) and (4), 103AO(4) and 103AS, is not complied with; or

(ba) a report required under section 51 or 115A in relation to the mining tenement is not filed in accordance with this Act; or

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

(bb) any requirement under section 55B(2), 103AV(1) or 115B(2) is not complied with; or

(c) the holder of the mining tenement is convicted of an offence against this Act,

but an order shall not be made under subsection (1) unless the warden is satisfied that the requirements of this Act in relation to such mining tenement have not been complied with in a material respect and that the matter is of sufficient gravity to justify the forfeiture of the mining tenement.

(2a) An application for forfeiture under subsection (1)(b) and made in respect of the expenditure conditions applicable to the mining tenement shall be made during the expenditure year in relation to which the requirement is not complied with or within 8 months thereafter, and not otherwise.

(3) A warden, as he thinks fit in the circumstances of the case, as an alternative to making an order under this section for forfeiture of such mining tenement may —

(a) impose on the holder of the mining tenement —

(i) in a case where expenditure conditions have not been complied with, a penalty not exceeding $10 000;

(ii) in any other case, a penalty not exceeding $75 000 if the holder is an individual or $150 000 if the holder is a body corporate;

or

(b) award the whole or any part of the amount of any such penalty to the applicant if the applicant is not the Minister, a mining registrar or an officer of the Department authorised in writing by him; or

(c) impose no penalty on the holder.

(3a) Where —

(a) a mining tenement that is the subject of an application for forfeiture under this section is surrendered (other than by way of a conditional surrender or a surrender under section 26A or 65) before that application is dealt with by the warden; and

(b) the applicant for forfeiture is not the Minister, a mining registrar or an officer of the Department authorised in writing by the Minister,

the applicant for forfeiture has, from the date on which the surrender is registered until the expiry of a period of 14 days after the date of being served with written notice of the surrender by an officer of the Department, a right in priority to any other person to mark out or apply for, or both, a mining tenement upon the whole or any part of the land that was the subject of the surrendered mining tenement.

(3b) Where —

(a) a prospecting licence that is the subject of an application for forfeiture under this section has continued in force under section 49(2) or 70C(6) pending the determination of an application referred to in that section (the ***tenement application***); and

(b) the applicant for forfeiture is not the Minister, a mining registrar or an officer of the Department authorised in writing by the Minister; and

(c) the tenement application is withdrawn in accordance with the regulations before the application for forfeiture is dealt with by the warden,

the applicant for forfeiture has, from the date on which the tenement application is withdrawn until the expiry of a period of 14 days after the date of being served with written notice of the withdrawal by an officer of the Department, a right in priority to any other person to mark out or apply for, or both, a mining tenement upon the whole or any part of the land that was the subject of the prospecting licence.

(4) Where an order for the forfeiture of a mining tenement is made under this section, if the applicant therefor was not the Minister, a mining registrar or an officer authorised in writing by the Minister, such applicant shall have, for a period of 14 days after the date of the order, a right in priority to any other person to mark out or apply for, or both, a mining tenement upon the whole or part of the land that was the subject thereof.

(5) If the applicant fails to proceed with his forfeiture application the warden may award the holder of the mining tenement such sum for costs and expenses as the warden thinks fit.

(6) Where any penalty imposed as an alternative to forfeiture under subsection (3)(a) is not paid within the time specified by the warden or within 30 days of the hearing of the application for forfeiture if no such time is specified by the warden, the mining tenement shall thereupon be forfeited and the rights conferred

on the applicant for forfeiture under subsection (4) shall apply as if the warden had made an order for forfeiture on the day on which the mining tenement is forfeited pursuant to this subsection.

(7) No prospecting licence shall be forfeited for non-compliance by the holder thereof with the expenditure conditions, if the holder satisfies the warden that the non-compliance therewith has been occasioned by a strike.

(8) Subject to section 97A, the warden may, for any cause that he deems sufficient and subject to subsection (9), cancel —

(a) an order for the forfeiture of any mining tenement made under subsection (1); or

(b) the forfeiture arising under subsection (6) of any mining tenement referred to in subsection (1),

and restore the mining tenement so forfeited to the holder thereof.

(9) The warden may, in effecting a cancellation and restoration under subsection (8), impose on the holder of the mining tenement restored under that subsection such conditions as he thinks fit.

[Section 96 amended: No. 69 of 1981 s. 21; No. 100 of 1985 s. 68; No. 105 of 1986 s. 13; No. 22 of 1990 s. 28 and 38; No. 37 of 1993 s. 13; No. 58 of 1994 s. 41; No. 54 of 1996 s. 23; No. 17 of 1999 s. 6(4); No. 15 of 2002 s. 21 and 28; No. 39 of 2004 s. 46 and 93; No. 51 of 2012 s. 28; No. 31 of 2022 s. 33.]

96A. Forfeiture of exploration licence or retention licence

(1) When —

(a) an exploration licence is liable to forfeiture by virtue of section 63A; or

(b) a retention licence is liable to forfeiture by virtue of section 70K,

the Minister may cause the licence to be forfeited by declaring by notice published in the *Government Gazette* that the licence is forfeited.

(2) Subject to section 97A, the Minister may, for any cause that he deems sufficient and subject to subsection (3), by notice under his hand published in the *Government Gazette* —

(a) cancel a declaration made under subsection (1); and

(b) restore the licence to which the declaration referred to in paragraph (a) relates to the holder thereof.

(3) The Minister may, in effecting the cancellation and restoration referred to in subsection (2), impose on the holder of the licence restored under that subsection such conditions as he thinks fit.

(4) The production of a copy of the *Government Gazette* containing a notice published therein under subsection (1) or (2) is evidence that the licence concerned has been forfeited or restored, as the case requires.

(5) The Minister, as he thinks fit in the circumstances of the case, as an alternative to causing the licence to be forfeited, may —

(a) impose on the holder of the licence a penalty not exceeding $75 000 if the holder is an individual or $150 000 if the holder is a body corporate; or

(b) award the whole or any part of the amount of any such penalty to any person, other than an officer of the Department; or

(c) impose no penalty on the holder.

(6) Where any penalty imposed as an alternative to forfeiture under subsection (5) is not paid within the time specified by the Minister, or within 30 days of written notice of the penalty being given by the Minister to the holder of the licence if no

other time is specified by the Minister, the licence is thereby forfeited.

(7) In this section ***licence*** means the exploration licence or the retention licence, as the case requires.

[Section 96A inserted: No. 69 of 1981 s. 22; amended: No. 100 of 1985 s. 69; No. 22 of 1990 s. 38; No. 37 of 1993 s. 10(2); No. 15 of 2002 s. 28; No. 51 of 2012 s. 29.]

97. Forfeiture of mining lease or general purpose lease

(1) Where a mining lease or general purpose lease is liable to forfeiture for a breach of the lessee's covenant to pay rent or royalty or for breach of a covenant included in the lease under section 82(1) or section 89 or a condition to which the lease is subject, the Minister may declare, by notice under his hand published in the *Government Gazette*, such lease forfeited.

(2) The production of a copy of the *Government Gazette* containing a notice published therein pursuant to subsection (1), is evidence that a breach of such a covenant has been committed by the lessee, and that the estate and interest of the lessee in such lease has been lawfully determined.

(3) Subject to section 97A, the Minister, for any cause that he deems sufficient, may cancel the forfeiture of any such lease and by subsequent notice under his hand published in the *Government Gazette*, restore the lessee as of his former estate in respect of the forfeited lease.

(4) The Minister, upon such cancellation and restoration as is referred to in subsection (3), may impose upon the lessee such conditions as he thinks fit.

(5) The Minister, as he thinks fit in the circumstances of the case, as an alternative to declaring the lease forfeited, may —

(a) impose on the lessee a penalty not exceeding $75 000 if the lessee is an individual or $150 000 if the lessee is a body corporate; or

(b) award the whole or any part of the amount of any such penalty to any person, other than an officer of the Department; or

(c) impose no penalty on the lessee.

(6) Where any penalty imposed as an alternative to forfeiture under subsection (5) is not paid within the time specified by the Minister, or within 30 days of written notice of the penalty being given by the Minister to the lessee if no other time is specified by the Minister, the lease is thereby forfeited.

[Section 97 amended: No. 100 of 1985 s. 70; No. 22 of 1990 s. 29 and 38; No. 15 of 2002 s. 28; No. 51 of 2012 s. 30.]

97A. Application for restoration of mining tenement after forfeiture

(1) Subject to subsection (2), where a mining tenement is forfeited under or by virtue of section 96, 96A or 97 a person who was, immediately prior to the forfeiture, the holder of the tenement concerned may apply for the mining tenement to be restored to the person and the forfeiture cancelled.

(2) Where the forfeiture was occasioned by non-compliance by the holder with an expenditure condition applicable to the tenement and results from an application made by a person, not being a person acting on behalf of the Department, subsection (1) does not apply.

(3) An application under subsection (1) —

(a) shall be in the prescribed form and made within the prescribed time; and

(b) shall be lodged in the prescribed manner; and

(c) shall be accompanied by the prescribed application fee,

and the applicant shall at the request of the warden furnish such other information, or such evidence in support thereof, as the warden may require but the warden shall not require

information or evidence relating to assays or other results of any testing, sampling or other mining operations that the applicant may have carried out on the land the subject of the application.

(4) Within 14 days after the lodging of such an application under subsection (1), the applicant shall serve such notice of the application as may be prescribed on any person who has since the forfeiture made application for a mining tenement in respect of the land or any part of the land to which the application relates and on such other persons as may be prescribed.

(5) An application under subsection (1) shall be heard by the warden on a day appointed by the warden.

(6) A person who wishes to object to the granting of an application made under subsection (1) must lodge a notice of objection.

(6A) A notice of objection must be —

(a) lodged within the prescribed time and in the prescribed manner; and

(b) accompanied by the prescribed fee.

(6B) A person is not entitled to lodge a notice of objection if the basis for the objection is that the mining tenement, or activities authorised by it, would affect an offsets project.

(6C) Subsection (6B) does not apply in respect of an offsets project, or any part of an offsets project, situated on land held in freehold.

(7) On the hearing of an application made under subsection (1) the warden —

(a) in a case to which section 96 applies, shall determine the application and make such order as the warden thinks fit and may —

(i) grant the application and restore the mining tenement to the former holder; or

(ii) grant the application and restore the mining tenement to the former holder subject to such further or other conditions as the warden may specify; or

(iii) refuse the application;

and

(b) in any other case, shall as soon as practicable thereafter transmit to the Minister for the Minister's consideration the notes of evidence and any maps or other documents referred to therein, and the warden's report recommending the granting or refusal of the application and setting out the reasons for the recommendation.

(8) On receipt of notes of evidence and any maps or documents transmitted to the Minister pursuant to subsection (7), the Minister may grant or refuse the application for restoration of the mining tenement, as the Minister determines and whether the warden recommends the granting of the application or the refusal thereof, and may impose on a mining tenement so restored such further or other conditions as the Minister may specify.

[Section 97A inserted: No. 100 of 1985 s. 71; amended: No. 37 of 1993 s. 26; No. 39 of 2004 s. 64; No. 12 of 2010 s. 35; No. 39 of 2022 s. 13; No. 27 of 2023 s. 9.]

98. Application for forfeiture on other grounds

(1) Where the requirements of this Act are not being complied with in respect of the expenditure conditions applicable to an exploration licence or a mining lease, any person may apply for the forfeiture of such licence or lease as provided in this section.

(2) An application for forfeiture under this section shall be made, during the expenditure year in relation to which the requirement is not complied with or within 8 months thereafter, in such form and manner as may be prescribed and shall be accompanied by the prescribed fee.

(3) The application for forfeiture shall be heard by the warden.

(4A) When the warden finds that the holder of an exploration licence or lessee of the mining lease has failed to comply with such requirements as are mentioned in subsection (1), the warden may recommend the forfeiture of such licence or lease, or impose a penalty not exceeding $10 000 as an alternative to the forfeiture or dismiss the application.

(4B) Where a penalty is imposed under this section the warden may award the whole amount of the penalty or any part thereof to the applicant.

(5) A recommendation shall not be made under subsection (4A) unless the warden is satisfied that the non-compliance with such requirements is, in the circumstances of the case, of sufficient gravity to justify the forfeiture.

(6) As soon as practicable after the hearing of the application the warden shall forward to the Minister the notes of evidence, with a report and the warden's recommendation, if any, on the application and the Minister may, before acting on the recommendation, require the warden to take such further evidence or rehear the application as the Minister directs.

(7) No exploration licence or mining lease shall be forfeited for non-compliance by the holder or lessee thereof with the expenditure conditions, if the holder or lessee satisfies the Minister that the non-compliance therewith has been occasioned by a strike.

(8) If the applicant fails to proceed with his forfeiture application, the warden may award the holder or lessee such sum for costs and expenses as he thinks fit.

(9) Where any penalty imposed by a warden as an alternative to forfeiture under subsection (4A) is not paid within the time specified by the warden, or within 30 days after the penalty is imposed where no other time is specified, the warden shall

make a recommendation to the Minister as to whether or not the licence or lease should be forfeited.

[Section 98 amended: No. 100 of 1985 s. 72; No. 22 of 1990 s. 30 and 38; No. 15 of 2002 s. 28; No. 39 of 2004 s. 65; No. 19 of 2010 s. 51.]

99. Proceedings by Minister on recommendation

(1) The Minister, after receiving the recommendation of the warden as provided in section 98, may, as the Minister thinks fit —

(a) declare the exploration licence or the lease to which the recommendation relates, forfeited; or

(b) impose a penalty not exceeding $10 000 as an alternative to forfeiture; or

(c) award the whole amount of the penalty or any part thereof to the applicant who applied for forfeiture; or

(d) determine not to forfeit such licence or lease or impose any penalty.

(2) Where the Minister declares an exploration licence or lease forfeited under subsection (1) he shall forthwith give written notice thereof to the applicant and shall publish notice of the declaration in the *Government Gazette* and on the publication of the notice the licence or lease shall become forfeited.

(3) Where any penalty imposed as an alternative to forfeiture under subsection (1)(b) is not paid within the time specified by the Minister or within 30 days of the Minister imposing the penalty as an alternative to forfeiture if no time is specified by the Minister, the exploration licence or lease shall thereupon be forfeited and notice thereof shall be published in the *Government Gazette*, and the rights conferred on the applicant for forfeiture under section 100(2) shall apply as if the Minister had declared the licence or lease forfeited.

[Section 99 amended: No. 100 of 1985 s. 73; No. 22 of 1990 s. 38; No. 37 of 1993 s. 14(2); No. 15 of 2002 s. 28.]

100. Applicant to have priority for marking out and applying for surrendered or forfeited licence or lease

(1) Where an exploration licence or a mining lease that is the subject of an application for forfeiture under section 98 is surrendered (other than by way of a conditional surrender or a surrender under section 26A or 65) before the application is finally dealt with under section 98(4A) or 99(1), the applicant for forfeiture has, from the date on which the surrender is registered until the expiry of a period of 14 days after the date of being served with written notice of the surrender by an officer of the Department, a right in priority to any other person to mark out or apply for, or both, a mining tenement upon the whole or any part of the land that was the subject of the surrendered licence or lease.

(1a) Where —

(a) an exploration licence or a mining lease that is the subject of an application for forfeiture under section 98 has continued in force under section 67(2) or 70C(6) pending the determination of an application referred to in section 67(2) or 70C(6), as the case requires (the ***tenement application***); and

(b) the tenement application is withdrawn in accordance with the regulations before the application for forfeiture is dealt with by the warden,

the applicant for forfeiture has, from the date on which the tenement application is withdrawn until the expiry of a period of 14 days after the date of being served with written notice of the withdrawal by an officer of the Department, a right in priority to any other person to mark out or apply for, or both, a mining tenement upon the whole or any part of the land that was the subject of the licence or lease.

(2) Where an exploration licence or a mining lease is forfeited pursuant to section 99, the applicant for forfeiture has, for a period of 14 days after the date of the publication of the notice

of forfeiture of the licence or lease in the *Government Gazette*, a right in priority to any other person to mark out or apply for, or both, a mining tenement upon the whole or any part of the land that was the subject of the forfeited licence or lease.

[Section 100 inserted: No. 37 of 1993 s. 14(1); amended: No. 15 of 2002 s. 22; No. 19 of 2010 s. 51.]

101. Application for forfeiture of mining tenement while holder is a company in process of winding up

(1) An application under section 96 or 98 for the forfeiture of a mining tenement for breach of the prescribed expenditure conditions applicable thereto while the holder thereof is a company in respect of which a winding up order has been made or a provisional liquidator has been appointed under the Corporations Law shall not be an action or proceeding for the purposes of subsection (2) of section 471 of that Law (or any provision of that Law which replaces or is substituted for that subsection), and notwithstanding anything therein contained to the contrary, the application may be commenced and proceeded with without the leave of the Supreme Court, and the mining tenement is liable to forfeiture accordingly.

(2) The following matter is declared to be an excluded matter for the purposes of section 5F of the Corporations Act in relation to section 471B of that Act — an application under section 96 or 98 for the forfeiture of a mining tenement for breach of the prescribed expenditure conditions applicable to the tenement while the holder of the tenement is a company in respect of which a winding up order has been made, or a provisional liquidator appointed, under the Corporations Act.

[Section 101 amended: No. 10 of 1982 s. 28; No. 100 of 1985 s. 75; No. 37 of 1993 s. 27; No. 10 of 2001 s. 135; No. 15 of 2002 s. 23; No. 8 of 2009 s. 8.]

Division 7 — Exemption from expenditure conditions

102. Exemption from expenditure conditions

(1) Subject to this Act, on an application (an ***application for exemption***) made, as prescribed, by the holder of a mining tenement (other than a retention licence) or his authorised agent prior to the end of the year to which the proposed exemption relates, or within the prescribed period after the end of that year, the holder may be granted a certificate of exemption in the prescribed form totally or partially exempting the mining tenement to which the application relates from the prescribed expenditure conditions relating thereto, in an amount not exceeding the amount required to be expended —

(a) in respect to any mining tenement other than a mining lease, in any one year; and

(b) in respect to a mining lease, subject to subsection (7), in a period of 5 years.

(1a) An application for exemption may relate to more than one mining tenement.

(2) A certificate of exemption may be granted for any of the following reasons —

(a) that the title to the mining tenement is in dispute; or

(b) that time is required to evaluate work done on the mining tenement, to plan future exploration or mining or raise capital therefor; or

(c) that time is required to purchase and erect plant and machinery; or

(d) that the ground the subject of the mining tenement is for any sufficient reason unworkable; or

(e) that the ground the subject of the mining tenement contains a mineral deposit which is uneconomic but which may reasonably be expected to become economic in the future or that at the relevant time economic or

marketing problems are such as not to make the mining operations viable; or

(f) that the ground the subject of the mining tenement contains mineral ore which is required to sustain the future operations of an existing or proposed mining operation; or

(g) that political, environmental or other difficulties in obtaining requisite approvals prevent mining or restrict it in a manner that is, or subject to conditions that are, for the time being impracticable; or

(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.

(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.

(3) Notwithstanding that the reasons given for the application for exemption are not amongst those set out in subsection (2), a certificate of exemption may also be granted for any other reason which may be prescribed or which in the opinion of the Minister is sufficient to justify such exemption.

(4) When consideration is given to an application for exemption regard shall be had to the current grounds upon which exemptions have been granted and to the work done and the money spent on the mining tenement by the holder thereof.

(4A) A person who wishes to object to the granting of an application for exemption must lodge a notice of objection.

(4B) A notice of objection must be —

(a) lodged within the prescribed time and in the prescribed manner; and

(b) accompanied by the prescribed fee.

(5) An application for exemption —

(a) where an objection to the application is lodged, shall be heard by the warden; but

(b) otherwise, shall be forwarded to the Minister for determination by the Minister.

(6) The warden shall as soon as practicable after the hearing of the application transmit to the Minister for his consideration the notes of evidence and any maps or other documents referred to therein and his report recommending the granting or refusal of the application and setting out his reasons for that recommendation.

(7) Where the warden finds that the reasons given by the holder of the mining lease are sufficient to justify the granting of a certificate of exemption and so recommends, or if the Minister is satisfied whether or not a recommendation is made by the warden, the Minister may grant a certificate of exemption in an amount not exceeding the amount required to be expended in

respect of the mining lease in the period of 5 years from the commencement of the year to which the application relates.

[Section 102 amended: No. 69 of 1981 s. 23; No. 100 of 1985 s. 76; No. 105 of 1986 s. 14; No. 22 of 1990 s. 32; No. 37 of 1993 s. 10(2); No. 15 of 2002 s. 24; No. 39 of 2004 s. 66 and 94; No. 39 of 2022 s. 14.]

102A. Exemption from expenditure conditions in respect of certain holders of exploration licences

(1) Notwithstanding anything in section 102, the Minister may, on payment of the prescribed fee and on the application in writing of the holder of an exploration licence who has been authorised by the Minister under section 111 to explore for iron on the land the subject of the exploration licence, grant that holder a certificate in the prescribed form totally or partially exempting the holder of that licence from the prescribed expenditure conditions relating to the exploration licence in an amount not exceeding the amount required to be expended in any one year.

(1a) An application referred to in subsection (1) may relate to more than one exploration licence.

(2) The refusal by the Minister of an application referred to in subsection (1) does not prevent the holder of the exploration licence concerned from making an application referred to in section 102(1) in respect of that exploration licence.

[Section 102A inserted: No. 122 of 1982 s. 25; amended: No. 100 of 1985 s. 77; No. 15 of 2002 s. 25.]

103. Effect of exemption

Upon the granting of a certificate of exemption pursuant to section 102 or section 102A the holder of a mining tenement to whom it is granted shall be deemed to be relieved, to the extent, and subject to the conditions specified in the certificate, from

his obligations under the prescribed expenditure conditions relating to the mining tenement.

[Section 103 amended: No. 100 of 1985 s. 78.]

[Division 8 deleted: No. 54 of 1996 s. 15.]

Part 4AA — Conditions and approvals

[Heading inserted: No. 31 of 2022 s. 34.]

Division 1 — Preliminary

[Heading inserted: No. 31 of 2022 s. 34.]

103AA. Terms used

In this Part —

approvals statement has the meaning given in section 103AP(1);

closure outcomes means —

(a) in relation to a mining development and closure proposal — the outcomes, objectives or goals to be achieved at the completion of the decommissioning of a proposed mine, and the rehabilitation of the land, the subject of a mining lease or a miscellaneous licence to which the mining development and closure proposal relates; and

(b) in relation to a mine closure plan — the outcomes, objectives or goals to be achieved at the completion of the decommissioning of a mine, and the rehabilitation of the land, in respect of which a mining lease or a miscellaneous licence is granted;

eligible mining activity (***EMA***) has the meaning given in section 103AB(1);

EMA notice has the meaning given in section 103AF(1);

licensed activity means an activity authorised by a miscellaneous licence;

mine closure plan has the meaning given in section 103AR;

programme of work means a programme of work required in order to comply with a condition referred to in section 103AG(3)(b) or (4), 103AH(2)(b) or (3) or 103AI(2)(b) or (3);

relevant information has the meaning given in section 103AO(6).

[Section 103AA inserted: No. 31 of 2022 s. 34.]

Division 2 — Conditions and notices relating to eligible mining activities

[Heading inserted: No. 31 of 2022 s. 34.]

103AB. Eligible mining activities

(1) For the purposes of this Part, the regulations may prescribe an activity done on land the subject of a mining tenement to be an ***eligible mining activity*** (***EMA***) if —

(a) the activity uses machinery to disturb the surface of the land for the purposes of, or in preparation for, mining; and

(b) the activity can be carried out with minimal disturbance to the surface of the land.

(2) For the purposes of subsection (1)(b), an EMA is taken to be carried out with minimal disturbance to the surface of the land if it is carried out in accordance with prescribed requirements.

[Section 103AB inserted: No. 31 of 2022 s. 34.]

103AC. Excluded area notices

(1) The Minister may, by notice (an ***excluded area notice***) in the *Gazette*, declare an area named or described in the notice as an excluded area for the purposes of this Part if the Minister is satisfied that it is not appropriate for an EMA notice to be given in relation to the area.

(2) An EMA notice cannot be given in relation to an area that is the subject of an excluded area notice.

(3) The Minister may, by notice in the *Gazette*, cancel an excluded area notice.

(4) The Minister must keep a register of excluded area notices and make the information on the register publicly available free of charge —

(a) by making the register available during normal office hours at a prescribed place for public inspection; and

(b) by making the register available on a website maintained by the Department.

[Section 103AC inserted: No. 31 of 2022 s. 34.]

103AD. Certain lands excluded from EMAs

An EMA notice cannot be given in relation to —

(a) land, or land of a class, to which section 24, 24A or 25 applies; or

(b) Commonwealth land.

[Section 103AD inserted: No. 31 of 2022 s. 34.]

103AE. Condition relating to carrying out EMAs in accordance with prescribed requirements

(1) Subject to subsection (2), it is a condition of every mining tenement that the holder of the mining tenement must not carry out an EMA on land the subject of the mining tenement otherwise than in accordance with the requirements for carrying out the EMA prescribed under section 103AB(2).

(2) The holder of a mining tenement is not required to comply with subsection (1) in respect of the carrying out of an EMA if —

(a) the EMA is proposed in a programme of work relating to the mining tenement, and approved under section 103AK(1); or

(b) the EMA is proposed in a mining development and closure proposal relating to the mining tenement and approved under section 103AO(1).

(3) Subsection (1) does not affect any obligation the holder of a mining tenement has to comply with a condition referred to in section 103AG(5), 103AH(5), 103AI(5), 103AL(4) or 103AM(4) in relation to the carrying out of an EMA.

[Section 103AE inserted: No. 31 of 2022 s. 34.]

103AF. EMA notices and notices of completion

(1) A notice (an ***EMA notice***) of an EMA required in order to comply with a condition referred to in section 103AG(3)(a), 103AH(2)(a), 103AI(2)(a), 103AL(2)(a) or 103AM(2)(a) must be in the approved form.

(2) The holder of a mining tenement who gives an EMA notice under this Part must, on completing the EMA, give the Minister notice of the completion in the approved form.

(3) The regulations must specify —

(a) the manner in which an EMA notice must be given; and

(b) the period within which a notice of completion must be given under subsection (2).

[Section 103AF inserted: No. 31 of 2022 s. 34.]

Division 3 — Programmes of work

[Heading inserted: No. 31 of 2022 s. 34.]

103AG. Conditions attached to prospecting licences, exploration licences and retention licences

(1) In this section —

relevant licence means —

(a) a prospecting licence; or

(b) an exploration licence; or

(c) a retention licence.

(2) This section applies to an activity done on land the subject of a relevant licence using machinery to disturb the surface of the land for the purposes of, or in preparation for, prospecting or exploring for minerals.

(3) It is a condition of every relevant licence that an activity that is an EMA must not be done by the holder of the relevant licence on land the subject of the relevant licence unless —

(a) the holder has given an EMA notice in respect of the activity; or

(b) the EMA is proposed in a programme of work and approved under section 103AK(1).

(4) It is a condition of every relevant licence that an activity that is not an EMA must not be done by the holder of the relevant licence on land the subject of the relevant licence unless the activity is proposed in a programme of work and approved under section 103AK(1).

(5) It is a condition of every relevant licence that, if an activity on land the subject of the relevant licence is proposed in a programme of work and approved under section 103AK(1), the holder of the relevant licence must not do the activity on the land otherwise than in accordance with the approved programme of work for the activity.

[Section 103AG inserted: No. 31 of 2022 s. 34.]

103AH. Conditions attached to mining leases

(1) This section applies to an activity done on land the subject of a mining lease using machinery to disturb the surface of the land for the purposes of, or in preparation for, prospecting or exploring for minerals but does not apply to mining operations.

(2) It is a condition of every mining lease that an activity that is an EMA must not be done by the lessee on land the subject of the mining lease unless —

(a) the lessee has given an EMA notice in respect of the activity; or

(b) the EMA is proposed in a programme of work and approved under section 103AK(1).

(3) It is a condition of every mining lease that an activity that is not an EMA must not be done by the lessee on land the subject of the mining lease unless the activity is proposed in a programme of work and approved under section 103AK(1).

(4) A lessee of a mining lease is not required to comply with the condition referred to in subsection (2) or (3) in respect of an activity that is proposed in a mining development and closure proposal relating to the mining lease and approved under section 103AO(1).

(5) It is a condition of every mining lease that, if an activity on land the subject of the lease is proposed in a programme of work and approved under section 103AK(1), the lessee must not do the activity on the land otherwise than in accordance with the approved programme of work for the activity.

(6) Unless a Government agreement provides otherwise, this section does not apply to a mining lease granted or held under the agreement in accordance with proposals approved, taken to be approved or determined under the agreement.

[Section 103AH inserted: No. 31 of 2022 s. 34.]

103AI. Conditions attached to miscellaneous licences

(1) This section applies to an activity done on land the subject of a miscellaneous licence using machinery to disturb the surface of the land for the purposes of, or in preparation for, a licensed activity but does not apply to mining operations.

(2) It is a condition of every miscellaneous licence that a licensed activity that is an EMA must not be done by the holder of the miscellaneous licence on land the subject of the miscellaneous licence unless —

(a) the holder has given an EMA notice in respect of the activity; or

(b) the EMA is proposed in a programme of work and approved under section 103AK(1).

(3) It is a condition of every miscellaneous licence that a licensed activity that is not an EMA must not be done by the holder of the miscellaneous licence on land the subject of the miscellaneous licence unless the licensed activity is proposed in a programme of work and approved under section 103AK(1).

(4) A holder of a miscellaneous licence is not required to comply with a condition referred to in subsection (2) or (3) in respect of a licensed activity that is proposed in a mining development and closure proposal relating to the miscellaneous licence and approved under section 103AO(1).

(5) It is a condition of every miscellaneous licence that, if a licensed activity on land the subject of the miscellaneous licence is proposed in a programme of work and approved under section 103AK(1), the holder of the miscellaneous licence must not do the activity on the land otherwise than in accordance with the approved programme of work for the activity.

(6) Unless a Government agreement provides otherwise, this section does not apply to a miscellaneous licence granted or held under the agreement in accordance with proposals approved, taken to be approved or determined under the agreement.

[Section 103AI inserted: No. 31 of 2022 s. 34.]

103AJ. Lodgment of programmes of work

(1) In this section —

relevant lodging party means —

(a) in relation to a programme of work lodged for an activity on land the subject of a prospecting licence, an exploration licence or a retention licence — the holder of the licence, or a person authorised by the holder of the licence; or

(b) in relation to a programme of work lodged for an activity on land the subject of a mining lease — the lessee of the mining lease, or a person authorised by the lessee of the mining lease; or

(c) in relation to a programme of work lodged for a licensed activity on land the subject of a miscellaneous licence — the holder of the miscellaneous licence, or a person authorised by the holder of the miscellaneous licence.

(2) A programme of work required in order to comply with a condition referred to in section 103AG(3)(b) or (4), 103AH(2)(b) or (3) or 103AI(2)(b) or (3) must be lodged with the Minister by the relevant lodging party in accordance with subsection (3).

(3) The programme of work must —

(a) be lodged in the prescribed manner; and

(b) be in the approved form; and

(c) be accompanied by the prescribed assessment fee; and

(d) include any prescribed information.

(4) Before the Minister approves or refuses to approve an activity proposed in a programme of work under section 103AK(1) —

(a) the Minister may request the relevant lodging party —

(i) to lodge a substitute programme of work; or

(ii) to provide such further information as the Minister may require for the purposes of making the decision;

or

(b) the relevant lodging party may, with the written permission of the Minister, lodge a substitute programme of work.

(5) The activity proposed in a substitute programme of work must not be substantially different to the activity proposed in the programme of work it is intended to replace.

(6) A relevant lodging party who has lodged a programme of work or a substitute programme of work may withdraw it, by written notice to the Minister, at any time before the Minister approves or refuses to approve the activity proposed in the programme of work under section 103AK(1).

[Section 103AJ inserted: No. 31 of 2022 s. 34.]

103AK. Approval of activities in programmes of work

(1) The Minister must approve, or refuse to approve, an activity proposed in a programme of work or a substitute programme of work (if any).

(2) The Minister must —

(a) notify the holder of the mining tenement to which the programme of work relates in writing of the Minister's decision under subsection (1); and

(b) if the decision is to refuse to approve the activity, include in the notification the reasons for the refusal.

(3) An approval takes effect when notice of it is given to the holder of the mining tenement to which the programme of work relates.

[Section 103AK inserted: No. 31 of 2022 s. 34.]

Division 4 — Mining development and closure proposals

[Heading inserted: No. 31 of 2022 s. 34.]

103AL. Conditions relating to mining operations on land subject of mining leases

(1) This section applies to the following activities done on land the subject of a mining lease —

(a) using machinery to disturb the surface of the land for the purposes of, or in preparation for, mining operations;

(b) carrying out mining operations.

(2) It is a condition of every mining lease that an activity that is an EMA must not be done by the lessee on land the subject of the mining lease unless —

(a) the lessee has given an EMA notice in respect of the activity; or

(b) the EMA is proposed in a mining development and closure proposal and approved under section 103AO(1).

(3) It is a condition of every mining lease that an activity that is not an EMA must not be done by the lessee on land the subject of the mining lease unless the activity is proposed in a mining development and closure proposal and approved under section 103AO(1).

(4) It is a condition of every mining lease that, if an activity on land the subject of the lease is proposed in a mining development and closure proposal and approved under section 103AO(1), the lessee must not do the activity on the land otherwise than in accordance with the approvals statement for the lease.

(5) Unless a Government agreement provides otherwise, this section does not apply to a mining lease granted or held under the agreement in accordance with proposals approved, taken to be approved or determined under the agreement.

[Section 103AL inserted: No. 31 of 2022 s. 34.]

103AM. Conditions relating to mining operations on land subject of miscellaneous licences

(1) This section applies to the following licensed activities done on land the subject of a miscellaneous licence —

(a) using machinery to disturb the surface of the land for the purposes of, or in preparation for, mining operations;

(b) carrying out mining operations.

(2) It is a condition of every miscellaneous licence that a licensed activity that is an EMA must not be done by the holder of the miscellaneous licence on land the subject of the miscellaneous licence unless —

(a) the holder has given an EMA notice in respect of the activity; or

(b) the EMA is proposed in a mining development and closure proposal and approved under section 103AO(1).

(3) It is a condition of every miscellaneous licence that a licensed activity that is not an EMA must not be done by the holder of the miscellaneous licence on land the subject of the miscellaneous licence unless the licensed activity is proposed in a mining development and closure proposal and approved under section 103AO(1).

(4) It is a condition of every miscellaneous licence that, if a licensed activity on land the subject of the miscellaneous licence is proposed in a mining development and closure proposal and approved under section 103AO(1), the holder of the miscellaneous licence must not do the activity on the land otherwise than in accordance with the approvals statement for the miscellaneous licence.

(5) Unless a Government agreement provides otherwise, this section does not apply to a miscellaneous licence granted or held under the agreement in accordance with proposals approved, taken to be approved or determined under the agreement.

[Section 103AM inserted: No. 31 of 2022 s. 34.]

103AN. Lodgment of mining development and closure proposal

(1) In this section —

relevant lodging party means —

(a) in relation to a mining development and closure proposal lodged for an activity on land the subject of a mining lease — the lessee of the mining lease, or a person authorised by the lessee of the mining lease; or

(b) in relation to a mining development and closure proposal lodged for a licensed activity on land the subject of a miscellaneous licence — the holder of the miscellaneous licence, or a person authorised by the holder of the miscellaneous licence.

(2) A mining development and closure proposal required in order to comply with a condition referred to in section 103AL(2)(b) or (3) or 103AM(2)(b) or (3) must be lodged with the Minister by the relevant lodging party in accordance with subsection (3).

(3) The mining development and closure proposal must —

(a) be lodged in the prescribed manner; and

(b) be in the approved form; and

(c) be accompanied by the prescribed assessment fee; and

(d) include detailed information regarding —

(i) the proposed mining operations to be carried out; and

(ii) the decommissioning of any proposed mine to which the mining development and closure proposal relates; and

(iii) the rehabilitation of land the subject of the mining tenement to which the mining development and closure proposal relates; and

(iv) the closure outcomes;

and

(e) include any prescribed information.

(4) Before the Minister approves, or refuses to approve, an activity proposed in a mining development and closure proposal under section 103AO(1) —

(a) the Minister may request the relevant lodging party —

(i) to lodge a substitute mining development and closure proposal; or

(ii) to provide such further information as the Minister may require for the purposes of making the decision;

or

(b) the relevant lodging party may, with the written permission of the Minister, lodge a substitute mining development and closure proposal.

(5) The activity proposed in a substitute mining development and closure proposal must not be substantially different to the activity proposed in the mining development and closure proposal it is intended to replace.

(6) A relevant lodging party who has lodged a mining development and closure proposal or a substitute mining development and closure proposal may withdraw it, by written notice to the Minister, at any time before the Minister approves or refuses to approve the activity proposed in the mining development and closure proposal under section 103AO(1).

[Section 103AN inserted: No. 31 of 2022 s. 34.]

103AO. Approval of activities in mining development and closure proposals

(1) The Minister must approve, or refuse to approve, an activity proposed in a mining development and closure proposal or a substitute mining development and closure proposal (if any).

(2) If the Minister approves an activity under subsection (1), the Minister must —

(a) record the approval on an approvals statement for the mining lease or the miscellaneous licence to which the mining development and closure proposal relates; and

(b) give a copy of the approvals statement to the lessee of the mining lease or the holder of the miscellaneous licence to which the mining development and closure proposal relates.

(3) If the decision is to refuse to approve the activity, the Minister must notify the lessee of the mining lease or the holder of the miscellaneous licence to which the mining development and closure proposal relates in writing of the Minister's decision and include in the notification the reasons for the refusal.

(4) The Minister may impose conditions on an approval and those conditions must be recorded on the approvals statement.

(5) A condition recorded on an approvals statement has effect for all purposes as a condition to which the mining lease or the miscellaneous licence is subject.

(6) The Minister may record information (the ***relevant information***) provided in a mining development and closure proposal, that is relevant to the nature and extent of the activity in the proposal, on the approvals statement for the mining lease or the miscellaneous licence to which the mining development and closure proposal relates.

(7) An approvals statement takes effect when it is given to the holder of the mining lease or the miscellaneous licence to which

it relates and remains in force until it is cancelled by the Minister.

[Section 103AO inserted: No. 31 of 2022 s. 34.]

103AP. Approvals statements

(1) An ***approvals statement*** is a document that, in relation to a mining lease or a miscellaneous licence, records the following information —

(a) an approval given to an activity on land the subject of the mining lease or the miscellaneous licence proposed in a mining development and closure proposal;

(b) any conditions attached to the approval;

(c) any relevant information;

(d) the closure outcomes included in a mining development and closure proposal relating to the mining lease or the miscellaneous licence;

(e) the date by which a mine closure plan for the land the subject of the mining lease or the miscellaneous licence must be lodged.

(2) An approvals statement must be —

(a) in writing; and

(b) signed by the Minister.

(3) The Minister must make an approvals statement available for public inspection in accordance with the regulations.

[Section 103AP inserted: No. 31 of 2022 s. 34.]

103AQ. Cancellations and variations recorded on approvals statements

(1) The Minister may, on the Minister's own initiative or by application in writing by the lessee of a mining lease or the

holder of a miscellaneous licence to which an approvals statement relates —

(a) cancel an approval given to an activity under section 103AO(1); or

(b) cancel or vary a condition that is recorded on the approvals statement under section 103AO(4); or

(c) vary any relevant information that is recorded on the approvals statement under section 103AO(6).

(2) The Minister must —

(a) record a cancellation or a variation made under subsection (1) on the approvals statement to which the cancellation or variation relates; and

(b) give a copy of the amended approvals statement to the lessee of the mining lease or the holder of the miscellaneous licence to which the approvals statement relates.

(3) A cancellation or a variation made under subsection (1) takes effect on the day recorded on the amended approvals statement.

[Section 103AQ inserted: No. 31 of 2022 s. 34.]

Division 5 — Mine closure plans

[Heading inserted: No. 31 of 2022 s. 34.]

103AR. Contents of mine closure plan

A ***mine closure plan***, for land the subject of a mining lease or a miscellaneous licence, is a planning and reporting document that provides for —

(a) the decommissioning of each mine on the land; and

(b) the rehabilitation of the land; and

(c) the closure outcomes; and

(d) any other prescribed information.

[Section 103AR inserted: No. 31 of 2022 s. 34.]

103AS. Conditions relating to mine closure plans

It is a condition of every mining lease or miscellaneous licence that the lessee of the mining lease or the holder of the miscellaneous licence must lodge a mine closure plan for land the subject of the mining lease or the miscellaneous licence in compliance with section 103AT(1).

[Section 103AS inserted: No. 31 of 2022 s. 34.]

103AT. Lodgment of mine closure plans

(1) The lessee of a mining lease or the holder of a miscellaneous licence, or a person authorised by the lessee of the mining lease or the holder of the miscellaneous licence (as the case requires) must lodge a mine closure plan required in order to comply with the condition referred to in section 103AS —

(a) with the Minister in the prescribed manner; and

(b) on or before the date recorded on the approvals statement for the mining lease or the miscellaneous licence, as the date required for lodgment of the mine closure plan.

(2) The mine closure plan must be in the approved form.

(3) The Minister may extend or vary the date recorded on the approvals statement by which a mine closure plan must be lodged.

(4) If the Minister extends or varies the date under subsection (3), the Minister must —

(a) give the lessee of the mining lease or the holder of the miscellaneous licence (as the case requires) written notice that the date has been extended or varied; and

(b) amend the date recorded on the approvals statement accordingly.

[Section 103AT inserted: No. 31 of 2022 s. 34.]

Division 6 — Other conditions

[Heading inserted: No. 31 of 2022 s. 34.]

103AU. Conditions for preventing, reducing or remediating injury to land and for other purposes

(1) The Minister may impose a condition on a mining tenement for the following purposes —

(a) preventing, reducing or remediating injury to land the subject of the mining tenement or other land;

(b) preventing or reducing the impact of mining on the statutory or public purposes for which land to which section 24 or 24A applies is reserved or managed, or remediating such land.

(2) The condition may be imposed —

(a) in the case of a prospecting licence or a miscellaneous licence —

(i) by the mining registrar, or the warden, on the granting of the licence; or

(ii) by the Minister on the granting of the licence or at any subsequent time;

and

(b) in any other case, by the Minister on the granting of the mining tenement or at any subsequent time.

(3) A condition imposed under subsection (1) may be cancelled or varied by the Minister at any time.

(4) The condition has effect for all purposes, whether or not the condition is endorsed on the mining tenement, on notice of the imposition of the condition being given in writing to the holder of the mining tenement.

(5) Without limiting subsection (1), a condition may be imposed for the purpose of preventing mining operations being carried out within a specified distance of the natural surface of the land the subject of a mining tenement.

[Section 103AU inserted: No. 31 of 2022 s. 34.]

Division 7 — Securities

[Heading inserted: No. 31 of 2022 s. 34.]

103AV. Security for compliance with conditions

(1) The Minister may require the holder of a mining tenement to lodge a security for compliance with any conditions imposed under section 103AO(4) or 103AU(1).

(2) A security referred to in subsection (1) —

(a) must be lodged in the prescribed manner and within the period specified in writing by the Minister; and

(b) is subject to the provisions of section 126.

[Section 103AV inserted: No. 31 of 2022 s. 34.]

Part IVA — Registration of instruments and register

[Heading inserted: No. 54 of 1996 s. 15.]

103A. Terms used

In this Part —

authorised officer means an officer of the Department authorised under section 103B;

tax memorial means a memorial affecting a mining tenement lodged under the *Taxation Administration Act 2003* Part 6 Division 2 for registration under this Act;

withdrawal of memorial means a withdrawal of a tax memorial lodged under the *Taxation Administration Act 2003* section 81 for registration under this Act.

[Section 103A inserted: No. 54 of 1996 s. 15; amended: No. 31 of 2008 s. 14.]

103B. Authorised officers

(1) The Minister may in writing authorise officers of the Department for the purposes of this Part and section 122B.

(2) An authorisation under subsection (1) may be given to a specified officer or to officers of a specified class, or may be given to the holder or holders for the time being of a specified office or class of office.

[Section 103B inserted: No. 54 of 1996 s. 15.]

103C. Registration

(1) This section applies to the following instruments —

(a) a dealing;

(b) a discharge of a mortgage of a legal interest in a mining tenement;

(c) a withdrawal of an application for a mining tenement;

(d) a surrender under section 26A, 65 or 95;

(e) a tax memorial;

(f) a withdrawal of memorial.

(2) An instrument to which this section applies is to be —

(a) lodged for registration in the prescribed manner and prescribed form; and

(b) accompanied by the fee (if any) prescribed in respect of the instrument.

(3) Only an instrument to which this section applies may be registered.

(4) The registration of an instrument is to be effected by an authorised officer.

(5) Subject to section 122D(1), an authorised officer is, unless section 103D applies or the regulations otherwise provide, to enter in the register the time and date of the lodgment of an instrument as the time and date of registration.

(6A) If a tax memorial is registered a notice stating that the memorial has been registered is to be sent by certified mail to the holder of the mining tenement against which the memorial is registered.

(6) Neither the Minister nor an authorised officer is concerned with the effect any instrument lodged under this section may have at law other than for the purposes of this Act.

(7) The acceptance of an instrument for registration does not give to it any priority (other than in so far as registration may be taken to be constructive notice), force, effect or validity that it would not have had if this section had not been enacted.

(8) A dealing does not pass any legal estate or interest in a mining tenement or in any way charge or encumber a mining tenement until it is registered in accordance with this section.

[Section 103C inserted: No. 54 of 1996 s. 15 (as amended: No. 39 of 2004 s. 103(a)); amended: No. 31 of 2008 s. 15.]

103D. Provisional lodgment

(1) If an authorised officer is of the opinion that an instrument lodged for registration contains an error or defect, the authorised officer is —

(a) if satisfied that the error or defect can be corrected, to accept the instrument for provisional lodgment; or

(b) in any other case, to reject the instrument and endorse the register accordingly.

(2) The regulations may provide for the effect to be given to an instrument accepted for provisional lodgment.

[Section 103D inserted: No. 54 of 1996 s. 15.]

103EA. Memorial for unpaid tax

(1) A tax memorial takes effect when it is registered and ceases to have effect when a withdrawal of the memorial is registered.

(2) While a tax memorial registered against a mining tenement is in effect no dealing affecting the mining tenement is to be lodged or registered without the consent of the Commissioner of State Revenue.

(3) If a tax memorial is registered and in effect against —

(a) a mining tenement and the holder of that tenement is granted a mining lease or general purpose lease (the ***later tenement***) under section 49, 67 or 70L in respect of the land or a part of the land the subject of the tenement; or

(b) a mining tenement and the holder of that tenement is granted a retention licence (the ***later tenement***) under section 70B in respect of the land or a part of the land the subject of the tenement; or

(c) a special prospecting licence granted under section 56A, 70 or 85B and the holder of that licence is granted a mining lease for gold (the ***later tenement***) under section 56A(8), 70(8) or 85B(7) in respect of the land or a part of the land the subject of the licence,

the tax memorial is taken to have been also lodged against the later tenement and is to be registered accordingly.

(4) A tax memorial registered in accordance with subsection (3) is taken to have been registered immediately after the later tenement was granted.

[Section 103EA inserted: No. 31 of 2008 s. 16; amended: No. 31 of 2022 s. 35.]

103E. Priority of dealings

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

[Section 103E inserted: No. 54 of 1996 s. 15 (as amended: No. 39 of 2004 s. 103(b)).]

103F. Register

(1) The Director General of Mines is to cause a register to be compiled and maintained.

(2) The register is to contain such particulars, relating to mining tenements and applications for mining tenements, as are prescribed.

(3) The register may be compiled and maintained in such form as the Director General of Mines determines.

(4) A person may, on payment of the prescribed fee, obtain at the Department at Perth or at the office of the mining registrar —

(a) a copy of an entry in the register relating to any mining tenement or application for a mining tenement; and

(b) subject to such requirements, if any, as are prescribed, a copy of a dealing or other instrument recorded in the register.

[Section 103F inserted: No. 54 of 1996 s. 15.]

103G. Amendment of register

(1) A person may apply in the prescribed manner and prescribed form for the amendment of particulars in the register relating to a mining tenement, or an application for a mining tenement, in which that person has an interest.

(2) If, on an application under subsection (1), an authorised officer is satisfied that there is reasonable cause for the amendment, the authorised officer may amend the particulars accordingly.

(3) An authorised officer may amend, add to and correct the register in such manner as is necessary to make the register an accurate record of the particulars it contains.

[Section 103G inserted: No. 54 of 1996 s. 15.]

103H. Regulations relating to register

The regulations may —

(a) prescribe the form a copy is to take for the purposes of section 103F(4)(a) or (b); and

(b) make provision for any other matter relating to the register.

[Section 103H inserted: No. 54 of 1996 s. 15.]

Part V — General provisions relating to mining and mining tenements

104. Entry on land for purpose of marking out, surveying etc.

(1) Subject to this Act, for the purpose of marking out any land and posting notices on any land in connection with an application for a mining tenement, any person or his servant or agent may —

(a) enter and re-enter from time to time on any land with such assistants as he thinks fit; and

(b) affix and set up on the land pegs, marks, posts, cairns of stones and poles, inspect and repair any peg, mark, post, cairn of stones or pole; and

(c) do all such things as may be necessary for the purpose of marking out the land, and posting notices thereon.

(2) Subject to subsections (3) to (5), for the purposes of surveying any land in connection with a mining tenement, any surveyor authorised in that behalf may —

(a) enter and re-enter from time to time on any land, with such assistants as he thinks fit; and

(b) affix and set up on the land survey pegs, marks and poles; and

(c) do all such things as may be necessary for the purposes of the survey.

(3) A person shall not enter on any private land for any purpose referred to in subsection (1) unless he does so pursuant to a permit issued under section 30.

(4) A person shall not, for the purposes specified in subsection (1) or (2), enter on any Commonwealth land or land referred to in section 24 or 25 or a marine nature reserve or marine park except as provided in section 26.

(5) In carrying out any marking out, posting of notices or survey of any land, every person entering on the land under this section shall ensure that no damage is done that with reasonable diligence could be avoided.

[Section 104 amended: No. 5 of 1997 s. 41(2); No. 51 of 2012 s. 31.]

105. Marking out of mining tenement

(1) Except as provided in subsection (2), before an application for a mining tenement other than an exploration licence, a retention licence or a miscellaneous licence is made, the land in relation to which the mining tenement is sought shall be marked out in the prescribed manner and in the prescribed shape, and for the purpose of any claim for compensation for loss or damage suffered or likely to be suffered resulting or arising therefrom under section 123, or for an order under section 124(2), the activities involved in the marking out shall be taken to be activities relating to prospecting and, as such, to constitute mining.

(2) The holder of a prospecting licence, exploration licence or retention licence may make an application for the grant of a mining lease or general purpose lease in respect of any part of the land the subject of the licence without first marking out the land in relation to which the lease is sought if the holder includes with the application —

(a) a statement of the grounds of the application; and

(b) evidence supporting the statement.

(3) The statement must specify that, in the opinion of the holder of the licence, it is not possible for the land in relation to which the lease is sought to be accessed by or on behalf of the holder for the purpose of marking out as a result of 1 or more of the following —

(a) any law;

(b) any order of a court, tribunal or person acting judicially;

(c) an act or omission of —

(i) a department of the Public Service; or

(ii) a State agency or instrumentality; or

(iii) a local government, regional local government or regional subsidiary; or

(iv) a body, whether incorporated or not, or the holder of an office, post or position, that is established or continued for a public purpose under a written law; or

(v) a brigade as defined in the *Fire Brigades Act 1942* section 4(1);

(d) any disaster or emergency, including a disaster or emergency caused by —

(i) fire, storm, flood, lightning, landslide or earthquake; or

(ii) the holder or any other person;

(e) any revolution, insurrection, riot or other civil disturbance;

(f) any vandalism, sabotage or other form of malicious damage of property;

(g) any war (whether declared or undeclared) or military operation;

(h) any strike, lock-out or other industrial dispute;

(i) any other circumstance beyond the control of the holder of the licence.

(4) If the holder of the licence makes an application in reliance on subsection (2), the holder must —

(a) mark out the land in relation to which the lease is sought in the prescribed manner and in the prescribed shape —

(i) as soon as practicable after it becomes possible for the land to be accessed; or

(ii) if the mining registrar is not satisfied that the evidence provided under subsection (2)(b) demonstrates that it is not possible for the land to be accessed and specifies, in writing, a day by which the land must be marked out — by the end of the specified day; or

(iii) if the mining registrar is satisfied that it has become possible for the land to be accessed and specifies, in writing, a day by which the land must be marked out — by the end of the specified day;

and

(b) as soon as practicable after the land is marked out, provide the mining registrar with evidence that the land has been marked out.

(5) The activities involved in marking out under subsection (4)(a) are taken to be activities relating to prospecting and to constitute mining for the purpose of any claim under section 123 for compensation for loss or damage suffered, or likely to be suffered, resulting or arising from marking out —

(a) under subsection (4)(a); or

(b) for the purposes of an order under section 124(2).

[Section 105 amended: No. 100 of 1985 s. 79; No. 105 of 1986 s. 16; No. 22 of 1990 s. 33; No. 37 of 1993 s. 10(2) and 16; No. 51 of 2012 s. 32; No. 39 of 2022 s. 15.]

105A. Priorities between applicants for certain tenements

(1) Subject to section 111A, where more than one application is received for a mining tenement (other than a miscellaneous licence) in respect of the same land or any part thereof, the applicant who first complies with the initial requirement in

relation to his application has, subject to this Act, the right in priority over every other applicant to have granted to him in respect of that land or part the mining tenement to which his application relates.

(2) In subsection (3) ***applicant*** means an applicant for a prospecting licence, exploration licence, mining lease or general purpose lease.

(3) Where in respect of any land the warden is satisfied that 2 or more applicants complied with the initial requirement in relation to their applications at the same time or within a prescribed period, priority shall, unless written agreement is concluded by the applicants and lodged in the prescribed manner and within the prescribed time, be determined by ballot conducted by the warden on a date to be determined by the warden and notified to the applicants.

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

(4) In this section a reference to compliance with the initial requirement in relation to an application is a reference —

(a) in the case of an application for an exploration licence, to lodging that application in the prescribed manner;

(b) in the case of an application for a prospecting licence, mining lease or general purpose lease —

(i) unless subparagraph (ia), (ii) or (iii) applies, to marking out the land concerned in the prescribed manner;

(ia) where the land concerned is land to which section 65(6) applies, lodging that application in the prescribed manner;

(ii) where the land concerned is wholly covered by the sea or the waters of any lake, pond, river or stream, to lodging that application in the prescribed manner;

(iii) where the land concerned is partly covered by the sea or the waters of any lake, pond, river or stream, to marking out in the prescribed manner so much of that land as is not so covered.

(5) If the warden is satisfied that 2 or more applications for a mining tenement have been lodged by or on behalf of the same party for the purpose of affecting the result of a ballot to be conducted under subsection (3), the warden may exclude all but one of those applications from the ballot.

(6) For the purposes of subsection (5) an application for a mining tenement is taken to have been lodged by or on behalf of a party if it is lodged by or on behalf of a person who is related to that party.

[Section 105A inserted: No. 69 of 1981 s. 24; amended: No. 100 of 1985 s. 80; No. 1 of 1986 s. 6; No. 22 of 1990 s. 34; No. 37 of 1993 s. 17 and 26; No. 58 of 1994 s. 42; No. 15 of 2002 s. 26; No. 39 of 2004 s. 67 and 95; No. 12 of 2010 s. 36; No. 31 of 2022 s. 36.]

105B. Grant of tenement subject to survey

The grant of a mining tenement shall be deemed to have been made subject to a condition that the land applied for is found to have been available for the purposes of that grant after a survey has been made of the tenement.

[Section 105B inserted: No. 100 of 1985 s. 81.]

106. Offence of destroying marks or obstructing surveyor etc.

A person who —

(a) without lawful authority removes, destroys or alters the position of, any peg, notice, survey peg, mark, post, cairn of stones or pole used for the purposes of any marking out or survey made or being made under section 104; or

(b) wilfully damages, destroys or otherwise interferes with any peg, survey peg, mark, post, cairn of stones, pole erected or notice posted for the purposes of this Act; or

(c) wilfully obstructs, hinders, or interferes with any person lawfully engaged in marking out or surveying any land under that section,

is guilty of an offence against this Act.

[Section 106 amended: No. 122 of 1982 s. 26; No. 100 of 1985 s. 82.]

107. Areas covered by water not required to be marked out

Notwithstanding anything to the contrary in this Act, if any area in respect of which an application for a mining tenement is to be made is wholly or partly covered by the sea or the waters of any lake, pond, river or stream, it shall not be necessary to mark out the area or part of the area so covered.

108. Rent payable for mining tenement

In respect of each mining tenement there shall be payable by the holder thereof at the times respectively prescribed, such rent as may be respectively prescribed.

*[**109, 109A.** Deleted: No. 7 of 2025 s. 10.]*

110. Mining lease restricted to certain minerals

Notwithstanding anything to the contrary in this Act, the Minister may, having regard to the locality wherein the land the subject of an application for a mining lease is, and if the Minister considers it is in the public interest to do so, grant the applicant a mining lease that authorises the holder thereof to mine on or under or both, and remove from the land the subject of the mining lease, only such mineral as is specified in the lease.

[Section 110 amended: No. 57 of 1997 s. 89(4).]

111. Iron authorisations

(1) Notwithstanding the provisions of sections 48, 66, 70J and 85 —

(a) a prospecting licence does not authorise the holder thereof to prospect for iron on the land the subject of the prospecting licence;

(b) an exploration licence does not authorise the holder thereof to explore for iron on the land the subject of the exploration licence;

(ba) a retention licence does not authorise the holder thereof to explore for iron on the land the subject of the retention licence;

(c) a mining lease does not authorise the holder thereof to work and mine the land in respect of which the lease was granted for iron,

unless the Minister, by instrument in writing under his hand, authorises such holder so to do and endorses the prospecting licence, exploration licence, retention licence or mining lease, as the case requires, accordingly.

(2) A reference to a licence or lease in subsection (1) does not include a reference to a licence or lease granted on an application made on or after the commencement of the *Licensing Provisions Amendment Act 2016* section 23.

[Section 111 amended: No. 37 of 1993 s. 10(2); No. 54 of 1996 s. 23; No. 44 of 2016 s. 23.]

111A. Minister may terminate or summarily refuse certain applications

(1) The Minister may —

(a) by notice served on the mining registrar or the warden, as the case requires, terminate an application for a mining tenement before the mining registrar or the

warden has determined, or made a recommendation in respect of, the application; or

(b) refuse an application for a mining tenement,

if in respect of the whole or any part of the land to which the application relates —

(c) the Minister is satisfied on reasonable grounds in the public interest that —

(i) the land should not be disturbed; or

(ii) the application should not be granted;

or

(d) a person who in relation to the land was formerly the lessee of a mining lease the term of which has expired, or is a person deriving title through such a former lessee, has subsequently made a late renewal application and the Minister, being satisfied that the requirements of that expired mining lease and of this Act in relation to that lease had been substantially observed (other than as to the timing of an application for renewal) and that the person has continued to observe those requirements as if the term of the lease had not expired, determines that the renewal application should be approved and grants that renewal.

(2) In subsection (1)(d) ***late renewal application*** means an application made in the manner prescribed for the purposes of section 78 (except that it was not made during the final year of the term of the lease) for the renewal of the lease with effect from the expiry of the term of the lease.

(3) Notwithstanding anything in this Act, an application to which a notice referred to in subsection (1)(a) applies ceases to have any effect for the purposes of this Act when that notice is served.

(4) The powers conferred by subsection (1) are in addition to any other powers of the Minister under this Act.

[Section 111A inserted: No. 58 of 1994 s. 44.]

112. Reservation in favour of Crown on prospecting licence or exploration licence to take rock etc.

(1) Subject to subsection (2), every prospecting licence and exploration licence is subject to a reservation in favour of the Crown and any person authorised thereby of the right to enter thereon and remove therefrom any rock, stone, clay, sand or gravel for use for any public purpose or for use in any prescribed work or undertaking.

(2) A prospecting licence or exploration licence granted —

(a) wholly in respect of private land is not subject to the reservation referred to in subsection (1); or

(b) partly in respect of any private land and partly in respect of land other than private land is not subject to the reservation referred to in subsection (1) in relation to that private land; or

(c) wholly in respect of Commonwealth land is not subject to the reservation referred to in subsection (1); or

(d) partly in respect of any Commonwealth land and partly in respect of land other than Commonwealth land is not subject to the reservation referred to in subsection (1) in relation to that Commonwealth land.

[Section 112 amended: No. 69 of 1981 s. 26; No. 51 of 2012 s. 33.]

113. Repossession of land on expiry, surrender or forfeiture of mining tenement

When a mining tenement expires or is surrendered or forfeited, the owner of the land to which the mining tenement related may take possession of the land forthwith, subject to any estate or interest held by any other person other than under that mining tenement.

114. Removal of mining plant on expiry, surrender or forfeiture of mining tenement

(1) In this section —

mining plant means any building, plant, machinery, equipment, tools or any other property of any kind whether affixed to land or not so affixed;

prescribed period means a period of 3 months after a mining tenement expires or is surrendered or forfeited or such longer period thereafter as the Minister from time to time or in any particular case determines and is hereby authorised to determine.

(2) When a mining tenement expires or is surrendered in whole or in part or forfeited —

(a) the person who was the holder of the mining tenement immediately prior to such expiry, surrender or forfeiture; or

(b) any other person,

who is entitled to any mining plant lawfully erected or brought onto the land or the part of the land to which the mining tenement related by a former holder thereof or any predecessor in title, may, within the prescribed period, remove any such mining plant.

(3) Where any such mining plant is not so removed within the prescribed period, the Minister may, at any time thereafter, call upon such holder or other person as is referred to in subsection (2) to show cause, within such period as the Minister may determine, why any mining plant that has not been so removed should not be sold and removed.

(4) Where such holder or person does not, within the period determined by the Minister, show cause to the satisfaction of the Minister why any such mining plant should not be sold and removed, the Minister may direct the mining plant to be sold by public auction and be removed.

(5) The proceeds of the sale of any mining plant pursuant to subsection (4), after deducting the cost of and incidental to the sale or the sale and the removal of the mining plant, shall be paid to such holder of the mining tenement or other person as is referred to in subsection (2), of whose claim thereto the Minister has had notice in writing prior to the payment of the proceeds.

(6) The Minister shall determine whether or not any mining plant shall be allowed to remain on the land that was the subject of the mining tenement and if so, the period for which it may so remain and the amount of rent that shall be paid for the use and occupation of the land on which the mining plant is allowed to remain and to whom the rent shall be due and payable.

(7) Where —

(a) a mining tenement expires or is surrendered in whole or in part or forfeited; and

(b) at the time of that expiry, surrender or forfeiture, the person (in this subsection called the ***former holder***) who was the holder of the mining tenement immediately before its expiry, surrender or forfeiture leaves any tailings or other mining product upon the land or part of the land that was the subject of the mining tenement,

the tailings or other mining product become or becomes the property of the Crown —

(c) at the expiration of the prescribed period, if the former holder does not —

(i) remove; or

(ii) *bona fide* treat and continue to treat,

the tailings or other mining product within that period; or

(d) at the expiration of a period of 3 months from the time when, in the opinion of the Minister, treatment of the tailings or other mining product is discontinued, if the former holder, having commenced treatment of the tailings or other mining product within the prescribed

period, discontinues that treatment after the expiration of the prescribed period.

(8) The Minister shall determine the amount of rent that shall be paid for the use and occupation of the land on which the tailings or other mining product are allowed to remain and the land used in relation to the treatment of the tailings or other mining product and to whom the rent shall be due and payable.

(9) Nothing in this section affects any valid agreement made by the holder of a mining tenement with the owner or occupier of any land to which the tenement relates in respect of mining plant or tailings or other mining product left on such land after the prescribed period, and this section shall be construed subject to such an agreement.

(10) Notwithstanding the foregoing provisions of this section, no timber or other material used and applied in the construction or support of any shaft, drive, gallery, adit, terrace, race, dam or other mining work shall be removed without the consent in writing of the Minister.

[Section 114 amended: No. 37 of 1993 s. 18.]

114A. Rights conferred under mining tenement exercisable in respect of mining product belonging to Crown

Where a provision of this Act confers on the holder of a mining tenement (other than a miscellaneous licence) rights in respect of land that is the subject of that mining tenement, the holder of the mining tenement may exercise those rights in respect of any tailings or other mining product left upon that land or any part of that land if —

(a) at the time the mining tenement was granted, the tailings or other mining product were or was the property of the Crown; or

(b) during the term of the mining tenement the tailings or other mining product become or becomes the property of the Crown,

by virtue of section 114(7) or clause 7(5) of the Second Schedule.

[Section 114A inserted: No. 37 of 1993 s. 19(1).]

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; or

(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.

[Section 114B inserted: No. 39 of 2004 s. 96.]

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.

[Section 114C inserted: No. 39 of 2004 s. 96.]

115. Power to enter on land for surveys

(1) When and as often as the Director, Geological Survey or any other officer of the Department or any person working in conjunction with that Department and acting under the Director's instructions considers it necessary to enter upon any land for the purpose of making any aerial, geological, geophysical or geochemical surveys of the land and drilling thereon in the course of his official duties he may —

(a) enter and re-enter on the land, with such assistants as he considers necessary for the purpose of making the survey thereon; and

(b) extract and remove from the land any geological specimens or samples that in his opinion are necessary to the survey; and

(c) affix to or set up on the land such pegs, marks, poles or other equipment as may be required for the purposes of the survey; and

(d) do all such things as he considers necessary for the purposes of the survey or for any inspection or alteration of it.

(2) Before a person enters on any land pursuant to this section, he shall if practicable, give reasonable notice to the owner and occupier of the land of his intention to do so, and shall, if required by the owner or occupier of the land, produce the authority under which he claims to enter or to have entered the land.

(3) In relation to the exercise of a power under this section —

(a) the owner and occupier of the land are entitled to compensation according to their respective interests, for any damage caused by a survey under this section; and

(b) in default of agreement as to the amount of compensation to be paid, the amount shall be assessed and settled by the warden's court under Part VII.

(4) A person who —

(a) wilfully obstructs, hinders, or interferes with any person lawfully engaged in connection with a survey that is being made under this section; or

(b) without lawful authority removes, destroys or alters the position of, any peg, mark, pole or other equipment used for the purposes of any such survey; or

(c) wilfully damages or destroys or otherwise interferes with any peg, mark, pole or other equipment so used,

is guilty of an offence against this Act.

[Section 115 amended: No. 100 of 1985 s. 84; No. 39 of 2004 s. 85.]

115A. Mineral exploration reports

(1) In this section —

guidelines means guidelines published under the regulations;

mineral exploration report means a report containing records of the progress and results of —

(a) programmes involving the application of one or more of the geological sciences;

(b) drilling programmes;

(c) activities involving the collection and assaying of soil, rock, groundwater and mineral samples,

that have been carried out in search for minerals;

operations report means a report of the kind required under section 51, 68(3), 70H(1)(f) or 82(1)(e).

(2) The holder of a mining tenement shall file a mineral exploration report, or cause a mineral exploration report to be filed —

(a) in conjunction with an operations report in such circumstances as are set out in the guidelines; and

(b) whenever required to do so by the Minister by notice in writing.

(3) A mineral exploration report is to be filed in the prescribed manner and is to be in the form required by the guidelines and is to contain information of the kind required by the guidelines.

(4) The Minister may, under the guidelines, approve of arrangements for combined mineral exploration reports to be filed for 2 or more mining tenements and mineral exploration reports can be filed under those arrangements despite the requirement of subsection (2)(a) for them to be filed in conjunction with operations reports.

(5) The Minister may, under the guidelines, cancel arrangements referred to in subsection (4).

[Section 115A inserted: No. 58 of 1994 s. 45; amended: No. 12 of 2010 s. 37.]

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 tenement to file an audit statement, or cause an audit statement to be filed, in the prescribed manner and 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.

[Section 115B inserted: No. 39 of 2004 s. 97(1); amended: No. 12 of 2010 s. 38.]

116. Instrument of licence or lease

(1) The holder of a mining tenement granted pursuant to this Act is entitled, on payment of the prescribed fee, to receive an instrument of licence or lease as the case may be in such form as may be prescribed.

(2) Except in the case of fraud, a mining tenement granted or renewed under this Act shall not be impeached or defeasible by reason or on account of any informality or irregularity in the application or in the proceedings previous to the grant or renewal of that tenement and no person dealing with a registered holder of a mining tenement shall be required or in

any way concerned to inquire into or ascertain the circumstances under which the registered holder or any previous holder was registered, or to see to the application of any purchase or consideration money, or be affected by notice, actual or constructive, of any unregistered trust or interest any rule of law or equity to the contrary notwithstanding, and the knowledge that any such unregistered trust or interest is in existence shall not of itself be imputed as fraud.

(3) In subsection (2) —

registered, in relation to a holder or previous holder of a mining tenement, means that the name of the holder or previous holder is or was entered in the register as the holder of the mining tenement.

[Section 116 amended: No. 100 of 1985 s. 85; No. 54 of 1996 s. 16; No. 51 of 2012 s. 34.]

117. Mining tenements protected

(1) Subject to the provisions of sections 56A, 70 and 85B as regards the special prospecting licences and mining leases therein referred to, no Crown grant, transfer of Crown land in fee simple, or conveyance nor the grant of any mining tenement has the effect of revoking or injuriously affecting any existing mining tenement acquired and held under this or the repealed Act, whether or not any reservation or exception of that existing mining tenement is contained in the Crown grant, transfer of Crown land in fee simple, or conveyance or the grant of the mining tenement.

(2) Each such Crown grant, transfer of Crown land in fee simple, or conveyance and each such grant of a mining tenement shall be deemed to contain an express reservation of the rights to which the holder of the existing mining tenement is entitled.

[Section 117 amended: No. 100 of 1985 s. 86; No. 37 of 1993 s. 12(2); No. 31 of 1997 s. 71(17) and (18).]

118. Notice of application to be given to lessee of pastoral lease or diversification lease

Where any land comprised in an application for a mining tenement is held subject to a pastoral lease or a lease otherwise granted by or on behalf of the Crown for grazing purposes only or a diversification lease, the applicant shall within the prescribed period, post a copy of the application together with a map on which are clearly delineated the boundaries of the land in respect of which the mining tenement is sought by registered post or certified mail to the holder of that lease at his usual or last known place of abode or business.

[Section 118 amended: No. 122 of 1982 s. 27; No 100 of 1985 s. 87; No. 22 of 1990 s. 36; No. 37 of 1993 s. 20; No. 31 of 1997 s. 141; No. 4 of 2023 s. 134.]

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.

[Section 118A inserted: No. 39 of 2004 s. 98(1).]

119. Mining tenement may be sold, encumbered etc.

(1) Subject to this Act a mining tenement may be sold, encumbered, transmitted, seized and sold to satisfy a judgment, or otherwise disposed of.

(2) A legal or equitable interest in or affecting a mining tenement is not capable of being created, assigned, affected or dealt with, whether directly or indirectly, except by an instrument in writing signed by the person creating, assigning or otherwise dealing with the interest.

[Section 119 amended: No. 10 of 1982 s. 28; No. 37 of 1993 s. 27; No. 58 of 1994 s. 46; No. 59 of 2004 s. 116.]

119A. Mining tenement may be mortgaged

(1) A mining tenement or share in a mining tenement may be mortgaged as security for the repayment of money advanced or agreed to be advanced or for the discharge of any liability.

(2) If there are 2 or more mortgages affecting the same legal interest in a mining tenement, the mortgages take priority according to the time and date of their registration.

(3) A mortgage —

(a) has effect only as security for the repayment of the money intended to be secured by the mortgage and not as an assignment of the mining tenement; and

(b) may cover all buildings, improvements, machinery and appliances in or upon the land comprised in the mining tenement.

(4) The regulations may provide that a mortgage is deemed to contain prescribed provisions unless the mortgage contains express provision to the contrary.

[Section 119A inserted: No. 54 of 1996 s. 17.]

120. Planning schemes to be considered but not to derogate from this Act

(1) In considering any application for the grant of a mining tenement the Minister, warden or mining registrar, as the case requires, shall take into account the provisions of any planning scheme in force under the *Planning and Development Act 2005* affecting the use of the land concerned, but the provisions of any such scheme shall not operate to prohibit or affect the granting of a mining tenement or the carrying out of any mining operations authorised by this Act.

(2) Without affecting subsection (1), where —

(a) an application has been made for a mining lease or a general purpose lease; and

(b) the local government or the Western Australian Planning Commission has, in writing, informed the Minister and the Minister for the time being administering the *Planning and Development Act 2005*, that the mining lease or general purpose lease would, if granted, authorise the carrying on of mining operations contrary to the provisions of a planning scheme referred to in subsection (1),

the Minister shall not dispose of the application until he has first consulted the Minister for the time being administering the *Planning and Development Act 2005* and obtained his recommendation thereon.

[Section 120 amended: No. 58 of 1994 s. 47; No. 14 of 1996 s. 4; No. 24 of 2000 s. 26(2); No. 38 of 2005 s. 15.]

120AA. Scheme for reversion licence applications

(1) In this section —

continuing licence means a prospecting licence, exploration licence or retention licence that has effect in relation to land to which a reversion licence application applies;

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).

(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 applications for a prospecting licence or an exploration licence 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; and

(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 continuing licence held by the applicant;

and

(c) priority as between reversion licence applications and other mining tenement applications; and

(d) the circumstances in which objections may be made to reversion licence applications; and

(e) the operation and effect of prospecting licences and exploration licences granted as a result of reversion licence applications; and

(f) the refund of rent paid in respect of a lease application or lease applications if a 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.

(8) An order under subsection (2) has effect despite any other provision of this Act.

(9) Despite sections 18, 23 and 27, a reversion licence application may be made in respect of land that is the subject of a mining tenement if the mining tenement is a continuing licence held by the applicant.

(10) Section 40(1)(b) or (c) of the *Mining Amendment Act 1990* does not apply if the land that has become available from an existing licence, as defined in section 40(3) of that Act, has been included in a reversion licence application and a prospecting licence is granted in respect of that application.

[Section 120AA inserted: No. 39 of 2004 s. 99; amended: No. 27 of 2005 s. 11]

Part 5A — Royalties

[Heading inserted: No. 7 of 2025 s. 11.]

Division 1 — General provisions about royalties

[Heading inserted: No. 7 of 2025 s. 11.]

120A. Terms used

(1) In this Part —

information includes —

(a) accounting or other records; and

(b) a document;

investigator —

(a) means a person appointed to be an investigator under section 120J(1); and

(b) if section 120J(2) applies — includes the Commissioner of State Revenue;

premises includes —

(a) a structure, building, vehicle, vessel or aircraft; and

(b) a place (whether or not enclosed or built on); and

(c) a part of a thing referred to in paragraph (a) or (b);

royalty investigation purpose has the meaning given in section 120I(2);

royalty payer means a person who is, or may be, liable to pay a royalty for a mineral.

(2) In this Part, a reference to a mineral includes a reference to a material containing that mineral.

(3) In Divisions 2 to 4, a reference to a royalty for a mineral includes a reference to additional rent (as defined in section 120E(1)) payable for the mining tenement from which the mineral is obtained.

[Section 120A inserted: No. 7 of 2025 s. 11.]

120B. Royalty payable

A royalty is payable to the State for a mineral obtained from a mining tenement, or from land the subject of an application for a mining tenement, as prescribed, including at the rate prescribed.

[Section 120B inserted: No. 7 of 2025 s. 11.]

120C. Prescription of royalty

The regulations may deal with the royalties payable for a mineral, including by dealing with the following matters —

(a) prescribing how, when and by whom a royalty for a mineral is payable;

(b) prescribing the rate of royalty, or basis for calculating the royalty, payable for a mineral or class of mineral;

(c) prescribing different rates of royalty, or different bases for calculating a royalty, for different minerals or classes of mineral;

(d) for the purposes of calculating the rate of royalty payable, authorising the Minister to decide the method for valuing a mineral or class of mineral;

(e) authorising the Minister to decide the rate of royalty, or basis for calculating the royalty, for a mineral that applies in prescribed circumstances;

(f) exempting a person, or class of persons, from paying a royalty for a mineral —

(i) subject to conditions or unconditionally; or

(ii) generally or in a specified case or class of case; or

(iii) wholly or to a specified extent;

(g) providing that contravention of a regulation relating to royalties, or providing information relevant to the assessment and calculation of a royalty, is an offence.

Example for this section:

For the purposes of paragraph (d), a method for valuing a mineral is to value the mineral using the fair market price of the mineral in the form in which it is first sold.

[Section 120C inserted: No. 7 of 2025 s. 11.]

120D. Requirement for royalty return

(1) A person who is required, under the regulations, to pay a royalty for a mineral obtained from a mining tenement, or from land the subject of an application for a mining tenement, must lodge a return (a ***royalty return***) in relation to the royalty.

(2) The royalty return must comply with, and be lodged in the way required by, the regulations.

[Section 120D inserted: No. 7 of 2025 s. 11.]

120E. Additional rent payable for mining tenement

(1) Rent for a mining tenement (***additional rent***) is payable to the State as prescribed, including at the rate prescribed, in addition to the rent payable for the tenement under section 108.

(2) The regulations may deal with the additional rent payable for a mining tenement, including by —

(a) prescribing how, when and by whom the additional rent is payable; and

(b) prescribing the rate of the additional rent.

(3) Regulations prescribing the rate of additional rent under subsection (2)(b) must provide for the additional rent to be calculated, wholly or partly, by reference to the quantity or value of the mineral obtained from the tenement.

(4) A person who is required, under the regulations, to pay additional rent for a mining tenement must lodge a return in relation to the rent.

(5) The return must comply with, and be lodged in the way required by, the regulations.

[Section 120E inserted: No. 7 of 2025 s. 11.]

Division 2 — Verification of royalties payable

[Heading inserted: No. 7 of 2025 s. 11.]

120F. Determination of royalty

(1) This section applies if the Minister is satisfied —

(a) a royalty has not been paid; or

(b) the amount of a royalty was not properly assessed or calculated.

(2) The Minister may determine the amount of the royalty, taking into account the information available to the Minister.

(3) The Minister may base a determination under subsection (2) on an estimate of the amount of the royalty if the Minister is satisfied that the information available to make a determination is inadequate or unreliable.

(4) Before finalising the determination, the Minister must give a royalty payer a notice —

(a) stating that the Minister is determining the amount of the royalty under this section; and

(b) setting out the way in which the Minister proposes to determine the amount; and

(c) inviting the person to make submissions about the proposed determination on or before the day specified in the notice.

(5) On making the determination, the Minister must consider any submissions made by the royalty payer on or before the specified day.

(6) The Minister may determine the amount of the royalty under this section even if the Minister accepts a certificate about the determination of the royalty given to the Minister under section 120H.

[Section 120F inserted: No. 7 of 2025 s. 11.]

120G. Notice of royalty determination

(1) When the Minister determines the amount of a royalty under section 120F, the Minister must give the royalty payer a notice about the determination.

(2) The notice must state —

(a) the amount of royalty the Minister determined is payable; and

(b) if an amount of the royalty has been paid — whether the amount determined is more or less than the amount paid; and

(c) if an amount of the royalty remains unpaid —the day by which the amount must be paid; and

(d) if an amount of royalty has been overpaid —the amount of the overpayment and that the overpaid amount will be paid or credited to the royalty payer.

[Section 120G inserted: No. 7 of 2025 s. 11.]

120H. Certificate verifying assessment of royalty

(1) In this section —

independent assessor means —

(a) a person registered, or taken to be registered, as an auditor under the Corporations Act Part 9.2; or

(b) otherwise, a person approved as an independent assessor by the Minister under subsection (5).

(2) This section applies if the Minister gives a royalty payer notice that the Minister considers it is necessary to verify the amount of a royalty payable for a specified period.

(3) The Minister may accept the certificate of an independent assessor that the royalty appears to have been properly assessed and calculated for the specified period.

(4) The certificate must —

(a) be signed by an independent assessor; and

(b) state the amount of the royalty paid or payable; and

(c) set out sufficient information about how the amount was assessed and calculated to enable the assessment and calculation to be verified; and

(d) be prepared at the cost of the royalty payer.

(5) The Minister may approve a person as an independent assessor if the Minister is satisfied the person is suitably qualified or experienced to provide a certificate under this section.

[Section 120H inserted: No. 7 of 2025 s. 11.]

Division 3 — Investigations

[Heading inserted: No. 7 of 2025 s. 11.]

120I. Purposes of investigations

(1) An investigation may be carried out under this Division for any or all of the following purposes —

(a) to ascertain whether a royalty is payable in relation to a mining operation;

(b) to determine the amount of a royalty payable for a mineral and related matters, including, for example —

(i) the rate at which a royalty is payable; or

(ii) the method to be used to value the mineral; or

(iii) the price for which the mineral is or may be sold and the way the mineral is priced;

(c) to gather information about —

(i) the storage, transport, processing or marketing of a mineral, or other matters that affect the value of a mineral; or

(ii) accounting methods used to calculate or assess the amount of a royalty payable.

(2) A purpose mentioned in subsection (1) is a ***royalty investigation purpose***.

[Section 120I inserted: No. 7 of 2025 s. 11.]

120J. Investigators

(1) The Minister may appoint a person as an investigator for this Part.

(2) If the Minister's power under subsection (1) is delegated to the Commissioner of State Revenue under section 12(2), the Commissioner is also an investigator for this Part.

(3) An investigator must be issued an identity card that includes —

(a) a statement to the effect that the person identified by the card is an investigator for this Part; and

(b) a photograph of the investigator.

(4) If a person to whom an identity card is issued ceases to be an investigator, the person must immediately return the card.

Penalty for this subsection: a fine of $20 000.

[Section 120J inserted: No. 7 of 2025 s. 11.]

120K. Power to enter land or premises

(1) An investigator may, for a royalty investigation purpose, enter —

(a) land on which mining operations are carried out, including any premises on the land; or

(b) premises used to prepare accounting or other records relating to mining operations; or

(c) if the investigator believes, on reasonable grounds, that a mineral derived from mining operations, or documents or other records relating to the mineral, are present on any other land or at any other premises — the other land or premises.

(2) However, the investigator can only enter land or premises under subsection (1)(c) if —

(a) the investigator believes, on reasonable grounds, that an offence against this Act, or a breach of the conditions of a mining tenement, has been, is being, or is about to be committed; or

(b) the entry is in accordance with the consent of the occupier of the land or premises.

[Section 120K inserted: No. 7 of 2025 s. 11.]

120L. Powers of investigation while on land or premises

(1) An investigator may exercise the powers under this section in relation to land or premises entered under section 120K for a royalty investigation purpose.

(2) The investigator may, in relation to the land or premises —

(a) inspect or examine —

(i) any mining operations carried out on the land or premises; or

(ii) any mining product or mineral in relation to which a royalty is or, in the investigator's opinion, may be, payable;

or

(b) inspect or examine, and make copies of or take extracts from, any document or other record that, in the investigator's opinion, relates to the mining operations, mining product or mineral mentioned in paragraph (a).

(3) The investigator may require a person apparently in charge of the land or premises to provide the investigator with assistance and facilities reasonably necessary for effectively exercising the investigator's powers.

(4) A person must not, without reasonable excuse, fail to provide assistance or facilities required of the person under subsection (3).

Penalty for this subsection: a fine of $5 000.

[Section 120L inserted: No. 7 of 2025 s. 11.]

120M. Power to require person to provide information

(1) In this section —

relevant information means information related to —

(a) a mining tenement or land the subject of an application for a mining tenement; or

(b) mining operations; or

(c) a mineral derived from mining operations.

(2) An investigator may require a person to produce to the investigator relevant information in the person's possession or control if, in the investigator's opinion, the information is necessary for the purpose of —

(a) ascertaining whether a royalty is payable in relation to a mining operation; or

(b) determining the amount of a royalty payable for a mineral.

(3) The requirement is made by giving the person a written notice that specifies —

(a) the information to be produced; and

(b) the time and place for the information to be produced.

(4) Despite subsection (3), if an investigator has entered land or premises under section 120K, the notice under subsection (3) —

(a) may be given orally; and

(b) may require the information to be produced immediately to the investigator.

(5) A person must comply with a requirement under this section within the time specified in the notice under subsection (3) or (4), or within any further time allowed by the investigator, unless the person has a reasonable excuse.

Penalty for this subsection: a fine of $5 000.

[Section 120M inserted: No. 7 of 2025 s. 11.]

120N. Obstruct or hinder investigator

A person must not, without reasonable excuse, obstruct or hinder an investigator exercising or attempting to exercise the investigator's powers.

Penalty: a fine of $5 000.

[Section 120N inserted: No. 7 of 2025 s. 11.]

120O. False or misleading information

A person must not provide information relating to a royalty to the Minister or an investigator knowing it to be false or misleading in a material particular.

Penalty: a fine of $5 000.

[Section 120O inserted: No. 7 of 2025 s. 11.]

120P. Royalty penalty following conviction

(1) This section applies if a royalty payer is convicted of an offence against section 120L(4), 120M(5), 120N or 120O in relation to —

(a) a mining tenement of which the royalty payer is a holder; or

(b) land the subject of an application for a mining tenement for which the royalty payer is an applicant.

(2) The Minister may, taking into account the information available to the Minister, estimate the amount of royalty that would have been payable for a mineral obtained from the mining tenement or land if the contravention giving rise to the conviction had not occurred.

(3) The Minister may decide that the royalty payer is liable to pay a penalty of an amount, not more than 50% of the estimated amount of the royalty, decided by the Minister.

(4) The Minister must give the royalty payer a notice about the estimate of royalty that states the following —

(a) the amount of royalty the Minister estimates is payable;

(b) if an amount of the royalty has been paid — whether the amount estimated is more or less than the amount paid;

(c) if an amount of the royalty remains unpaid — the amount that remains unpaid and that the royalty payer is liable to pay the amount;

(d) if an amount of the royalty has been overpaid — the amount of the overpayment and that the overpaid amount will be paid or credited to the royalty payer;

(e) if the Minister decided under subsection (3) that the royalty payer is liable to pay a penalty — that fact and the amount of the penalty payable;

(f) if the royalty payer is liable to pay an amount mentioned in paragraph (c) or (e) — the day by which the amount must be paid.

[Section 120P inserted: No. 7 of 2025 s. 11.]

120Q. Consequences of failure to pay royalty penalty

(1) This section applies if the Minister gives a royalty payer a notice under section 120P(4) that states the royalty payer is liable to pay an amount by a specified day and the royalty payer fails to pay the amount as required.

(2) The royalty payer's failure to pay the amount is taken to be —

(a) in the case of a mining tenement — a breach of a covenant under the mining tenement for the royalty payer to pay royalty in respect of the tenement that is sufficient grounds for the tenement to be forfeited; or

(b) in the case of an application for a mining tenement — reasonable grounds in the public interest that the application should not be granted for the purposes of section 111A.

[Section 120Q inserted: No. 7 of 2025 s. 11.]

Division 4 — General

[Heading inserted: No. 7 of 2025 s. 11.]

120R. Disclosure and use of royalty information

(1) In this section —

disclose includes give and give access to;

royalties information means information —

(a) obtained in, or in connection with, the administration or collection of royalties for minerals; or

(b) that is otherwise relevant to the administration or collection of royalties for minerals and is obtained in, or

in connection with, performing a function under this Act.

(2) A person who obtains royalties information because of the person's office, position, employment or engagement under or for the purposes of this Act may record, disclose or use the information —

(a) for the purpose of, or in connection with, the person, or another person, performing a function under this Act; or

(b) as permitted or required by —

(i) regulations made under section 162(2)(x) or otherwise by this Act; or

(ii) another law that specifically or by necessary implication overrides the duty of confidentiality imposed by this section;

or

(c) for the purposes of legal proceedings arising out of the administration of this Act to which the person whose affairs the information relates is a party; or

(d) with the written consent of the person to whom the information relates.

(3) A person to whom royalties information is disclosed under subsection (2) may record, disclose or use the information —

(a) if the information is disclosed to the person for the purpose of, or in connection with, performing a function under this Act — also in accordance with subsection (2); or

(b) otherwise — for the purpose for which the information was disclosed.

(4) Subsection (2) authorises a person to disclose royalties information to the Minister or another Minister.

(5) A person mentioned in subsection (2) or (3) commits an offence if the person, directly or indirectly, records, discloses or uses

royalties information in a way that is not authorised under those subsections.

Penalty for this subsection: a fine of $10 000.

(6) This section does not limit the disclosure or use of statistical or summary information if the identity of a particular person or mining operation cannot reasonably be ascertained from the information.

[Section 120R inserted: No. 7 of 2025 s. 11.]

120S. Time limit for prosecution action

(1) This section applies in relation to an offence against this Part of —

(a) failing to provide information relevant to the assessment of a royalty; or

(b) failing to pay a royalty.

(2) Despite section 160B, a prosecution for the offence may, with the consent of the Minister, be commenced more than 3 years after the day on which the offence is alleged to have been committed.

[Section 120S inserted: No. 7 of 2025 s. 11.]

120T. Recovery of unpaid royalty

(1) An amount of unpaid royalty is a debt due to the State that may be recovered by action in a court of competent jurisdiction.

(2) The Minister may appoint a person to represent the State in court proceedings for the recovery of unpaid royalty.

(3) An appointed representative may represent the Minister in accordance with the appointment.

[Section 120T inserted: No. 7 of 2025 s. 11.]

Part VI — Caveats

[Heading inserted: No. 54 of 1996 s. 18.]

121. Terms used

In this Part, unless the contrary intention appears —

absolute caveat means a caveat referred to in section 122A(1)(a);

caveat means an absolute caveat, a consent caveat or a subject to claim caveat;

consent caveat means a caveat referred to in section 122A(2);

subject to claim caveat means a caveat referred to in section 122A(1)(b).

[Section 121 inserted: No. 54 of 1996 s. 18.]

122. Certain surrenders not affected by this Part

(1) A reference in this Part (other than this section) to a surrender does not include a surrender under section 26A or 65.

(2) Where —

(a) a surrender under section 26A or 65 is registered under section 103C; and

(b) the surrender affects a mining tenement or an interest in a mining tenement that is the subject of a caveat,

notification of the registration of the surrender is to be sent by or on behalf of the Minister in the prescribed manner to the person who lodged that caveat.

[Section 122 inserted: No. 54 of 1996 s. 18.]

122A. Lodgment of caveats

(1) A person claiming an interest in a mining tenement may lodge —

(a) a caveat against the mining tenement forbidding the registration of a dealing or surrender affecting the mining tenement or interest; or

(b) a caveat against the mining tenement forbidding the registration of —

(i) a dealing affecting the mining tenement or interest unless the dealing expressly states that it is to be subject to the interest claimed by the caveator; or

(ii) a surrender affecting the mining tenement or interest.

(2) If —

(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) the agreement so provides,

either party to the agreement may lodge a caveat against the mining tenement forbidding the registration of a dealing or surrender affecting the mining tenement or interest together with a copy of the agreement.

(3) A caveat lodged under this section is to —

(a) be in the prescribed form; and

(ba) be lodged in the prescribed manner; and

(b) be accompanied by the prescribed fee; and

(c) state the full name and address of the caveator; and

(d) be signed by the caveator or an agent of the caveator; and

(e) give an address within the State for the service of notices and proceedings in relation to the caveat.

(4) If a caveat is lodged under this section —

(a) a memorial or copy of the caveat is to be entered in the register; and

(b) except in the case of a consent caveat lodged by the holder of a mining tenement, a notice stating that the caveat has been lodged is to be sent by certified mail to the holder of the mining tenement affected by the caveat.

(5) Subject to section 122B, a caveat lodged under this section has effect from the time of lodgment.

(6) Successive caveats shall not be lodged by, or on behalf of, the same person in respect of the same subject matter except with the consent of a warden.

[Section 122A inserted: No. 54 of 1996 s. 18 (as amended: No. 39 of 2004 s. 104(a) and (b)); amended: No. 12 of 2010 s. 39.]

122B. Provisional lodgment

(1) If an authorised officer (as defined in section 103A) is of the opinion that a caveat lodged under section 122A contains an error or defect, the officer is —

(a) if satisfied that the error or defect can be corrected, to accept the caveat for provisional lodgment; or

(b) in any other case, to reject the caveat and endorse the register accordingly.

(2) The regulations may provide for the effect to be given to a caveat accepted for provisional lodgment.

[Section 122B inserted: No. 54 of 1996 s. 18.]

122C. Caveats deemed to be lodged against later tenements

(1) If a caveat has been lodged against —

(a) a mining tenement and the holder of that tenement is granted a mining lease or general purpose lease (the ***later tenement***) under section 49, 67 or 70L in respect of the land or a part of the land the subject of the tenement; or

(b) a mining tenement and the holder of that tenement is granted a retention licence (the ***later tenement***) under section 70B in respect of the land or a part of the land the subject of the tenement; or

(c) a special prospecting licence granted under section 56A, 70 or 85B and the holder of that licence is granted a mining lease for gold (the ***later tenement***) under section 56A(8), 70(8) or 85B(7) in respect of the land or a part of the land the subject of the licence,

the caveat is taken to have been also lodged against the later tenement and a memorial to that effect is to be entered in the register.

(2) A caveat to which subsection (1) applies has effect, in relation to a later tenement, from the day on which the later tenement is granted.

[Section 122C inserted: No. 54 of 1996 s. 18; amended: No. 31 of 2022 s. 37.]

122D. Effect of caveat

(1) A dealing or surrender affecting the subject matter of a caveat shall not be registered under section 103C while the caveat remains in force, except with the consent of a warden.

(2) Subsection (1) does not apply to a dealing if —

(a) the caveat concerned is a subject to claim caveat; and

(b) the dealing is expressed to be subject to the interest claimed by the caveator.

[Section 122D inserted: No. 54 of 1996 s. 18 (as amended: No. 39 of 2004 s. 104(c)).]

122E. Duration of caveat

(1) An absolute caveat or a subject to claim caveat ceases to have effect upon —

(a) the direction of a warden for the removal of the caveat; or

(b) the withdrawal of the caveat by the caveator or an agent of the caveator; or

(c) the expiry of a period of 14 days after notification that —

(i) in the case of an absolute caveat, application has been made for the registration of a dealing or surrender affecting the subject matter of the caveat; or

(ii) in the case of a subject to claim caveat, application has been made for the registration of a dealing or surrender affecting the subject matter of the caveat that is not expressed to be subject to the interest claimed by the caveator,

has been sent by or on behalf of the Minister by certified mail to the caveator at the address for service given in the caveat, unless within that period a warden otherwise directs.

(2) A consent caveat ceases to have effect upon —

(a) the direction of a warden for the removal of the caveat; or

(b) the withdrawal of the caveat by consent of the parties to the agreement; or

(c) the expiry of the period of time, if any, specified in the agreement.

(3) If a caveat ceases to have effect under this section a memorial to that effect is to be entered in the register.

(4) In subsection (2) —

agreement means the agreement referred to in section 122A(2).

[Section 122E inserted: No. 54 of 1996 s. 18 (as amended: No. 39 of 2004 s. 104(d)-(f)).]

Part VII — Compensation

123. Compensation in respect of mining

(1) On and after the coming into operation of the *Mining Amendment Act 1985*, in so far as the mineral is by virtue of section 9 the property of the Crown or the mining is authorised under this Act no compensation shall be payable in any case, and no claim lies for compensation, whether under this Act or otherwise —

(a) in consideration of permitting entry on to any land for mining purposes; or

(b) in respect of the value of any mineral which is or may be in, on or under the surface of any land; or

(c) by reference to any rent, royalty or other amount assessed in respect of the mining of the mineral; or

(d) in relation to any loss or damage for which compensation can not be assessed according to common law principles in monetary terms.

(2) Subject to this section and to sections 124 and 125, the owner and occupier of any land where mining takes place are entitled according to their respective interests to compensation for all loss and damage suffered or likely to be suffered by them resulting or arising from the mining, whether or not lawfully carried out in accordance with this Act, and a person mining thereon is liable to pay compensation in accordance with this Act for any such loss or damage, or likely loss or damage, resulting from any act or omission on his part or on the part of his agents, sub-contractors or employees or otherwise occasioned with his authority.

(2a) A reference in subsection (2) to ***mining*** shall be construed as including a reference to marking out in connection with an application for a mining tenement.

(3) The amount of compensation payable to the owner of private land or to an occupier of Crown land or private land may be determined by agreement, but in default of agreement —

(a) if the owner or occupier, respectively, and the person liable for payment of the compensation so consent, may be determined by the warden's court, without requiring any formal proceedings to be taken, pursuant to a claim made in the prescribed manner; and

(b) in any other case, shall be determined by the warden's court in formal proceedings, upon the application of the owner, the occupier or the person liable for the payment of the compensation.

(4) Subject to subsection (1) and subsection (7) and taking into account the matters referred to in section 124 and section 125, the amount payable under subsection (2) to which an owner or occupier may be found to be entitled may include compensation for —

(a) being deprived of the possession or use, or any particular use, of the natural surface of the land or any part of the land; and

(b) damage to the land or any part of the land; and

(c) severance of the land or any part of the land from other land of, or used by, that person; and

(d) any loss or restriction of a right of way or other easement or right; and

(e) the loss of, or damage to, improvements; and

(f) social disruption; and

(g) in the case of private land that is land under cultivation, any substantial loss of earnings, delay, loss of time, reasonable legal or other costs of negotiation, disruption to agricultural activities, disturbance of the balance of the agricultural holding, the failure on the part of a person concerned in the mining to observe the same

laws or requirements in relation to that land as regards the spread of weeds, pests, disease, fire or erosion, or as to soil conservation practices, as are observed by the owner or occupier of that land; and

(h) any reasonable expense properly arising from the need to reduce or control the damage resulting or arising from the mining,

and where the use for mining purposes of aircraft over or in the vicinity of any land (whether or not private land) occasions damage that damage shall be deemed to have been occasioned by an entry on the land thereby affected.

(5) If any private land or improvement thereon adjoining or in the vicinity of land where mining takes place is injured or depreciated in value by the mining or by reason of the occupation of any portion of the surface or enjoyment by the holder of a mining tenement or of any right of way, the owner and occupier of the private land or improvements thereon are entitled severally to compensation for all loss or damage thereby sustained and the amount of compensation shall be determined in the manner provided in this section.

(6) Where mining operations are carried out on or under any land the subject of a mining tenement and damage is thereby caused to the surface or part of the surface of any private land comprised within the boundaries of the land the subject of the mining tenement belonging to the same or another owner, or to any improvement on any such private land, not being damage already determined under this Part, the owner and occupier of the private land or improvement are entitled severally to compensation for all loss or damage thereby sustained, and the amount of the compensation shall be determined in the manner provided by this section.

(7) Subject to section 124, a person who holds any land —

(a) which is leased to or held by that person under a pastoral lease or a lease or concession otherwise granted by or on

behalf of the Crown for grazing purposes only or a diversification lease or which is Crown land leased for the use and benefit of the Aboriginal inhabitants; and

(b) in respect of which a mining tenement has been granted,

(in this section called the ***lessee***) is entitled to be compensated by the holder of that mining tenement for —

(c) subject to section 125, any damage to improvements on that land caused by the holder and for any loss —

(i) suffered by the lessee; and

(ii) resulting from that damage;

and

(d) notwithstanding anything in section 125, any substantial loss of earnings —

(i) suffered by the lessee; and

(ii) resulting or arising from mining by the holder.

(8) In an action in the warden's court for compensation pursuant to this Act, if the warden's court considers it impracticable or inexpedient to determine the amount of compensation to be paid in full satisfaction the warden's court may on the application of a party to the claim for compensation or of its own motion give judgment or make a determination as to the compensation payable in respect of any specified period and in respect of the whole or part of the total claim for compensation.

(9) A determination made by the warden's court under subsection (3) is, for the purposes of section 147(1), a final determination of the warden's court.

[Section 123 amended: No. 69 of 1981 s. 27; No. 100 of 1985 s. 93; No. 105 of 1986 s. 17 and 18; No. 37 of 1993 s. 26; No. 54 of 1996 s. 23; No. 31 of 1997 s. 141; No. 39 of 2004 s. 85; No. 12 of 2010 s. 12 and 40; No. 4 of 2023 s. 135.]

124. Matters to be considered by warden's court in relation to compensation

(1) Without limiting or otherwise affecting the powers conferred on a warden's court by this Act, a warden's court when considering matters relating to compensation under this Act, shall take into consideration —

(a) any work that the person has carried out or undertakes to carry out to make good injury to the surface of the land or injury to anything on the surface of the land;

(b) the amount of any compensation that the owner and occupier or either of them have or has already received in respect of the loss or damage for which compensation is being assessed, and shall deduct the amount already so received from the amount that they would otherwise be entitled to for such loss or damage.

(2) Upon the hearing of a claim for compensation under section 123, an order may be made requiring the person by or on whose behalf the mining was authorised to restore, so far as is reasonably practicable, the surface of the land that was damaged thereby.

(3) Before an order is made under subsection (2) consideration shall be given to the following matters —

(a) the geographical location of the land to which the claim for compensation relates and its environment;

(b) the purpose for which such land was used before the mining operations commenced and the purpose for which such land is likely to be used after the mining operations have ceased;

(c) the cost to restore the surface of the land relative to the whole of the cost of and in relation to such mining operations and the profitability thereof;

(d) the practicability of restoring the surface of the land after such mining operations have ceased.

[Section 124 amended: No. 69 of 1981 s. 28; No. 100 of 1985 s. 94; No. 39 of 2004 s. 85.]

125. Limitation on compensation

Except where and then only to the extent agreed upon by the parties concerned or authorised by the warden's court, compensation is not payable under this Part to a person who is the ***lessee*** of any land for the purposes of section 123(7) —

(a) for deprivation of the possession of the surface or any part of the surface of the land;

(b) for damage to the surface of the land;

(c) where the lessee is deprived of the possession of the surface of any land, for severance of the land from any other land of the lessee;

(d) for surface rights of way and easements.

[Section 125 amended: No. 100 of 1985 s. 95; No. 105 of 1986 s. 19.]

125A. Liability for payment of compensation to native title holders

(1) If compensation is payable to native title holders for or in respect of the grant of a mining tenement, the person liable to pay the compensation is —

(a) if an amount is to be paid and held in trust, the applicant for the grant of, or the holder of, the mining tenement at the time the amount is required to be paid; or

(b) otherwise, the applicant for the grant of, or the holder of, the mining tenement at the time a determination of compensation is made.

(2) If, at the relevant time, there is no holder of the mining tenement because the mining tenement has been surrendered or forfeited or has expired, a reference in subsection (1) to the

holder of the mining tenement is a reference to the holder of the mining tenement immediately before its surrender, forfeiture or expiry.

(3) In subsection (1) —

grant includes extension or renewal;

native title holders has the same meaning as in the *Native Title Act 1993* of the Commonwealth.

[Section 125A inserted: No. 61 of 1998 s. 16.]

126. Securities

(1) A security referred to in section 26, 52(1), 60(1), 70F(1), 84A(1) or 103AV(1) —

(a) shall be for such amount —

(i) in the case of a security referred to in section 26 or 103AV(1), as the Minister in a particular case approves (including any variation of that amount under subsection (1a)); or

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

and

(b) shall be in the prescribed form or such other form as the Minister in a particular case approves; and

(c) may, subject to the approval of the Minister, be by bond or such other method as the Minister allows, or be partly by bond and partly by such other method as the Minister allows.

(1a) The Minister may by instrument in writing vary an amount approved under subsection (1)(a)(i).

(2) A security given in accordance with the prescribed form or a form approved by the Minister, although it is not sealed, binds the person subscribing it as if it were sealed.

(3) Whenever a security under this section is put in suit the production of the security, without further proof, entitles the Minister to judgment against the person appearing to have executed the security for the amount of his stated liability or for such lesser amount as is claimed, unless that person proves compliance with the conditions of the security or that the security was not executed by him or release or satisfaction.

(4) If it appears to the court before which the security is in suit that a non-compliance with a condition of a security under this section has occurred, the security shall not be deemed to have been discharged or invalidated, and the subscriber shall not be deemed to have been released or discharged from liability, by reason of —

(a) any extension of time or other concession; or

(b) any consent to, or acquiescence in, a previous non-compliance with a condition; or

(c) any failure to bring suit against the subscriber upon the occurrence of a previous non-compliance with the condition.

(5) If there are several subscribers to the security they are bound, unless the security otherwise provides, jointly and severally and for the full amount.

(6) A security given under this section shall not be enforced except with the written approval of the Minister.

(7) The Minister may discharge, in whole or in part, a security given under this section —

(a) on receipt of an application in writing by the person subscribing to the security accompanied by evidence satisfactory to the Minister showing cause why the security should be discharged; or

(b) on the Minister's own initiative, if the Minister considers it appropriate to do so.

(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.

[Section 126 amended: No. 100 of 1985 s. 96; No. 37 of 1993 s. 10(2); No. 17 of 1999 s. 19; No. 39 of 2004 s. 41; No. 31 of 2022 s. 38.]

Part VIII — Administration of justice

127. Establishment of wardens' courts

(1) The Governor may, by Order in Council —

(a) establish wardens' courts at such places in the State as he thinks necessary;

(b) assign to any warden's court such mineral field or district thereof, as he thinks fit;

(c) alter the place at which a warden's court is established;

(d) discontinue the holding of a warden's court at any place;

(e) cancel the assignment of a mineral field or district thereof to a warden's court and assign it to another warden's court.

(2) When the holding of a warden's court is discontinued, or any mineral field or district thereof is no longer assigned to that court, all proceedings pending in that court and all the records thereof, or such of the proceedings and such of the records as relate to the mineral field or district thereof, as the case requires, shall be transferred to and be continued in such other warden's court as the Governor by Order in Council directs.

[Section 127 amended: No. 100 of 1985 s. 97; No. 59 of 2004 s. 116.]

128. Warden's court to be court of record

Each warden's court shall be a court of record, and shall have an official seal which shall be judicially noticed.

129. Signing of process

All summonses, judgment orders, warrants and other process issued out of a warden's court shall be signed by the warden or the mining registrar.

130. Times for holding warden's court

A warden's court may be held at such times as the warden, from time to time, appoints.

[Section 130 amended: No. 39 of 2004 s. 68.]

131. Power of warden to act in absence of warden usually presiding

Where the warden who usually presides in a warden's court is for any reason unable to do so, any other warden may act in his place and while so acting has all the powers, duties and authorities of the warden for whom he is acting.

[Section 131 amended: No. 100 of 1985 s. 98; No. 39 of 2004 s. 69.]

132. Jurisdiction of warden's court

(1) A warden's court has jurisdiction to hear and determine all such actions, suits and other proceedings cognizable by any court of civil jurisdiction as arise in respect of —

(a) the area, dimensions, or boundaries of mining tenements;

(b) the title to, and ownership or possession of, mining tenements or mining products;

(c) water to be used for mining and any questions or disputes relating thereto;

(d) trespass or encroachment upon, or injuries to, mining tenements;

(e) specific performance of contracts relating to mining tenements or mining;

(f) transfers and other dispositions of, and charges upon, mining tenements;

(g) trusts relating to mining tenements or mining;

(h) partnerships relating to mining tenements or mining, the existence, formation, and dissolution thereof, the taking of accounts connected therewith, the contribution of the partners as between themselves and the determination of all questions arising between the partners;

(i) contribution by or between persons holding joint or several interests in mining tenements towards rent or other expenses in relation thereto;

(j) encroachment or trespass upon, or injury to, land by reason of mining, whether the land is held under this Act or otherwise;

(k) encroachments upon, injuries to, and matters affecting roads, tramways, railroads or other property of whatever kind constructed, held or occupied under this Act;

(l) the partition, sale, disposal, or division of any mining property, or the proceeds thereof, held by 2 or more persons having conflicting interests therein,

and generally all rights claimed in, under or in relation to any mining tenement or purported mining tenement, or relating to any matter in respect of which jurisdiction is under any provision of this Act conferred upon the warden's court.

(2) Every warden's court has jurisdiction throughout the State, including any area that comes within paragraph (b) of the definition of ***land*** in section 8(1), but any action, suit or other proceeding within the jurisdiction of a warden's court in respect of, or in relation to, any mining tenement shall be brought in the warden's court for the mineral field or the district thereof assigned to the court and in which the mining tenement is.

(3) Where a warden's court is satisfied that any action, suit or other proceeding pending in the court has been erroneously brought before the court, or could more conveniently be dealt with in

another warden's court, the court may, notwithstanding subsection (2), order the mining registrar of the court —

(a) to transmit a copy of the record of the proceedings to the mining registrar of such other court; and

(b) to give notice thereof to the parties to the action, suit or proceeding.

(4) When the mining registrar receives a copy of the record transmitted to him pursuant to subsection (3) —

(a) he shall appoint a day for the hearing or further hearing or other consideration of the action, suit or proceeding so transmitted; and

(b) he shall give notice thereof to the parties thereto,

and the action, suit or proceeding shall be heard or considered accordingly.

[Section 132 amended: No. 39 of 2004 s. 70 and 85; No. 12 of 2003 s. 10.]

133. Offences to be dealt with by magistrate

A court of summary jurisdiction dealing with an offence under this Act is to be constituted by a magistrate.

[Section 133 inserted: No. 59 of 2004 s. 114.]

134. Powers of warden's court

(1) A warden's court has power to make orders on all matters within its jurisdiction, for —

(a) the enforcement of contracts;

(b) the awarding of damages or compensation;

(c) the appointment of receivers;

[(d) deleted]

(e) the determination of the area, extent, dimensions or boundaries of any mining tenement or as to the

respective rights of the owner of the primary tenement and the special prospecting licence or mining lease for gold granted in relation to that tenement pursuant to section 56A, 70 or 85B;

(f) the declaration or enforcement of any trust relating to mining tenements or mining operations and the product thereof;

(g) the declaration of any partnership proved to exist between any persons, the taking of accounts relating thereto, the determination of contributions between the partners therein, and the settlement of all questions arising in relation thereto;

(h) the dissolution of mining partnerships and the division of the property thereof between the parties entitled thereto either by sale, partition or otherwise, as may be agreed between the parties or as the warden's court, in case of dispute, may order;

(i) the partition, sale, disposal, or division of any mining property, or the proceeds thereof, held by 2 or more persons having conflicting interests therein;

(j) the cessation or suspension by any party of any mining operations or works in connection therewith causing or likely to cause, injury to any other party,

and generally for the determination and settlement of all actions, claims, questions and disputes properly brought before the warden's court, and for the enforcement and carrying out of any order previously made, and for awarding or apportioning costs in any such proceedings.

(2) The costs of all proceedings in the warden's court under this Act shall be in the discretion of the court and the amount thereof may be determined by the court or taxed by the warden or the mining registrar, as the court may direct.

(3) A warden's court at any stage of any proceedings pending therein may, of its own motion, or on the application of any party to those proceedings, order —

(a) the adding, joining, substituting, or striking out of any party in, to, for or from those proceedings;

(b) any person having the possession, custody, or control of any minerals or other chattels to which those proceedings relate, to deposit the minerals or chattels with such person at such time and place as is specified in the order pending any further order with respect thereto;

(c) the valuation, sale or other disposal of any such mineral or such chattels of any person;

(d) the appropriation and delivery of any such minerals or chattels or any portion or part thereof or proceeds thereof, to any person in or towards the satisfaction of any order made against the owner thereof for the payment of any sum of money;

(e) the seizure of any such minerals or chattels by any bailiff or other person specified in the order and the detention thereof pending any further order with respect thereto;

(f) the cessation or suspension at any time and from time to time of any mining operations or works, or the carrying on thereof under the direction or control of some person appointed by the warden's court, for such period as seems necessary to the court;

(g) that any person shall do, or refrain from doing, as the case may require, any such act or thing upon or in relation to any mining tenement or property the subject matter of any proceeding as the court thinks fit;

(h) the measurement or survey of any land or mining tenement or part thereof, and the making of plans and drawings thereof by any person duly qualified for the particular purpose;

(i) the inspection of any land, mine or works by any specified person, and the taking of samples of any mineral or that a report thereon be made to the warden's court by any specified person;

(j) the taking of accounts by any specified person in relation to any mining partnership or to the respective shares or interests of any person interested in any mining property, mining tenement or mineral;

(k) the payment to any person or into court of any sum of money, or the giving of security therefor, for or towards the expenses of carrying out or giving effect to any such order, or for the payment of costs,

and any such order may be made upon such terms or conditions as to costs, compensation, security or otherwise, as the court thinks fit.

(4) Without affecting the exercise by the court of its other powers, the power conferred by subsection (3)(g) may be exercised by the court of its own motion or on the application of any person prior to the commencement of an action or other proceeding in the court, if the court is satisfied that the applicant has sufficient grounds for making the application.

(5) Subject to this Act and without affecting the jurisdiction of a warden's court, a warden's court has and may exercise in relation to all matters relating to any civil proceeding under this Act the like powers and authorities as are conferred upon the Supreme Court.

(6) In all respects, except as expressly provided by or under this Act, the practice and procedure of a warden's court as a court of civil jurisdiction shall be the same as the practice and procedure of the Magistrates Court in like matters.

[Section 134 amended: No. 100 of 1985 s. 99; No. 37 of 1993 s. 12(2); No. 39 of 2004 s. 71 and 85; No. 59 of 2004 s. 116.]

135. Summary determination by warden by consent

(1) Upon the request in writing of all parties to a dispute relating to a matter within the jurisdiction of a warden's court, the warden's court may hear and determine the question in dispute forthwith or at any time or place which it may appoint without requiring any formal proceedings to be taken.

(2) An order made by the warden's court in a case to which subsection (1) refers has the same force and effect as if made upon formal proceedings in the court, and the order is final and conclusive, and not subject to appeal.

(3) The warden's court shall keep a record, in a register kept for the purpose, of every matter determined under this section by it and of its decision thereon.

[Section 135 amended: No. 100 of 1985 s. 100; No. 39 of 2004 s. 72.]

136. Practice and procedure in warden's court

(1) Subject to this Act the practice and procedure of a warden's court shall be governed by the rules of court made by the Governor and until provision is made by rules of court, or where no provision, or insufficient provision is made by this Act or the rules of court in relation to any act, matter or thing, the rules of court of the Magistrates Court, for the time being in force, so far as applicable, apply to the warden's court, but without limiting the jurisdiction conferred by this Act on a warden's court.

(2) The rules of court may provide in particular that the appropriate provisions of the *Magistrates Court (Civil Proceedings) Act 2004*, with such modifications as may be necessary or desirable and specified in the rules of court, apply in respect of judgments and orders of the warden's court.

(3) The rules of court may provide for documents to be lodged with or issued by a warden's court, or served, in an electronic form.

[Section 136 amended: No. 105 of 1986 s. 21; No. 59 of 2004 s. 116; No. 12 of 2010 s. 41.]

137. Records of evidence

(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), (3) deleted]

(4) Any party to any proceedings in which evidence has been recorded in accordance with this section, is entitled to obtain a copy of that evidence in the prescribed form upon payment of the prescribed fee.

(5) Each order and decision of a warden's court, and in any contested proceeding the reasons for the order made or decision given, shall be reduced to writing, and signed by the warden presiding in the court that made the order or gave the decision.

(6) Any person may obtain a copy of the order or decision referred to in subsection (5) upon payment of the prescribed fee.

[Section 137 amended: No. 100 of 1985 s. 101; No. 39 of 2004 s. 73.]

138. Mode of trial

(1) The hearing of all proceedings in a warden's court shall be in open court, at the time and place appointed therefor, and all evidence shall be taken on oath, for which purpose a warden, the mining registrar or other person acting as the clerk of the warden's court is empowered to administer an oath.

(2) Where a warden's court, for any reason cannot be held at the time and place so appointed, the warden or in his place the

mining registrar, may adjourn it to such time and place as the warden or the mining registrar, as the case may be, appoints.

(3) A warden's court at any time may adjourn the hearing of any proceedings in such manner and upon such terms as to costs or otherwise, as the court thinks fit.

(4) A warden's court may, of its own motion, at any time during the hearing of any proceedings in the warden's court, call any expert witness to give evidence in relation to any technical matter arising in the course of those proceedings, but before doing so it shall give to each party to the proceedings reasonable notice of its intention so to do.

[Section 138 amended: No. 39 of 2004 s. 74.]

139. Contempt of court

(1) Where a person in or during the course of any proceedings in a warden's court insults or threatens the warden or any officer of the court, or interrupts or obstructs the proceedings of the court, or in any other manner is guilty of any contempt in the face of the court, the warden may direct any officer of the court, or any police officer to take such person into custody and to detain him until the rising of the court or until further order.

(2) At any time before the rising of the court the warden may direct such person to be brought before the court, and may impose upon him a fine not exceeding $1 000 or a sentence of imprisonment not exceeding 14 days or both the fine and the imprisonment.

(3) When a person fails to pay any fine imposed under subsection (2) the warden may order that person to be imprisoned for a term not exceeding 14 days.

(4) At any time before or after the making of any order under this section, the warden may accept an apology from the offender and may discharge the order, if any, previously made and release the offender.

[Section 139 amended: No. 22 of 1990 s. 38.]

140. Judgments, enforcement of

(1) In this section —

judgment includes an order, direction or decision.

(2) A person to whom money is to be paid under a judgment of a warden's court may enforce it by lodging a copy of it, certified by the mining registrar, and an affidavit stating to what extent it has not been complied with, with a court of competent jurisdiction.

(3) If, or to the extent that, a judgment of a warden's court does not require the payment of money, a person entitled to the benefit of the judgment may enforce it by lodging a copy of it, certified by the mining registrar, and an affidavit stating to what extent it has not been complied with, with the Magistrates Court.

(4) A judgment that is lodged with another court under subsection (2) or (3) is taken to be a judgment of the other court and may be enforced accordingly.

(5) For the purposes of Part 5 Division 1 of the *Civil Judgments Enforcement Act 2004*, a judgment of a warden's court for the delivery by a person of possession of any mining tenement or minerals to another is taken to be a judgment requiring the person to give possession of real or personal property to the other person.

[Section 140 inserted: No. 59 of 2004 s. 115; amended: No. 31 of 2022 s. 39.]

*[**141.** Deleted: No. 59 of 2004 s. 115.]*

142. Informality and amendment

(1) No misnomer or inaccurate description of any person or place or any process or document in any proceedings in a warden's court under this Act vitiates the process or document or the

proceedings if the person or place is named or described therein so as to be commonly known.

(2) No proceedings in a warden's court under this Act shall be dismissed or vitiated by any informality, but a warden's court has power at any time to amend all defects and errors in such proceedings, whether there is anything in writing to amend or not.

(3) The power to amend as provided in subsection (2), may be exercised with or without an order as to costs being made.

(4) Upon due application in that behalf being made, all such amendments as may be necessary for determining in the existing proceedings the real question in issue between the parties thereto shall be allowed.

(5) Any amendments referred to in subsections (2) and (4) may be allowed upon such terms and conditions as to an adjournment of the proceedings or otherwise, as the warden's court determines.

[Section 142 amended: No. 100 of 1985 s. 102; No. 39 of 2004 s. 75.]

143. Grant of injunction affecting mining tenement to be notified

Where a warden's court grants any injunction with respect to any mining tenement, the party to whom the injunction is granted shall notify forthwith the Director General of Mines of the fact that the injunction has been granted and of the particulars thereof, and on receipt of such notification an entry of the particulars shall be made in the register against the mining tenement to which the injunction relates.

[Section 143 amended: No. 100 of 1985 s. 103; No. 105 of 1986 s. 22; No. 54 of 1996 s. 19; No. 39 of 2004 s. 85.]

*[**144, 145.** Deleted: No. 39 of 2004 s. 76.]*

146. Reservation of questions of law: hearing and determination

(1) A warden's court may reserve, at any stage of any proceedings under this Act, any question of law for the opinion of the Supreme Court thereon.

(2) The question of law shall be submitted to the Supreme Court in the form of a special case stated by the warden's court and transmitted by the court to the Principal Registrar of the Supreme Court.

(3) The Principal Registrar of the Supreme Court shall set down the case for consideration by a judge, and shall forthwith notify the warden's court of the time and place appointed therefor.

(4) The warden's court shall give notice of the time when, and the place where the judge shall consider the case to each of the parties concerned who is entitled to be heard by the judge.

(5) The judge, at any stage of the matter, may —

(a) remit the case to the warden's court for amendment; or

(b) direct that the case be set down for argument before the Court of Appeal; or

(c) proceed to hear and determine the question so submitted,

and the Court of Appeal or judge, as the case may be, may give such direction or opinion as to the question so submitted, as the Court of Appeal or the judge thinks proper.

(6) Every such direction or opinion of the Court of Appeal or the judge, shall be transmitted by the Principal Registrar of the Supreme Court to the warden's court which shall act in accordance therewith.

(7) When reserving any question of law pursuant to this section or at any time before acting in accordance with the direction or opinion of the Court of Appeal or the judge as provided in this section, the warden's court, on the application of any party to

the proceedings in relation to which the question of law is to be or was so submitted, may make such order for —

(a) an injunction; or

(b) the appointment of a receiver; or

(c) the payment of money into court; or

(d) giving security for damages and costs or otherwise,

as it thinks fit and on such terms or conditions as it thinks fit.

[Section 146 amended: No. 100 of 1985 s. 104; No. 39 of 2004 s. 77 and 85; No. 45 of 2004 s. 37.]

147. Appeal to Supreme Court

(1) Except as provided in sections 135(2) and 151, any party aggrieved by any final judgment, determination or decision of a warden's court may appeal therefrom to the Supreme Court.

(2) Every appeal shall be commenced by notice in the prescribed form, filed in the warden's court within 21 days after the judgment, determination or decision appealed against was given.

(3) The notice of appeal shall be served within the period referred to in subsection (2) upon the respondent or his solicitor and shall set forth the grounds upon which the appeal is made.

[(4), (5) deleted]

(6) A notice of appeal filed under this section does not operate as a stay of proceedings, but the warden's court, on the application of any party to the proceedings, may make such order for the stay of proceedings, for an injunction or for the appointment of a receiver, and for the giving of security as it thinks necessary in the circumstances.

(7) When an appeal is withdrawn or abandoned an order staying proceedings lapses.

[Section 147 amended: No. 39 of 2004 s. 78 and 85.]

148. Procedure on appeal

(1) Where the grounds of appeal include any matter of fact, the Supreme Court may order, or the parties to the appeal may agree, that the appeal shall be by way of rehearing before a judge.

(2) Except as provided in subsection (1), every appeal shall be heard and determined upon the proceedings in the warden's court.

(3) Upon the hearing of an appeal the notes, depositions, minutes of evidence, exhibits and other documents taken or filed in the warden's court or copies thereof certified to be correct by the warden or mining registrar, may be used by the Supreme Court or any party to the appeal.

(4) Upon notice in the prescribed form being filed in the warden's court pursuant to section 147(2), the warden's court shall cause a copy of the judgment, determination or decision appealed from together with the documents and things referred to in subsection (3) required by the appellant for the purpose of the appeal to be transmitted to the Principal Registrar of the Supreme Court not later than 21 days after —

(a) in the case of original documents or things, the date of being so requested in writing by the appellant; but

(b) in the case of a copy document required to be certified to be correct by the warden or mining registrar and not compiled at the time of such a request in writing by the appellant, the date on which the copy was so compiled and certified,

and shall cause the appellant to be notified of the date on which the request was complied with.

(5) The appellant shall, within 21 days after filing notice of appeal, apply to set down the appeal for hearing by filing in the Central Office of the Supreme Court at Perth —

(a) a copy of the notice of appeal; and

(b) a copy of any request made for the transmission of documents or things pursuant to this section.

(5a) Upon receipt by the Principal Registrar of the Supreme Court of a copy of the judgment, determination or decision appealed from, certified as correct by the warden, and of the documents or things and copies so requested, certified as correct by the mining registrar or the warden, the appeal shall be set down for hearing.

(6) The Principal Registrar of the Supreme Court shall notify forthwith the result of each appeal to the warden's court and the warden's court —

(a) shall cause the result of the appeal to be recorded; and

(b) shall give effect where necessary to any order or direction made or given by the appellate court thereon.

[Section 148 amended: No. 100 of 1985 s. 105; No. 39 of 2004 s. 79 and 85.]

149. Power of Supreme Court on appeal

Upon the hearing of any appeal under this Act the Supreme Court —

(a) may allow for any reason that it thinks sufficient, an appellant on such terms as to costs, postponement, or otherwise as it thinks fit, to rely upon a ground of appeal not set forth in the notice of appeal; and

(b) may confirm the order, determination or decision in respect of which the appeal is made and may dismiss the appeal; and

(c) may reverse, modify or vary such order, determination, or decision and may make such order in lieu thereof as it may think just; and

(d) may direct any issue to be tried in such manner, and at such time and place as it may think fit; and

(e) may remit any case to the warden's court to be reheard; and

(f) may make any order or give any direction consequential upon or necessitated by the order that it may think necessary; and

(g) may make such order as to costs of the appeal or of the proceedings in the warden's court to which the appeal relates, as it thinks fit,

and may impose in respect of any order made pursuant to this section such terms and conditions as it thinks just.

150. Withdrawal or failure to prosecute appeal

Where an appellant withdraws his appeal or fails to prosecute it as provided by this Act, the respondent may apply to a judge on summons for the dismissal of the appeal and the judge —

(a) may dismiss the appeal; or

(b) may, on the application of the appellant, permit him to prosecute the appeal within such period and on such terms and conditions as the judge thinks fit,

and in either case the judge may make an order for the payment by the appellant of the costs of and incidental to the summons.

151. Limitation of right of appeal

There shall be no right of appeal under this Part where at or before the hearing of any proceedings in the warden's court the parties thereto have agreed by a memorandum in writing lodged

in the warden's office, that the decision of the warden's court therein shall be final.

[Section 151 amended: No. 58 of 1994 s. 49; No. 39 of 2004 s. 80.]

Part IX — Miscellaneous and regulations

152. Police to assist warden

All members of the Police Force of the State shall, when required by the warden so to do, act in aid of the warden in the exercise and discharge by him of his powers, functions and duties under this Act.

153. Minor capable of being sued and of suing

Any person who has not attained the age of 18 years may sue and be sued in a warden's court in respect of any matter within the jurisdiction of that court as if he were of full age and any mining tenement held by him may be taken in execution and sold under legal process.

154. General penalty

(1) A person who acts in contravention of or fails to comply in any respect with any provision of this Act commits an offence against this Act.

(2) A person who commits an offence against this Act for which no penalty is provided elsewhere than in this section is liable to a fine of $20 000 and if the offence is a continuing one, to a fine not exceeding $2 000 for every day or part of a day during which the offence has continued.

(3) Where a body corporate is convicted of an offence against this Act, every director and every other officer of the body corporate concerned in the management thereof is guilty of the offence if it is proved that the act or omission that constituted the offence took place with his authority, permission or consent.

[Section 154 amended: No. 100 of 1985 s. 106; No. 22 of 1990 s. 38; No. 78 of 1995 s. 147; No. 15 of 2002 s. 28; No. 51 of 2012 s. 35.]

154A. Liability of officers for offence by body corporate

The Criminal Code section 39 (which provides for the criminal liability of officers of a body corporate) applies to an offence under section 155(1) of this Act.

[Section 154A inserted: No. 9 of 2023 s. 106.]

155. Offence of mining without authority

(1) Subject to subsection (2) a person shall not carry on mining on any land unless he is duly authorised under this or any other Act to do so.

Penalty:

(a) for an individual — a fine of $150 000 and, if the offence is a continuing one, a further fine of $15 000 for each day or part of a day during which the offence has continued;

(b) for a body corporate — a fine of $300 000 and, if the offence is a continuing one, a further fine of $30 000 for each day or part of a day during which the offence has continued.

(2) Subsection (1) does not apply in respect of mining operations carried on on any private land with the consent of the owner of the land if he is the owner of the mineral being mined on the land.

(3) A person who is convicted of an offence under this section is not thereby relieved from any other obligation or liability that he may have incurred by reason of having carried on unauthorised mining.

(4) A person who owns minerals in their natural state may take proceedings in any court of competent jurisdiction for the recovery of those minerals or their value from any person who unlawfully takes, removes or mines the minerals.

(5) Where a person is convicted of an offence against subsection (1) the court may, in addition to imposing the penalty under this Act in relation to the offence, order the offender to rehabilitate the land to the satisfaction of the Minister within the time specified in the order.

(6) A person who fails to carry out an order made under subsection (5) commits an offence and is liable to a penalty of $500 and in addition the court may require the offender to pay the costs of rehabilitating the land to the satisfaction of the Minister.

(7) Any sum specified in an order under subsection (6) constitutes a debt due to the crown and may be recovered in any court of competent jurisdiction.

[Section 155 amended: No. 100 of 1985 s. 107; No. 105 of 1986 s. 23; No. 22 of 1990 s. 38; No. 78 of 1995 s. 147; No. 15 of 2002 s. 28; No. 51 of 2012 s. 36.]

155A. Aerial survey work

Nothing in this Act has the effect of restricting or preventing the obtaining of data in respect of any land by means of aerial surveys.

[Section 155A inserted: No. 58 of 1994 s. 50.]

156. Offences

(1) A person who —

(a) takes or removes from the mining tenement of any other person any mineral or other mining product without the authority of that other person; or

(b) assaults, obstructs, resists or insults —

(i) any warden; or

(ii) any public service officer or other person duly authorised under this Act to perform any act or

duty, in the course of performance of that act or duty,

or who when required to do so by the warden, officer or other person, fails to give the person's name, address, or authorisation for being on any land or who gives false or misleading information; or

(c) when lawfully evicted or removed under this Act from any mining tenement, re-enters the mining tenement or retakes possession thereof; or

(d) prevents, resists or obstructs the taking or diverting of any water or the doing of any other act by any person acting in pursuance of an order of the warden's court,

commits an offence against this Act.

(2) Subsection (1)(a) does not apply to a person who removes a mineral in the exercise of the authorisation conferred by section 40D(1)(c).

[Section 156 amended: No. 122 of 1982 s. 28; No. 100 of 1985 s. 108; No. 63 of 2000 s. 6; No. 39 of 2004 s. 81; No. 51 of 2012 s. 37; No. 7 of 2025 s. 12.]

157. Obstruction of persons authorised to mine under this Act

A person shall not, without lawful excuse, obstruct or hinder the holder of a mining tenement in the reasonable execution of any right conferred on him thereby.

Penalty: $10 000.

[Section 157 amended: No. 22 of 1990 s. 38; No. 15 of 2002 s. 28.]

158. Power to require information as to right to mine

(1) Where there is reason to suspect that a person is mining on land without authority under this Act a member of the Police Force

or a person authorised in that behalf by the Director General of Mines may —

(a) require the person to produce any document or other evidence relating to the entitlement of that person to mine on that land; and

(b) require the person to give an explanation concerning the mining on that land.

(2) A person who —

(a) upon request made under subsection (1) refuses or fails to comply with the request; or

(b) obstructs or hinders the person making the request; or

(c) knowingly misleads or deceives the person making the request,

commits an offence.

Penalty: $10 000.

(3) Where a person who is authorised to make a request under subsection (1) is not satisfied with any evidence or explanation given to him in pursuance of a request made under that subsection he may orally or by notice in writing direct the person to whom the request is made to cease mining on the land referred to in the direction.

(4) A person who refuses or neglects to comply with a request under subsection (3) commits an offence.

Penalty: $10 000.

(5) Where the person to whom a request is made under subsection (3) refuses or neglects to comply with the direction given under that subsection, the person giving the direction may use such force as is necessary to remove the person from the land and stop and remove any machinery being used for the purpose of mining on the land using such assistance as is necessary for that purpose.

(6) A person who commits an offence under subsection (2) or (4) may be arrested without a warrant.

[Section 158 inserted: No. 105 of 1986 s. 24; amended: No. 22 of 1990 s. 38.]

159. Disputes between licensees and other persons

(1) Where a dispute arises between a licensee or permittee under the *Petroleum, Geothermal Energy and Greenhouse Gas Storage Act 1967* and any person duly authorised to mine or search for minerals by virtue of a mining tenement or other authority under this Act or the repealed Act concerning any operations carried out or proposed to be carried out by the licensee or permittee or such person on any land within the boundaries of the area in respect of which the licence or permit was granted to the licensee or permittee, the licensee or the permittee or such person or both of them may refer the matter to the warden for inquiry and report, and the warden shall, as soon as practicable after such reference, inquire into the dispute and report thereon to the Minister.

(2) Upon receipt of the warden's report the Minister may make such order and give such directions to the licensee or the permittee or such person or to both of them as in the public interest and in the circumstances of the case may seem to him to be just and equitable and by such order may direct the payment by the licensee or the permittee or such person or both of them of any costs and expenses incidental to the conduct of the inquiry.

(3) If the licensee or the permittee or such person fails or neglects to comply with any such order or directions, the Minister may cancel the licence, the permit or the mining tenement or other authority (if any) held by such person.

(4) In this section —

(a) a reference to a licence or permit includes a reference to a drilling reservation or lease; and

(b) a reference to a licensee or permittee includes a reference to the registered holder of a drilling reservation or lease.

[Section 159 amended: No. 35 of 2007 s. 100(5) and (6); No. 17 of 2024 s. 407.]

160. Saving of civil remedies

(1) Subject to section 40G, nothing in this Act shall prejudice, abridge or take away any right of action that any person may have in respect of any act or omission of another unless that act or omission occurs in pursuance of any authority lawfully given under this Act.

(2) The recovery of any penalty under this Act does not affect any such right of action as is referred to in subsection (1).

[Section 160 amended: No. 63 of 2000 s. 7; No. 51 of 2012 s. 38.]

160AA. Authority to perform certain functions of LAA Minister under this Act

(1) A function that the LAA Minister has under a provision of this Act listed in the Table may be performed by a public service officer of the Department, as defined in the *Land Administration Act 1997* section 3(1), who is authorised in writing by the LAA Minister to do so.

(2) Nothing in this section limits the ability of the LAA Minister to otherwise perform a function through an officer or agent.

Table

s. 24(3)(b), (5)(b), as the ***responsible Minister*** under s. 24(8)	s. 25(2)(b), (3)(b)
s. 26(2)(a)	s. 55(1), (3), (4)

s. 69C(1), (3), (4)	

[Section 160AA inserted: No. 8 of 2010 s. 19; amended: No. 17 of 2014 s. 29.]

160AB. Inspectors

The Minister may, by instrument in writing, appoint a person to be an inspector for all or some of the purposes of this Act specified in the instrument of appointment.

[Section 160AB inserted: No. 7 of 2025 s. 13.]

160A. Immunity of Minister, wardens and officials

No liability shall attach to the Minister, a warden, a public service officer, any authorised person under this Act or any person acting with the authority or on the direction of the Minister, a warden or the Director General of Mines, or the LAA Minister in good faith and in the exercise or purported exercise of a power or in the discharge or purported discharge of a duty under this Act.

[Section 160A inserted: No. 105 of 1986 s. 25; amended: No. 42 of 1999 s. 8; No. 8 of 2010 s. 20; No. 7 of 2025 s. 14.]

160B. Time limit for prosecution action

A prosecution for an offence against this Act must be commenced within 3 years after the day on which the offence is alleged to have been committed.

[Section 160B inserted: No. 51 of 2012 s. 39.]

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; or

(ii) an application for forfeiture of a mining tenement; or

(iii) an application for exemption from expenditure or other conditions;

or

(b) in respect of a decision or order of the Minister on —

(i) an application for a mining tenement; or

(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.

[Section 160C inserted: No. 39 of 2004 s. 82.]

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) any person who, under the *Oaths, Affidavits and Statutory Declarations Act 2005*, is an authorised witness for an affidavit; or

(b) a warden; or

[(c)-(e) deleted]

(f) a prescribed official.

[Section 160D inserted: No. 39 of 2004 s. 82; amended: No. 24 of 2005 s. 62.]

161. Evidentiary provisions

(1) In any proceedings for an offence against this Act, an averment in the charge that any land referred to therein is land —

(a) open for mining under this Act;

(b) exempt from mining operations in pursuance of this Act;

(c) to which section 23, 24, 24A, 25, or 26 applies,

shall be deemed to be proved in the absence of evidence to the contrary.

(2) In any proceedings a document purporting to be a mining tenement shall be accepted as such in the absence of evidence to the contrary.

(3) In any proceedings a document purporting to be certified by a person authorised for that purpose by the Director General of Mines as a correct copy of an extract from a register kept under this Act is, without proof of that person's signature, evidence of the matter contained in the document.

(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; or

(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.

[Section 161 amended: No. 122 of 1982 s. 29; No. 37 of 1993 s. 23; No. 54 of 1996 s. 21; No. 5 of 1997 s. 41(2); No. 39 of 2004 s. 83; No. 84 of 2004 s. 80.]

162A. Certain things are not personal property for purposes of *Personal Property Securities Act 2009* (Cwlth)

In accordance with the *Personal Property Securities Act 2009* (Commonwealth) section 10 the definition of ***licence*** paragraph (d), the following rights, entitlements or authorities are declared not to be personal property for the purposes of that Act —

(a) a prospecting licence granted under section 40(1), 56A(6) or 70(6);

(b) an exploration licence granted under section 57(1);

(c) a retention licence granted under section 70B(1);

(d) a mining lease granted under section 71;

(e) a general purpose lease granted under section 86(1);

(f) a miscellaneous licence granted under section 91(1).

[Section 162A inserted: No. 42 of 2011 s. 83.]

162B. Extension of prescribed period or time

(1) If this Act provides for something to be done within a prescribed period or a prescribed time, the Minister or a warden may, in a particular case, extend the period or the time for doing the thing.

(2) The power in subsection (1) may be exercised whether or not the prescribed period has ended or the prescribed time has passed.

[Section 162B inserted: No. 51 of 2012 s. 40.]

162. Regulations

(1) The Governor may make such regulations as are contemplated by this Act, or as the Governor thinks necessary or expedient for the purposes of this Act and any such regulations may confer upon a prescribed person or body specified in the regulations a discretionary authority.

(2) Without limiting the generality of the powers conferred by subsection (1) those regulations may —

(a) prescribe and regulate the powers, functions and duties of wardens, mining registrars and of any officer or other person appointed under this Act or employed or acting in the administration of this Act;

(aa) authorise an inspector appointed under section 160AB —

(i) to enter upon land where mining operations are carried out for the purpose of inspecting those mining operations;

(ii) to require any person to provide the inspector with prescribed information relating to mining operations;

(iii) to give directions to the holder of a mining tenement requiring the holder to modify or cease mining operations in prescribed circumstances;

(ab) provide for an appeal to the Minister by the holder of a mining tenement against a direction referred to in paragraph (aa)(iii) requiring the holder to cease mining operations;

(b) prescribe and provide for the payment of fees under this Act and the purposes for which they are to be paid;

(ba) prescribe exemptions from the payment of fees for certain classes of applications under this Act;

(c) prescribe any forms for the purposes of this Act and prescribe the manner in which any of those forms are to be executed;

(ca) prescribe the manner in which fossicking may be carried out, or prohibit the carrying out of fossicking in prescribed areas or by prescribed means;

(cb) provide for any matter relating to permits under section 40E, including without limitation —

(i) the persons or class of persons to whom notice of the issue of permits is to be given; and

(ii) the operation, duration and surrender of permits; and

(iii) the maximum number of permits that may be in force at any time in respect of an exploration licence; and

(iv) the conditions that may be imposed on permits and the variation or cancellation of such conditions; and

(v) the powers of the Minister, in cases of breach of conditions referred to in section 40E(5) or (6) or in other prescribed circumstances —

(I) to impose on holders of permits monetary penalties not exceeding the prescribed amount; or

(II) to cancel permits; or

(III) to disqualify holders of permits from again holding or applying for permits for such period not exceeding the prescribed period as the Minister thinks fit;

and

(vi) the procedure to be followed before the exercise of a power referred to in subparagraph (v); and

(vii) the recovery of penalties referred to in subparagraph (v)(I); and

(viii) the prohibition of the use of hand tools of a prescribed kind; and

(ix) the reporting of minerals recovered by the holders of permits; and

(x) the issuing of guidelines in relation to the operation of the permit system;

(d) prescribe the manner in which land is to be marked out for the purposes of making applications for mining tenements;

(ea) provide for matters relating to the lodgment, in electronic form, of mining tenement documents;

(eb) provide for the time at which a mining tenement document is taken to have been lodged;

(ec) regulate matters in connection with designated tenement contacts for mining tenements and applications for mining tenements, including without limitation —

(i) to require a person who holds, or has applied for, a mining tenement to have a designated tenement contact for the mining tenement or application;

(ii) to provide the manner in which designated tenement contacts are to be nominated for mining tenements, or applications for mining tenements, by persons who hold, or have applied for, mining tenements;

(iii) to provide for matters relating to the provision, updating and accurate recording of particulars relating to designated tenement contacts;

(ed) provide for matters relating to the giving of information, a document, a notice or a notification required or permitted to be given under this Act (including the

giving of the information or the document, notice or notification in electronic form);

(ef) provide for the time at which information, a document, a notice or a notification is taken to have been given;

(eg) prescribe the means of satisfying a requirement under this Act in relation to information, a document, a notice or a notification in writing if the information, document, notice or notification is given in electronic form;

(e) prescribe the rent payable in respect of any mining tenement or class of mining tenement, and make provision for the exercise of a discretion by the Minister as to the basis upon which a rent shall be calculated;

(f) prescribe how and when rent for a mining tenement is to be paid;

(g) prescribe the manner in which, and the terms and conditions subject to which, mining tenements may be surrendered;

(ga) prescribe grounds for extension for the purposes of sections 45(1a) and 61(2);

[(gb) deleted]

(h) prescribe the expenditure conditions subject to which a mining tenement or any class of mining tenement shall be held, and the conditions on which exemption therefrom may be applied for, and granted;

(i) prescribe the persons or class of persons on whom copies of applications for mining tenements or any other documents relating thereto are to be served;

(j) provide for the compilation of mining statistics and for that purpose require holders of mining tenements to supply the Director General of Mines with such particulars as may be prescribed;

(k) provide for the furnishing of returns, and the keeping and furnishing of records, for the purposes and by the persons specified in the regulations;

(ka) provide for any matter relating to the surveying of mining tenements, including —

(i) requiring that surveying to be carried out by a surveyor (in this paragraph referred to as the ***approved surveyor***) approved by the Minister or an officer of the Department in accordance with any specified written law, any instructions given by an officer of the Department, a warden or the Minister or any direction published by the Department, or any 2 or all 3 of the foregoing;

(ii) the course to be adopted by the approved surveyor if he finds that a mining tenement or application therefor is not marked out in the prescribed shape referred to in section 105;

(iii) the hearing by the warden of disputes arising during the course of that surveying concerning the positions of pegs or otherwise, or of objections to the survey of a mining tenement or of land the subject of an application for a mining tenement, prescribing fees for the lodgment of notices relating to those disputes or objections, and the determination by the Minister of those disputes or objections;

(iv) the correction of errors or omissions in that surveying and the completion of surveying that is uncompleted;

(v) the lodging of reports relating to surveys;

(vi) the entry on land by officers of the Department for the purpose of inspecting surveys;

(l) provide for any matter relating to any register to be kept by a warden, a mining registrar or other prescribed persons;

(m) provide for such information to be supplied to the Director General of Mines by holders of mining tenements in respect of boring operations for water or water obtained while boring for other purposes as may be prescribed;

(n) provide for the protection of land upon which mining operations are conducted and require the rehabilitation to the satisfaction of the Minister of land disturbed by the mining operations;

(o) prescribe the covenants and conditions that may be included in mining tenements and the exemption from the performance of those covenants or the operation of those conditions;

[(p) deleted]

(q) prescribe the mode of assigning, transferring, sub-letting, encumbrancing or otherwise dealing with mining tenements, the enforcement or discharge of any encumbrance thereon, the rights and obligations of an encumbrancer and an encumbrancee thereof or of an assignee, transferee or sub-lessee thereof; and the order of priority of 2 or more encumbrances;

(qa) prescribe the mode of dealing with a mining tenement upon the death of the holder of the mining tenement or in other prescribed circumstances and provide for any related matter;

(r) regulate the practice and procedure in warden's courts, the sittings of those courts, the duties of the officers thereof; the fees and costs of the proceedings therein fixed by a legal costs determination made under the *Legal Profession Uniform Law Application Act 2022* section 133 and of appeals therefrom and the allowances to witnesses in those courts;

(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;

(rca) provide for documents for use in Part IV proceedings to be lodged with or issued by the warden, or served, in electronic form;

(rc) prescribe a scale of costs for Part IV proceedings and provide for the taxation and recovery of costs in those proceedings;

(s) regulate matters in connection with partnerships in mining;

(t) provide for a refund of fees paid under this Act;

(u) regulate the way in which drill cores obtained from mining tenements are to be stored and dealt with and impose restrictions on the disposal or destruction of them;

(v) provide for the reporting of prescribed information as to aerial photography for mineral exploration and provide for the keeping of a register of such information;

(w) provide for the publication of guidelines in relation to mineral exploration reports referred to in section 115A;

(x) authorise and regulate the copying, storage, release, publication and dissemination of information contained in any application or report under this Act or any other information supplied to the Minister, a warden or any official of the Department under this Act;

(y) prescribe and regulate the responsibilities of the holders of mining tenements as to authorising, or obtaining

authorisation for, the release of information contained in applications or reports under this Act.

(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.

(3A) In subsection (2) —

mining tenement document means —

(a) an application for a mining tenement; or

(b) an agreement, claim, notice of objection, security, or any other document, in respect of a mining tenement.

(3) The regulations may prescribe a fine not exceeding $10 000 for an offence against any regulation and if the offence is a continuing one, a fine not exceeding $1 000 for each day or part thereof during which the offence has continued.

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

(5) A regulation may require any matter or thing to be verified by statutory declaration.

[Section 162 amended: No. 52 of 1983 s. 6; No. 100 of 1985 s. 109; No. 105 of 1986 s. 26; No. 65 of 1987 s. 40; No. 22 of 1990 s. 38; No. 37 of 1993 s. 24 and 28(1); No. 58 of 1994 s. 51; No. 54 of 1996 s. 22; No. 49 of 2000 s. 86; No. 63 of 2000 s. 8; No. 15 of 2002 s. 28; No. 65 of 2003 s. 52; No. 39 of 2004 s. 84 and 100; No. 21 of 2008 s. 681; No. 12 of 2010 s. 42; No. 51 of 2012 s. 41; No. 44 of 2016 s. 24; No. 9 of 2022 s. 424; No. 31 of 2022 s. 40; No. 39 of 2022 s. 16; No. 7 of 2025 s. 15.]

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.

[Section 163 inserted: No. 39 of 2004 s. 101.]

[First Schedule omitted under the Reprints Act 1984 s. 7(4)(e).]

Second Schedule — Transitional provisions

[s. 4]

[Heading inserted: No. 69 of 1981 s. 29; amended: No. 19 of 2010 s. 4.]

Division 1 — Provisions relating to transition from repealed Act

[Heading inserted: No. 51 of 2012 s. 42.]

1. Continuation of certain temporary reserves and rights of occupancy

(1) Any land that is temporarily reserved from occupation under the repealed Act immediately before the commencing date shall continue to be so reserved on and after that date until the reservation of the land or portion thereof is cancelled by the Minister by instrument in writing under his hand, and while the land is so reserved (whether or not any authority to occupy, or right of occupancy of, the land granted under the repealed Act and in force in relation to the land immediately before the commencing date is in force by virtue of subclause (2)) a mining tenement shall not be granted under this Act in respect of the land without the consent in writing of the Minister.

(2) Any authority to occupy or right of occupancy of any land to which subclause (1) refers granted pursuant to the repealed Act and in force in relation to such land immediately before the commencing date, shall continue, subject to the terms and conditions upon which the authority or right was granted, to be in force on and after that date until —

(a) the date on which such authority or right would have expired under the terms and conditions upon which it was granted; or

(b) 6 months after the commencing date,

whichever date is the later.

(3) At any time before an authority to occupy or right of occupancy expires as provided in subclause (2) the holder thereof may, if he has not then failed to comply with the terms and conditions upon which the authority or right was granted, mark out in accordance with this Act, and/or make application to the Minister for, a prospecting licence

or exploration licence over the land or any portion thereof to which the authority or right relates.

(4) Notwithstanding anything in this Act, the Minister shall, on receiving an application made under subclause (3) or (5) and on being satisfied that the applicant has complied with the terms and conditions referred to in subclause (3), grant that application on such terms and conditions as he thinks fit.

(5) An application for the renewal of an authority to occupy or right of occupancy of any land —

(a) to which subclause (1) refers; and

(b) which expired before the commencing date,

which application was pending immediately before the commencing date, shall be dealt with as if the repealed Act had not been repealed and the holder of any such authority to occupy or right of occupancy renewed as a result of that application may while that renewed authority or right is in force mark out in accordance with this Act the land the subject of that renewed authority or right, or apply to the Minister for a prospecting licence or exploration licence, or both so mark out and apply, in respect of the whole or part of the land to which that renewed authority or right relates.

(6) Section 105A does not apply and never has applied to an application for a mining tenement under this Act in respect of any land —

(a) which continues or continued to be temporarily reserved from occupation by virtue of subclause (1); and

(b) in respect of which no authority to occupy or right of occupancy is or was in force,

at the time when that application is or was made.

[Clause 1 inserted: No. 69 of 1981 s. 29; amended: No. 122 of 1982 s. 30(a).]

2. Certain gold mining leases, coal mining leases and mineral leases to become mining leases

(1) Every gold mining lease, coal mining lease, or mineral lease granted under section 42, 48 or 61 or pursuant to section 153 of the repealed

Act and in force immediately before the commencing date, shall be deemed to be a mining lease granted under this Act, and shall, subject to this Act and, insofar as those terms and conditions and encumbrances are not inconsistent with this Act, subject to —

(a) the terms and conditions on which it was granted under the repealed Act (other than a term or condition restricting the scope of the gold mining lease, coal mining lease or mineral lease concerned to certain minerals) and which were in force immediately before the commencing date; and

(b) any encumbrances to which it was subject under the repealed Act and which were in force immediately before the commencing date,

remain in force for the unexpired period for which it was granted or renewed under the repealed Act, and shall then expire, and while any such lease is in force the holder thereof has the right in priority to any other person to mark out in accordance with this Act and/or apply for a mining tenement under and in accordance with this Act in respect of the land or any part thereof which is the subject of such lease.

(2) Every gold mining lease, coal mining lease or mineral lease granted under the repealed Act by virtue of clause 8(1) as a result of an application referred to in that subclause shall be deemed to be a mining lease granted under this Act and shall, subject to this Act and, insofar as those terms and conditions and encumbrances are not inconsistent with this Act, subject to —

(a) the terms and conditions under which it was so granted (other than a term or condition restricting the scope of that gold mining lease, coal mining lease or mineral lease to certain minerals); and

(b) any encumbrances to which it is subject under the repealed Act,

remain in force for the period for which it was so granted under the repealed Act and shall then expire, and while it is in force the holder thereof has the right in priority to any other person to mark out in accordance with this Act and/or apply for a mining tenement under and in accordance with this Act in respect of the land or any part thereof which is the subject of that gold mining lease, coal mining lease or mineral lease.

(3) The holder of 2 or more gold mining leases, coal mining leases or mineral leases which are contiguous or of any combination thereof, which are deemed by virtue of subclause (1) or (2) to be mining leases granted under this Act, has notwithstanding anything in that subclause the right under that subclause in priority to any other person to mark out in accordance with this Act and/or apply for one mining tenement under and in accordance with this Act in respect of all the land or any part thereof which is the subject of those gold mining leases, coal mining leases or mineral leases or of that combination, as the case requires.

[Clause 2 inserted: No. 69 of 1981 s. 29; amended: No. 100 of 1985 s. 110(a); amended: Gazette 18 Dec 1981 p. 5274; 16 Jul 1982 p. 2829.]

*[**2A.** Deleted: Gazette 15 May 1987 p. 2161.]*

3. Rights conferred on holders of certain mineral claims and dredging claims

(1) A mineral claim or dredging claim granted under the repealed Act and in force immediately before the commencing date shall remain in force, subject to that Act and as though that Act had not been repealed, for a period of 2 years after that date, and shall then expire.

(2) The holder of any such mineral claim or any such dredging claim as is referred to in subclause (1) may at any time while the claim is in force mark out as and/or make application under this Act for a prospecting licence or an exploration licence or a mining lease in respect of a single area that is constituted by all the land the subject of each mineral claim or mineral claims or dredging claim or dredging claims, and such licence or such lease shall, subject to this Act, be granted to him.

(3) Notwithstanding anything in subclause (1), if an application for a prospecting licence, exploration licence or mining lease made under subclause (2) is pending immediately before the mineral claim or dredging claim held by the applicant expires under subclause (1), that mineral claim or dredging claim continues in force, subject to the repealed Act and as though that Act had not been repealed, until that application is finally disposed of under this Act.

[Clause 3 inserted: No. 69 of 1981 s. 29; amended: No. 122 of 1982 s. 30(b).]

4. Rights conferred on holders of certain miners' homestead leases, residential leases, residence areas, business areas and garden areas

Every miner's homestead lease, residential lease, residence area, business area or garden area granted under the repealed Act and in force immediately before the commencing date shall remain in force subject to that Act, and as though that Act had not been repealed, for a period of 5 years after that date and shall then expire, but if within that period an application is made therefor to the Minister for Mines and on the Minister for Mines being satisfied that the applicant is the due holder of a miner's homestead lease, residential lease, residence area, business area or garden area, as the case may be, and that such mining tenement is not at the date of the application liable to forfeiture under the repealed Act, and on the Minister for Mines issuing a certificate to that effect to the Minister for Lands, the Minister for Lands may grant under the *Land Act 1933* to the applicant a fee simple or lease of the whole or any portion of the land comprising the miner's homestead lease, residential lease, residence area, business area, or garden area, as the case may be, as the Minister for Lands determines and on such terms and conditions as he determines, but he shall not grant a fee simple of such land unless in his opinion the land is substantially developed and improved; and, to give full effect to the object of this clause and the powers hereby conferred, the *Land Act 1933* shall be read and construed with such modifications as are necessary and, without limiting the generality thereof, shall be read and construed with the following particular modifications —

(a) the substitution for subsection (2) of section 45A of the following subsection —

"

(2) Upon the Minister for Lands signifying approval pursuant to subsection (1) in respect of any such land the same may, subject to this section, be sold or leased.

";

(b) the deletion of the proviso to section 116;

(c) the deletion of section 135;

(d) a power to dispose of land under Division (1) of Part V of the *Land Act 1933* notwithstanding the land has not been declared open for selection under that Part.

[Clause 4 inserted: No. 69 of 1981 s. 29; amended: No. 126 of 1987 s. 124.]

5. Continuation of mining tenements held by virtue of miners' rights

A person holding a mining tenement immediately before the commencing date by virtue of the provisions of the repealed Act relating to miners' rights as then in force may continue to hold the mining tenement under and subject to this Schedule notwithstanding the repeal of those provisions.

[Clause 5 inserted: No. 69 of 1981 s. 29.]

6. Temporary continuation of certain machinery areas, tailings areas, quarrying areas and water rights

(1) Every machinery area, tailings area, quarrying area or water right granted under the repealed Act and in force immediately before the commencing date shall remain in force, subject to that Act and as though that Act had not been repealed, for a period of 3 years after that date and shall then expire or shall expire on a date on which it would have expired under the repealed Act, whichever happens first.

(2) The holder of —

(a) a machinery area or tailings area in force by virtue of subclause (1) may, while the machinery area or tailings area is so in force, apply to the Minister for a general purpose lease in respect of all of the land to which the machinery area or tailings area relates; or

(b) a quarrying area in force by virtue of subclause (1) may, while the quarrying area is so in force, apply to the Minister for a mining lease in respect of all of the land to which the quarrying area relates; or

(c) a water right in force by virtue of subclause (1) may, while the water right is so in force, apply to the Minister for a

miscellaneous licence in respect of all of the land to which the water right relates.

(3) On receiving an application made under subclause (2), the Minister shall grant to the applicant on such terms and conditions as the Minister may determine the general purpose lease, mining lease or miscellaneous licence applied for or, after consultation with the applicant, such other mining tenement as is in the opinion of the Minister most appropriate.

(4) Notwithstanding anything in subclause (1), if an application for a general purpose lease, mining lease or miscellaneous licence made under subclause (2) is pending immediately before the machinery area, tailings area, quarrying area or water right, as the case requires, held by the applicant expires under subclause (1), that machinery area, tailings area, quarrying area or water right continues in force, subject to the repealed Act and as though that Act had not been repealed, until that application is finally disposed of under this Act.

[Clause 6 inserted: No. 69 of 1981 s. 29; amended: No. 122 of 1982 s. 30(c); No. 100 of 1985 s. 110(c).]

7. Continuation of certain licences

(1) A licence which was —

(a) granted under section 112 of the repealed Act, conferring the right to remove tailings or other mining material from, or to treat the same upon, any land; and

(b) in force immediately before the commencing date,

remains in force, and may, subject to subclause (2), be renewed from time to time under the repealed Act as if that Act had not been repealed.

(2) An application for the renewal under subclause (1) of a licence shall be made to the Minister and the Minister may —

(a) subject to paragraph (b), exercise in relation to that application the powers conferred on the Governor by the repealed Act in relation to applications for the renewal of licences; and

(b) in the case of such an application —

(i) which is made after the expiry of the licence to which that application relates; and

(ii) in respect of which the Minister considers that there are special circumstances justifying renewal,

renew the licence to which that application relates with effect from the expiry of that licence.

(3) An application for a licence or for the renewal of such a licence, which application was pending immediately before the commencing date, shall be disposed of, notwithstanding anything in subclause (2), as if the repealed Act had not been repealed.

(4) Notwithstanding that any application for the renewal under the repealed Act as read with this clause of a licence under section 112 of that Act may have referred only to a licence to treat tailings, a licence so renewed which purported to grant by way of renewal under this clause any one or more of the following rights —

(a) to treat tailings upon the land; or

(b) to remove, and treat, tailings from the land; or

(c) to treat any other mining material upon the land; or

(d) to remove, and treat, other mining material from the land,

shall be taken to confer, and always to have conferred, a right of that kind according to its tenor.

(5) Where a licence granted under section 112 of the repealed Act expires, any tailings or other mining material left upon the land or any part of the land in respect of which the licence was granted become or becomes the property of the Crown —

(a) if an application for the renewal of the licence is not made within a period of 3 months from the expiry of the licence, at the expiration of that period; or

(b) if an application for the renewal of the licence is made within the period referred to in paragraph (a) but is subsequently refused by the Minister, at the expiration of a period of 3 months from that refusal.

[Clause 7 inserted: No. 69 of 1981 s. 29; amended: No. 122 of 1982 s. 30(d); No. 37 of 1993 s. 25; amended: Gazette 20 Nov 1987 p. 4239.]

8. Disposal of pending applications for mining tenements

(1) Where an application for a mining tenement under the repealed Act or the regulations made thereunder (not being an application in connection with section 276 of the repealed Act or an application for —

(a) a miner's homestead lease; or

(b) a residential lease; or

(c) a residence area; or

(d) a business area; or

(e) a garden area),

is pending on the commencing date, that application shall be disposed of as if the repealed Act had not been repealed and the applicant may in respect of that application exercise all the powers, and shall in respect of that application perform all the duties, conferred or imposed on him by the repealed Act.

(2) Until an application referred to in subclause (1) has been finally disposed of, the land to which that application relates is not open for mining by any person other than the applicant.

(3) Subject to clause 2(2), when a mining tenement is granted under the repealed Act by virtue of subclause (1) as a result of an application referred to in that subclause —

(a) the mining tenement is, subject to paragraph (b), deemed for the purposes of this Schedule to have been granted under the repealed Act;

(b) the holder of the mining tenement under the repealed Act so deemed to have been granted is entitled, before that mining tenement expires or within a period of 2 years from the date referred to in paragraph (c) whichever is the sooner, to apply for, and subject to this Act to be granted, a mining tenement under this Act of the kind and in respect of the area for which he would have been entitled to apply under this Schedule had

the mining tenement under the repealed Act so deemed to have been granted in fact been granted prior to the commencing date and been in force or existence immediately before the commencing date; but

(c) the date on which the grant under the repealed Act is deemed to have been made shall be the date on which the relevant certificate of registration is issued and the grant expires at the end of the period of 2 years from that date subject to subclause (4); and

(d) regulation 55(15) of the regulations made under the repealed Act applies, with such modification as is necessary, to an application by the holder of a prospecting area granted under regulation 55(14) of those regulations and made under paragraph (b) of this subclause for a mining lease in respect of the land subject to that prospecting area as if that application were an application referred to in that regulation.

(4) Notwithstanding anything in this clause, if an application under subclause (3)(b) is pending immediately before the expiry of the mining tenement held by the applicant or of the period of 2 years from the date on which that mining tenement was granted under that paragraph, as the case requires, that mining tenement continues in force, subject to the repealed Act and as though that Act had not been repealed, until that application is finally disposed of under this Act.

(5) A person who —

(a) has marked out a mining tenement under the repealed Act not more than 10 days; but

(b) has not lodged an application for the mining tenement referred to in paragraph (a),

before the commencing date is for the purposes of this Act deemed, if he lodges that application not more than 10 days after the commencing date, to have lodged that application immediately before the commencing date.

(6) An application for a miner's homestead lease, a residential lease, a residence area, a business area or a garden area, which application was pending immediately before the commencing date, lapses on the

commencing date and any fees paid in respect of that application shall be refunded to the applicant.

[Clause 8 inserted: No. 69 of 1981 s. 29; amended: No. 122 of 1982 s. 30(e); No. 100 of 1985 s. 110(d); No. 105 of 1986 s. 27; amended: Gazette 18 Dec 1981 p. 5274.]

9. Rights of holders of certain prospecting areas

(1) A prospecting area that is in existence immediately before the commencing date shall continue in existence for the period for which it would have remained in force if the repealed Act had not been repealed, and shall then cease to be in force.

(2) The holder of a prospecting area which continues in existence by virtue of subclause (1) may, before the expiry of the prospecting area, apply for a mining lease under this Act in respect of the land subject to that prospecting area.

(3) Regulation 55(15) of the regulations made under the repealed Act applies with necessary modifications to an application made under subclause (2) as if that application were an application referred to in that regulation.

[Clause 9 inserted: No. 69 of 1981 s. 29; amended: No. 105 of 1986 s. 28.]

10. Transitional provisions relating to mortgages

(1) Subject to subclause (2), if —

(a) a mining tenement (in this subclause and in subclause (2) referred to as the ***new mining tenement***) is granted under this Schedule or section 5(3) in place of one or more mining tenements (in this subclause and in subclause (2) referred to as the ***old mining tenement*** or the ***old mining tenements***, as the case requires) granted under the repealed Act or in accordance with an agreement referred to in section 5(3); and

(b) the old mining tenement or any interest therein was, immediately prior to its expiry, the subject of a mortgage or mortgages or the old mining tenements or any interests therein were, immediately prior to their expiry, the subject of the same mortgage or mortgages, as the case requires,

the new mining tenement shall be deemed to be the subject of the mortgage or mortgages referred to in paragraph (b) as if the new mining tenement had been referred to therein, and a memorandum of that mortgage or those mortgages shall be made and endorsed on the documents of title to the new mining tenement and noted in the appropriate registers of the Department of Mines [4] and there shall be endorsed on the original or originals of that mortgage or those mortgages the fact of it or their having been registered as an encumbrance or encumbrances against the new mining tenement.

(2) If 2 or more mortgages were registered against the old mining tenement or the old mining tenements, as the case requires, the memorandum thereof shall be made and endorsed on the documents of title to the new mining tenement, and noted in the appropriate registers of the Department of Mines [4], in the order in which they appeared so registered immediately before their expiry and they shall have priority accordingly.

(3) The holder of a mining tenement under the repealed Act (in this subclause called the ***old mining tenement***) who is empowered by this Schedule or by section 5(3) to apply for a mining tenement under this Act (in this subclause called the ***new mining tenement***) in substitution for the old mining tenement shall, if the old mining tenement is the subject of an existing mortgage and that holder lodges an application for the new mining tenement, forthwith notify the mortgagee concerned of that lodging.

(4) An application for a mining tenement under this Act in substitution for a mining tenement held by the applicant under the repealed Act, the holding of which second-mentioned mining tenement entitles the applicant to apply under this Schedule or section 5(3) for the first-mentioned mining tenement, shall be deemed for the purposes of Part VI of this Act to be an interest in a mining tenement.

(5) An encumbrance, not being a mortgage, on a mineral claim or dredging claim —

(a) granted under the repealed Act, whether before or after the commencing date; and

(b) the holder of which is entitled to apply, and does apply, under this Schedule or section 5(3) for a mining tenement under this Act in substitution for that mineral claim or dredging claim,

lapses on the determination of that mineral claim or dredging claim, but the person who has the benefit of that encumbrance may apply for the registration of that encumbrance against the application for the mining tenement under this Act referred to in paragraph (b) and the application for the registration of that encumbrance against that application shall be granted.

(6) When the mining tenement referred to in subclause (5)(b) is granted, an encumbrance registered against the application for that mining tenement shall by virtue of this subclause be registered against that mining tenement without any further application by the person who has the benefit of that encumbrance.

[Clause 10 inserted: No. 69 of 1981 s. 29.]

11. Officers

A person holding office under the repealed Act immediately before the commencing date shall be deemed to have been appointed to the corresponding office under this Act, except that the Under Secretary shall cease to be a warden.

[Clause 11 inserted: No. 69 of 1981 s. 29.]

12. Warden's courts and warden's offices

Each warden's court and warden's office in existence immediately before the commencing date shall be continued under this Act as though it had been established thereunder and with the mineral field or district of a mineral field then assigned thereto, but where a goldfield or a district of a goldfield is assigned thereto at the time, that goldfield or that district shall be deemed to be a mineral field or district of a mineral field.

[Clause 12 inserted: No. 69 of 1981 s. 29.]

13. Lodging of certain applications

A person making an application for a mining tenement to the Minister under this Schedule or section 5(3) shall lodge that application in the manner provided under and in accordance with this Act in respect of an application for a mining tenement of that kind.

[Clause 13 inserted: No. 69 of 1981 s. 29; amended: No. 37 of 1993 s. 26; No. 12 of 2010 s. 43; amended: Gazette 22 Jul 2016 p. 3134.]

13A. Consents to follow land

In relation to any claim or other mining tenement or interest in land, of whatever kind, to which the repealed Act applied or to which that Act applies by virtue of clause 8 of this Schedule —

(a) a consent to the grant of any mining tenement under the repealed Act (including any grant deemed to have been granted under that Act by virtue of clause 8 of this Schedule) or to the use or occupation for mining purposes of any private land, given for the purposes of that Act or this Act in respect of the land thereby affected, is deemed to follow that land and to confer such consent in relation to that land for the purposes of any application, proceeding or tenement under this Act made or arising, or being deemed to be made or to arise, out of or pursuant to the operation of this Schedule; and

(b) where paragraph (a) applies in relation to consent given by any owner or occupier of the land, for the purposes of the operation of this Schedule no further or other consent as to the grant of a mining tenement under this Act in respect of the land or the use or occupation of the land for mining purposes is required to be obtained from that owner or occupier or from his successors in title to that land.

[Clause 13A inserted: Gazette 15 May 1987 p. 2161-2.]

14. References to repealed Act

A reference in any Act, regulation, rule, by-law, instrument or document to the repealed Act, or any provision thereof, shall, unless the contrary intention appears, be read and construed as a reference to this Act, or the corresponding provision, if any, of this Act.

[Clause 14 inserted: No. 69 of 1981 s. 29.]

15. Prevention of anomalies during transitional period

If any difficulty arises with respect to the foregoing transitional provisions in this Schedule the Governor may by Order in Council —

(a) make such modifications in those provisions as may appear to him necessary for preventing anomalies during the period affected by the transition to the provisions of this Act from the provisions of the repealed Act; and

(b) make such incidental, consequential and supplementary provisions as may be necessary or expedient for the purpose of giving full effect to those transitional provisions,

and any such modifications or provisions made by the Governor have, and shall be deemed always to have had, the same force and effect as if they had been enacted by way of an amendment to this Schedule and on publication of the Order in Council in the *Government Gazette*, this Schedule shall be amended accordingly.

[Clause 15 inserted: No. 69 of 1981 s. 29; amended: No. 100 of 1985 s. 110(e).]

Division 2 — Provisions relating to *Mining Amendment Act 2012*

[Heading inserted: No. 51 of 2012 s. 43.]

16. Miner's rights

(1) In this clause —

commencement day means the day on which the *Mining Amendment Act 2012* section 15 comes into operation.

(2) A miner's right in force under this Act immediately before commencement day is taken to be a miner's right issued under section 40C.

[Clause 16 inserted: No. 51 of 2012 s. 43.]

17. Surrender requirements

(1) In this clause —

commencement day means the day on which the *Mining Amendment Act 2012* section 20 comes into operation.

(2) Section 65, as in force immediately before commencement day, applies in relation to an exploration licence if —

(a) the licence was granted on an application made after 10 February 2006; and

(b) an application for deferral under subsection (3b) of that section was made in relation to the licence before commencement day but not determined before that day.

[Clause 17 inserted: No. 51 of 2012 s. 43.]

18. Commonwealth land

(1) In this clause —

commencement day means the day the *Mining Amendment Act 2012* section 13 comes into operation;

existing application means an application for an exploration licence made but not determined before commencement day;

transition period means the period beginning on commencement day and ending 3 months after that day.

(2) During the transition period —

(a) a person who has made an existing application in respect of Commonwealth land has a right in priority to a person who has not made such an application to mark out or apply for a mining tenement in respect of the land the subject of the existing application; and

(b) if more than one person has made an existing application in respect of the same Commonwealth land, priority is to be determined according to the date and time of the making of the existing applications.

[Clause 18 inserted: No. 51 of 2012 s. 43.]

19. Time limit for prosecution action

(1) In this clause —

commencement day means the day on which the *Mining Amendment Act 2012* section 39 comes into operation.

(2) Despite section 160B, a prosecution for an offence that is alleged to have been committed before commencement day must be commenced within one year after the day on which the offence is alleged to have been committed.

[Clause 19 inserted: No. 51 of 2012 s. 43.]

Division 3 — Provisions relating to *Mining Amendment Act 2022*

[Heading inserted: No. 31 of 2022 s. 41.]

20. Terms used

In this Division —

commencement day means the day on which the *Mining Amendment Act 2022* section 34 comes into operation;

former, in relation to a provision, means the provision as in force immediately before commencement day.

[Clause 20 inserted: No. 31 of 2022 s. 41.]

21. Continuation of conditions for prevention or reduction of injury to land

(1) In this clause —

former provision means —

(a) former section 46A; or

(b) former section 63AA; or

(c) former section 70I; or

(d) former section 84.

(2) A condition that was, immediately before commencement day, imposed on the holder of a mining tenement under a former provision has effect, on and from commencement day, as if it were a condition imposed on the mining tenement under section 103AU(1).

(3) Subclause (2) applies whether or not the condition is of a kind that, on or after commencement day, could be imposed on the mining tenement under section 103AU(1).

[Clause 21 inserted: No. 31 of 2022 s. 41.]

22. Continuation of securities

(1) In this clause —

former provision means —

(a) former section 52(1a); or

(b) former section 60(1a); or

(c) former section 70F(2); or

(d) former section 84A(2).

(2) A security that was, immediately before commencement day, required to be lodged by the holder of a mining tenement under a former provision is, on and from commencement day, taken to be a security required to be lodged by the holder of the mining tenement under section 103AV(1).

[Clause 22 inserted: No. 31 of 2022 s. 41.]

23. Transitional provisions for programmes of work

(1) In this clause —

existing undetermined programme of work means a programme of work that —

(a) was lodged before commencement day in accordance with a former provision; and

(b) was not, before commencement day, approved or refused to be approved as described in that former provision;

former provision means —

(a) former section 46(aa); or

(b) former section 63(aa); or

(c) former section 70H(1)(aa); or

(d) former section 82(1)(ca)(i);

previously approved programme of work means a programme of work referred to in a former provision for which there was, immediately before commencement day, approval as described in that former provision.

(2) On and from commencement day —

(a) a previously approved programme of work is taken to be a programme of work lodged in accordance with section 103AJ(2); and

(b) an activity proposed in a previously approved programme of work is taken to be approved under section 103AK(1).

(3) On and from commencement day, an existing undetermined programme of work is taken to be a programme of work lodged in accordance with section 103AJ(2).

[Clause 23 inserted: No. 31 of 2022 s. 41.]

24. Transitional provisions for existing undetermined mining proposals

(1) In this clause —

existing undetermined mining proposal means —

(a) a mining proposal that accompanied, under former section 74(1)(ca)(i), the application for a mining lease that was lodged, but not finally determined, before commencement day; or

(b) a mining proposal that was lodged before commencement day in accordance with former section 82A(2)(a) and written approval for the mining proposal was not obtained before commencement day, as described in former section 82A(2)(b); or

(c) a mining proposal that was lodged before commencement day in accordance with a condition imposed under former section 84 and was not, before commencement day, approved or refused to be approved as described in the condition.

(2) On and from commencement day —

(a) an existing undetermined mining proposal is taken to be a mining development and closure proposal lodged in accordance with section 103AN(2); and

(b) a mine closure plan contained in an existing undetermined mining proposal is taken to be information required under section 103AN(3)(d)(ii), (iii) and (iv) to be included in a

mining development and closure proposal lodged in accordance with section 103AN(2).

[Clause 24 inserted: No. 31 of 2022 s. 41.]

25. Transitional provisions for previously approved mining proposals

(1) In this clause —

previously approved mining proposal means —

(a) a mining proposal that accompanied, under former section 74(1)(ca)(i), the application for a mining lease that was granted before commencement day; or

(b) a mining proposal for which there was, immediately before commencement day, approval as described in former section 82A(2)(b); or

(c) a mining proposal for which there was, immediately before commencement day, approval as described in a condition imposed under former section 84;

transition period means the period beginning on commencement day and ending —

(a) 10 years after that day; or

(b) on a later day approved by —

(i) the Minister; or

(ii) if the Minister does not approve a later day — the Director General of Mines.

(2) During the transition period, a copy of an approvals statement may be given to the holder of a mining tenement in accordance with section 103AO(2)(b).

(3) If an approvals statement is given under subclause (2) —

(a) a previously approved mining proposal for the mining tenement is taken to be a mining development and closure proposal lodged in accordance with section 103AN(2); and

(b) the mining operations proposed in the previously approved mining proposal for the mining tenement is taken to be an activity (a ***transitioned activity***) approved under section 103AO(1); and

(c) the mine closure plan contained in the previously approved mining proposal for the mining tenement is taken to be a mine closure plan lodged in accordance with section 103AT(1).

(4) An approval of a transitioned activity must be recorded on the approvals statement in accordance with section 103AO(2)(a).

[Clause 25 inserted: No. 31 of 2022 s. 41.]

Division 4 — Provisions relating to *Mining Amendment (Transfer of Royalty Administration) Act 2025*

[Heading inserted: No. 7 of 2025 s. 16.]

26. *Interpretation Act 1984* not affected

This Division is in addition to the *Interpretation Act 1984* and does not limit or otherwise affect the operation of the provisions of that Act.

[Clause 26 inserted: No. 7 of 2025 s. 16.]

27. Act continues to be administered by Minister

Despite the repeal of section 10(1) by the *Mining Amendment (Transfer of Royalty Administration) Act 2025* section 5, this Act continues to be, and is taken always to have been, administered by the Minister to whom its administration is for the time being, and has from time to time been, committed by the Governor.

[Clause 27 inserted: No. 7 of 2025 s. 16.]

28. Existence of department and appointment of chief executive officer and other officers not affected

The following are not affected by the repeal of section 11 by the *Mining Amendment (Transfer of Royalty Administration) Act 2025* section 6 —

(a) the existence of the department of the Public Service referred to in repealed section 11;

(b) the appointment, referred to in repealed section 11, of the chief executive officer and other officers of that department under the *Public Sector Management Act 1994* Part 3.

[Clause 28 inserted: No. 7 of 2025 s. 16.]

29. Royalties actions taken under repealed provisions before commencement day

(1) In this clause —

commencement day means the day on which the *Mining Amendment (Transfer of Royalty Administration) Act 2025* section 10 comes into operation;

corresponding provision, of Part 5A in relation to a repealed provision, means the provision of Part 5A, or a regulation under Part 5A, that is substantially the same as the repealed provision;

repealed, in relation to section 109 or 109A or a regulation under section 109, means that provision as in force from time to time before the commencement day;

repealed provisions means repealed sections 109 and 109A and regulations under repealed section 109.

(2) Anything done or that may have been done by the Minister under a repealed provision before the commencement day —

(a) is, on and from the commencement day, taken to have been done by the Minister under the corresponding provision of Part 5A; and

(b) if doing the thing is ongoing, unfinished or yet to be started, may, on or after the commencement day, continue to be done or started by the Minister under the corresponding provision of Part 5A.

(3) Without limiting subclause (2) —

(a) an estimate or determination of a royalty payable that is, or may be, made by the Minister under repealed section 109A(1) or (6) is taken to have been made, or may be made, by the Minister under section 120F; and

(b) a notice about an estimate or determination of a royalty payable that is, or may be, given by the Minister under

repealed section 109A(1) or (6) is taken to have been given, or may be given, by the Minister under section 120G; and

(c) a certificate that a royalty has been properly assessed and calculated accepted by, or given to but not yet accepted by, the Minister under repealed section 109A(2) is taken to have been accepted by or given to the Minister under section 120H; and

(d) a penalty amount determined, or that may be determined, by the Minister under repealed section 109A(6)(b) is taken to have been determined, or may be determined, by the Minister under section 120P(3).

(4) Despite subclauses (2) and (3), a legal proceeding about anything done by the Minister under a repealed provision that, immediately before the commencement day, was being taken, or may have been taken, by or against the Minister may be continued or taken by or against the Minister as though the *Mining Amendment (Transfer of Royalty Administration) Act 2025* had not been enacted.

[Clause 29 inserted: No. 7 of 2025 s. 16.]

30. Transitional regulations

(1) In this clause —

commencement day means the day on which this clause comes into operation;

publication day, in relation to transitional regulations, means the day on which the regulations are published in accordance with the *Interpretation Act 1984* section 41(1)(a);

transitional regulations means regulations made for the purposes of subclause (2).

(2) The regulations may deal with matters of a transitional, savings or application nature arising as a result of the enactment of the *Mining Amendment (Transfer of Royalty Administration) Act 2025* Part 2.

(3) Transitional regulations may not be made after the end of the period of 2 years beginning on the commencement day.

(4) If transitional regulations provide that a state of affairs is taken to have existed, or not to have existed, on and from a day that is earlier

than the publication day, but not earlier than the commencement day, the regulations have effect according to their terms.

(5) If transitional regulations contain a provision referred to in subclause (4), 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 publication day; 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 publication day.

[Clause 30 inserted: No. 7 of 2025 s. 16.]

Third Schedule — Private land not open for mining

[s. 27]

[Heading amended: No. 19 of 2010 s. 4.]

East Locations 36, 41, 48, 51, 53, 55, 57, 59, 32, 35, 39, 40, 42, 44, 45, 50, 37, 61, 62.

Notes

This is a compilation of the *Mining Act 1978* and includes amendments made by other written laws [5]. For provisions that have come into operation, and for information about any reprints, see the compilation table. For provisions that have not yet come into operation see the uncommenced provisions table.

Compilation table

Short title	Number and year	Assent	Commencement
Mining Act 1978	107 of 1978	8 Dec 1978	Long title, heading to Pt. I, s. 1 and 2, heading to, and cl. 3 of, the Second Sch: 8 Dec 1978 (see s. 2(1)); Act other than long title, heading to Pt. I, s. 1 and 2, heading to, and cl. 3 of, the Second Sch.: 1 Jan 1982 (see s. 2(2) and *Gazette* 11 Dec 1981 p. 5085)
Acts Amendment (Mining) Act 1981 Pt. II	69 of 1981	30 Oct 1981	30 Oct 1981
Reprint of the *Mining Act 1978* approved 11 Dec 1981 (includes amendments listed above except those in the *Mining Act 1978* other than the Long title, heading to Pt. I, s. 1 and 2, heading to, and cl. 3 of, the Second Sch.)			
Mining (Anomalies Prevention) Order 1981	published in *Gazette* 18 Dec 1981 p. 5274		1 Jan 1982 (see cl. 3)
Companies (Consequential Amendments) Act 1982 s. 28	10 of 1982	14 May 1982	1 Jul 1982 (see s. 2(1) and *Gazette* 25 Jun 1982 p. 2079)
Mining (Anomalies Prevention) Order 1982	published in *Gazette* 16 Jul 1982 p. 2829		16 Jul 1982 (see cl. 3)
Acts Amendment (Mining) Act 1982 Pt. II	122 of 1982	10 Dec 1982	s. 30(d): 1 Jan 1982 (see s. 2(2)); Pt. II other than s. 30(d): 10 Dec 1982 (see s. 2(1))
Mining Amendment Act 1983	52 of 1983	13 Dec 1983	1 Jan 1984 (see s. 2 and *Gazette* 23 Dec 1983 p. 4934)

Short title	Number and year	Assent	Commencement
Mining Amendment Act 1985 [6]	100 of 1985 (as amended by No. 105 of 1986 Pt. II and No. 22 of 1990 s. 39)	4 Dec 1985	s. 1 and 2: 4 Dec 1985; Act other than s. 1, 2, 31, 34, 38, 59, 63, 68-71, 77-80, 88, 90 and 96: 31 Jan 1986 (see s. 2 and *Gazette* 31 Jan 1986 p. 320); s. 31, 34, 38, 59, 63, 68-71, 77-80 and 96: 16 Oct 1987 (see s. 2 and *Gazette* 16 Oct 1987 p. 3884)
Mining (Validation and Amendment) Act 1986 Pt. III	1 of 1986	26 Jun 1986	26 Jun 1986 (see s. 2)
Acts Amendment and Repeal (Environmental Protection) Act 1986 Pt. IV	77 of 1986	4 Dec 1986	20 Feb 1987 (see s. 2 and *Gazette* 20 Feb 1987 p. 440)
Mining Amendment Act 1986	105 of 1986	12 Dec 1986	s. 1 and 2: 12 Dec 1986; Act other than s. 1 and 2: 9 Jan 1987 (see s. 2 and *Gazette* 9 Jan 1987 p. 18)
Mining (Transitional Provisions) (Anomalies Prevention) Order 1987 published in *Gazette* 15 May 1987 p. 2161-2			15 May 1987
Mining Amendment Act 1987	12 of 1987	16 Jun 1987	s. 1 and 3: 16 Jun 1987; Act other than s. 1 and 3: 26 Jun 1987 (see s. 3 and *Gazette* 26 Jun 1987 p. 2447)
Mining (Transitional Provisions) (Anomalies Prevention) (No. 2) Order 1987 published in *Gazette* 20 Nov 1987 p. 4239			20 Nov 1987
Acts Amendment (Legal Practitioners, Costs and Taxation) Act 1987 Pt. XIII	65 of 1987	1 Dec 1987	12 Feb 1988 (see s. 2(2) and *Gazette* 12 Feb 1988 p. 397)
Acts Amendment (Public Service) Act 1987 s. 32	113 of 1987	31 Dec 1987	16 Mar 1988 (see s. 2 and *Gazette* 16 Mar 1988 p. 813)
Acts Amendment (Land Administration) Act 1987 Pt. XVIII	126 of 1987	31 Dec 1987	16 Sep 1988 (see s. 2 and *Gazette* 16 Sep 1988 p. 3637)

Short title	Number and year	Assent	Commencement
Reprint of the *Mining Act 1978* as at 1 Aug 1988 (includes amendments listed above except those in the *Acts Amendment (Land Administration) Act 1987*) (corrigenda to reprint in *Gazette* 23 Sep 1988 p. 3922 and *Gazette* 21 Jul 1989 p. 2213)			
Mining Amendment Act 1990[7]	22 of 1990 (as amended by No. 37 of 1993 s. 30(1) and (2) and No. 58 of 1994 s. 52)	28 Aug 1990	s. 1 and 2: 28 Aug 1990; Act other than s. 1 and 2: 28 Jun 1991 (see s. 2 and *Gazette* 28 Jun 1991 p. 3101)
Conservation and Land Management Amendment Act 1991 s. 57	20 of 1991	25 Jun 1991	23 Aug 1991 (see s. 2 and *Gazette* 23 Aug 1991 p. 4353)
Western Australian Land Authority Act 1992 s. 49	35 of 1992	23 Jun 1992	1 Jul 1992 (see s. 2(2) and *Gazette* 30 Jun 1992 p. 2869)
Land (Titles and Traditional Usage) Act 1993 s. 45	21 of 1993	2 Dec 1993	2 Dec 1993 (see s. 2)
Mining Amendment Act 1993[8]	37 of 1993	16 Dec 1993	Pt. 3: 28 Jun 1991 (see s. 2(2); s. 1 and 2: 16 Dec 1993; Act other than s. 1 and 2 and Pt. 3: 1 Jul 1994 (see s. 2(1) and *Gazette* 24 Jun 1994 p. 2819)
Acts Amendment (Public Sector Management) Act 1994 s. 19	32 of 1994	29 Jun 1994	1 Oct 1994 (see s. 2 and *Gazette* 30 Sep 1994 p. 4948)
Mining Amendment Act 1994[9]	58 of 1994 (as amended by No. 52 of 1995 Pt. 6 and No. 74 of 2003 s. 85)	2 Nov 1994	Act other than Pt. 2 and s. 52: 2 Nov 1994 (see s. 2(1)); Pt. 2 (except s. 5) and s. 52: 14 Oct 1995 (see s. 2(2) and *Gazette* 13 Oct 1995 p. 4797 and Printer's correction to proclamation in *Gazette* 24 Oct 1995 p. 4917); s. 5 repealed by No. 74 of 2003 s. 85
Statutes (Repeals and Minor Amendments) Act 1994 s. 4	73 of 1994	9 Dec 1994	9 Dec 1994 (see s. 2)

Short title	Number and year	Assent	Commencement
Acts Amendment and Repeal (Native Title) Act 1995 Pt. 5	52 of 1995	24 Nov 1995	9 Dec 1995 (see s. 2 and *Gazette* 8 Dec 1995 p. 5935)
Water Agencies Restructure (Transitional and Consequential Provisions) Act 1995 s. 188	73 of 1995	27 Dec 1995	1 Jan 1996 (see s. 2(2) and *Gazette* 29 Dec 1995 p. 6291)
Sentencing (Consequential Provisions) Act 1995 Pt. 88	78 of 1995	16 Jan 1996	4 Nov 1996 (see s. 2 and *Gazette* 25 Oct 1996 p. 5632)
Reprint of the *Mining Act 1978* as at 27 Feb 1996 (includes amendments listed above except those in the *Sentencing (Consequential Provisions) Act 1995*) (correction to reprint in *Gazette* 19 Apr 1996 p. 1739)			
Local Government (Consequential Amendments) Act 1996 s. 4	14 of 1996	28 Jun 1996	1 Jul 1996 (see s. 2)
Mining Amendment Act 1996 [10]	54 of 1996 (as amended by No. 39 of 2004 Pt. 11 and No. 8 of 2009 s. 93)	11 Nov 1996	s. 1 and 2: 11 Nov 1996; s. 5, 7, 10, 13 and 23: 7 Dec 1996 (see s. 2 and *Gazette* 6 Dec 1996 p. 6699); s. 3, 4, 6, 8, 11, 12 and 14-22: 11 Feb 2006 (see s. 2 and *Gazette* 3 Feb 2006 p. 515) [11]
Acts Amendment (Marine Reserves) Act 1997 Pt. 3	5 of 1997	10 Jun 1997	29 Aug 1997 (see s. 2 and *Gazette* 29 Aug 1997 p. 4867)
Acts Amendment (Land Administration) Act 1997 Pt. 44 and s. 141	31 of 1997	3 Oct 1997	30 Mar 1998 (see s. 2 and *Gazette* 27 Mar 1998 p. 1765)
Statutes (Repeals and Minor Amendments) Act 1997 s. 89	57 of 1997	15 Dec 1997	15 Dec 1997 (see s. 2(1))
Statutes (Repeals and Minor Amendments) Act (No. 2) 1998 s. 52	10 of 1998	30 Apr 1998	30 Apr 1998 (see s. 2(1))
Mining Amendment Act 1998 [12]	35 of 1998	6 Jul 1998	6 Jul 1998 (see s. 2)

Short title	Number and year	Assent	Commencement
Acts Amendment (Land Administration, Mining and Petroleum) Act 1998 Pt. 3	61 of 1998	11 Jan 1999	11 Jan 1999 (see s. 2(1))
Acts Amendment (Mining and Petroleum) Act 1999 Pt. 2	17 of 1999	15 Jun 1999	24 Jul 1999 (see s. 2 and *Gazette* 23 Jul 1999 p. 3385)
Reprint of the *Mining Act 1978* as at 26 Jul 1999 (includes amendments listed above except those in the *Mining Amendment Act 1996* s. 3, 4, 6, 8, 11, 12 and 14-22)			
Acts Amendment (Police Immunity) Act 1999 s. 8	42 of 1999	25 Nov 1999	25 Nov 1999 (see s. 2)
Statutes (Repeals and Minor Amendments) Act 2000 s. 26	24 of 2000	4 Jul 2000	4 Jul 2000 (see s. 2)
Rights in Water and Irrigation Amendment Act 2000 s. 86	49 of 2000	28 Nov 2000	10 Jan 2001 (see s. 2 and *Gazette* 10 Jan 2001 p. 163)
Acts Amendment (Australian Datum) Act 2000 s. 5	54 of 2000	28 Nov 2000	16 Dec 2000 (see s. 2 and *Gazette* 15 Dec 2000 p. 7201)
Mining Amendment Act 2000	63 of 2000	4 Dec 2000	s. 1 and 2: 4 Dec 2000; Act other than s. 1 and 2: 3 Feb 2001 (see s. 2 and *Gazette* 2 Feb 2001 p. 697)
Corporations (Consequential Amendments) Act 2001 Pt. 39	10 of 2001	28 Jun 2001	15 Jul 2001 (see s. 2 and *Gazette* 29 Jun 2001 p. 3257 and Cwlth *Gazette* 13 Jul 2001 No. S285)
Reprint of the *Mining Act 1978* as at 7 Sep 2001 (includes amendments listed above except those in the *Mining Amendment Act 1996* s. 3, 4, 6, 8, 11, 12 and 14-22)			

Short title	Number and year	Assent	Commencement
Mining Amendment Act 2002	15 of 2002	8 Jul 2002	s. 1 and 2: 8 Jul 2002; s. 23: 15 Jul 2001 (see s. 2(3) and Cwlth. *Gazette* 13 Jul 2001 No. S285); Act other than s. 1, 2, 12 and 23: 18 Jan 2003 (see s. 2(1) and (2) and *Gazette* 17 Jan 2003 p. 105); s. 12: 10 Feb 2006 (see s. 2(2) and *Gazette* 3 Feb 2006 p. 516) [13]
Offshore Minerals (Consequential Amendments) Act 2003 Pt. 2	12 of 2003	17 Apr 2003	1 Jan 2011 (see s. 2 and *Gazette* 17 Dec 2010 p. 6350)
Acts Amendment (Equality of Status) Act 2003 Pt. 46	28 of 2003	22 May 2003	1 Jul 2003 (see s. 2 and *Gazette* 30 Jun 2003 p. 2579)
Acts Amendment and Repeal (Courts and Legal Practice) Act 2003 s. 52	65 of 2003	4 Dec 2003	1 Jan 2004 (see s. 2 and *Gazette* 30 Dec 2003 p. 5722)
Mining Amendment Act 2004 [14]	39 of 2004 (as amended by No. 19 of 2008 Pt. 2 and No. 51 of 2012 Pt. 3)	3 Nov 2004	s. 1 and 2: 3 Nov 2004; Act other than s. 1 and 2 and Pt. 9: 10 Feb 2006 (see s. 2 and *Gazette* 3 Feb 2006 p. 516); Pt. 9: 31 Mar 2007 (see s. 2 and *Gazette* 9 Mar 2007 p. 847) [15]
Acts Amendment (Court of Appeal) Act 2004 s. 37	45 of 2004	9 Nov 2004	1 Feb 2005 (see s. 2 and *Gazette* 14 Jan 2005 p. 163)
Courts Legislation Amendment and Repeal Act 2004 Pt. 15	59 of 2004	23 Nov 2004	1 May 2005 (see s. 2 and *Gazette* 31 Dec 2004 p. 7128)
State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004 s. 570 [16]	55 of 2004	24 Nov 2004	1 Jan 2005 (see s. 2 and *Gazette* 31 Dec 2004 p. 7130)
Criminal Law Amendment (Simple Offences) Act 2004 s. 82	70 of 2004	8 Dec 2004	31 May 2005 (see s. 2 and *Gazette* 14 Jan 2005 p. 163)

Short title	Number and year	Assent	Commencement
Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004 s. 80	84 of 2004	16 Dec 2004	2 May 2005 (see s. 2 and *Gazette* 31 Dec 2004 p. 7129 (correction in *Gazette* 7 Jan 2005 p. 53))
Oaths, Affidavits and Statutory Declarations (Consequential Provisions) Act 2005 Pt. 15 (s. 61-62)	24 of 2005	2 Dec 2005	s. 61: 1 Jan 2006 (see s. 2 and *Gazette* 23 Dec 2005 p. 6244); s. 62: 31 Mar 2007 (see s. 2(3) and *Gazette* 9 Mar 2007 p. 847)
Mining Amendment Act 2005	27 of 2005	12 Dec 2005	s. 1 and 2: 12 Dec 2005; Act other than s. 1 and 2: 10 Feb 2006 (see s. 2 and *Gazette* 3 Feb 2006 p. 516)
Planning and Development (Consequential and Transitional Provisions) Act 2005 s. 15	38 of 2005	12 Dec 2005	9 Apr 2006 (see s. 2 and *Gazette* 21 Mar 2006 p. 1078)
Reprint 6: The *Mining Act 1978* as at 10 Apr 2006 (includes amendments listed above except those in the *Offshore Minerals (Consequential Amendments) Act 2003*, the *Mining Amendment Act 2004* Pt. 9 and the *Oaths, Affidavits and Statutory Declarations (Consequential Provisions) Act 2005* s. 62)			
Petroleum Amendment Act 2007 s. 100	35 of 2007	21 Dec 2007	19 Jan 2008 (see s. 2(b) and *Gazette* 18 Jan 2008 p. 147)
Legal Profession Act 2008 s. 681	21 of 2008	27 May 2008	1 Mar 2009 (see s. 2(b) and *Gazette* 27 Feb 2009 p. 511)
Revenue Laws Amendment Act (No. 2) 2008 Pt. 2 Div. 2	31 of 2008	27 Jun 2008	28 Jun 2008 (see s. 2(b))
Statutes (Repeals and Miscellaneous Amendments) Act 2009 s. 8	8 of 2009	21 May 2009	22 May 2009 (see s. 2(b))
Reprint 7: The *Mining Act 1978* as at 3 Jul 2009 (includes amendments listed above except those in the *Offshore Minerals (Consequential Amendments) Act 2003*)			
Approvals and Related Reforms (No. 3) (Crown Land) Act 2010 Pt. 6	8 of 2010	3 Jun 2010	18 Sep 2010 (see s. 2(b) and *Gazette* 17 Sep 2010 p. 4757)

Short title	Number and year	Assent	Commencement
Approvals and Related Reforms (No. 2) (Mining) Act 2010 Pt. 2 and 3	12 of 2010	3 Jun 2010	Pt. 3: 21 Mar 2011 (see s. 2(b) and *Gazette* 18 Mar 2011 p. 909); Pt. 2: 1 Jul 2011 (see s. 2(b) and *Gazette* 18 Mar 2011 p. 909)
Standardisation of Formatting Act 2010 s. 4 and 51	19 of 2010	28 Jun 2010	11 Sep 2010 (see s. 2(b) and *Gazette* 10 Sep 2010 p. 4341)
Public Sector Reform Act 2010 s. 89	39 of 2010	1 Oct 2010	1 Dec 2010 (see s. 2(b) and *Gazette* 5 Nov 2010 p. 5563)
Personal Property Securities (Consequential Repeals and Amendments) Act 2011 Pt. 9 Div. 1	42 of 2011	4 Oct 2011	30 Jan 2012 (see s. 2(c) and Cwlth Legislative Instrument No. F2011L02397 cl. 5 registered 21 Nov 2011)
Reprint 8: The *Mining Act 1978* as at 7 Oct 2011 (includes amendments listed above except those in the *Personal Property Securities (Consequential Repeals and Amendments) Act 2011*) (correction to reprint in *Gazette* 1 Jun 2012 p. 2282)			
Mining Amendment Act 2012	51 of 2012	29 Nov 2012	2 Feb 2013 (see s. 2(b) and *Gazette* 1 Feb 2013 p. 447)
Statutes (Repeals and Minor Amendments) Act 2014 s. 29	17 of 2014	2 Jul 2014	6 Sep 2014 (see s. 2(b) and *Gazette* 5 Sep 2014 p. 3213)
Conservation and Land Management Amendment Act 2015 s. 77	28 of 2015	19 Oct 2015	7 May 2016 (see s. 2(b) and *Gazette* 6 May 2016 p. 1379-80)
Alumina Refinery (Mitchell Plateau) Agreement (Termination) Act 2015 Pt. 3	31 of 2015	2 Nov 2015	3 Nov 2015 (see s. 2(b))
Mining (Transitional Provisions) (Anomalies Prevention) Order 2016 published in *Gazette* 22 Jul 2016 p. 3134			22 Jul 2016 (see cl. 2)
Licensing Provisions Amendment Act 2016 Pt. 5	44 of 2016	1 Dec 2016	8 Feb 2017 (see s. 2(b) and *Gazette* 7 Feb 2017 p. 1158)
Reprint 9: The *Mining Act 1978* as at 10 Feb 2017 (includes amendments listed above)			
Environmental Protection Amendment Act 2020 s. 116	40 of 2020	19 Nov 2020	23 Oct 2021 (see s. 2(1)(e) and SL 2021/176 cl. 2)

Short title	Number and year	Assent	Commencement
Legal Profession Uniform Law Application Act 2022 s. 424	9 of 2022	14 Apr 2022	1 Jul 2022 (see s. 2(c) and SL 2022/113 cl. 2)
Mining Amendment Act 2022	31 of 2022	28 Sep 2022	s. 1 and 2: 28 Sep 2022 (see s. 2(a)); s. 3, 6 and 41: 31 Aug 2025 (see s. 2(b) and SL 2025/155 cl. 2); Act other than s. 1-3, 6 and 41: 9 Sep 2025 (see s. 2(b) and SL 2025/152 cl. 2)
Mining Amendment Act (No. 2) 2022	39 of 2022	1 Nov 2022	s. 1 and 2: 1 Nov 2022 (see s. 2(a)); Act other than s. 1 and 2: 2 Nov 2022 (see s. 2(b))
Land and Public Works Legislation Amendment Act 2023 Pt. 4 Div. 8	4 of 2023	24 Mar 2023	10 Aug 2023 (see s. 2(b) and SL 2023/132 cl. 2)
Directors' Liability Reform Act 2023 Pt. 3 Div. 41	9 of 2023	4 Apr 2023	5 Apr 2023 (see s. 2(j))
Mining Amendment Act 2023	27 of 2023	17 Nov 2023	s. 1 and 2: 17 Nov 2023 (see s. 2(a)); Act other than s. 1 and 2: 18 Nov 2023 (see s. 2(b))
Petroleum Legislation Amendment Act 2024 Pt. 5 Div. 8	17 of 2024	14 May 2024	28 May 2026 (see s. 2(b) and SL 2026/70 cl. 2)
Mining Amendment (Transfer of Royalty Administration) Act 2025 Pt. 2	7 of 2025	2 Jul 2025	1 Sep 2025 (see s. 2(b) and SL 2025/151 cl. 2)

Uncommenced provisions table

To view the text of the uncommenced provisions see *Acts as passed* on the WA legislation website.

Short title	Number and year	Assent	Commencement
Native Title (State Provisions) Act 1999 s. 7.3	60 of 1999	10 Jan 2000	Operative on earliest of commencement of Pt. 2 (except s. 2.2), Pt. 3 (except s. 3.1) and Pt. 4
Mining Legislation Amendment Act 2014 Pt. 2	4 of 2014 (as amended by No. 22 of 2026 Pt. 3)	22 Apr 2014	To be proclaimed (see s. 2(b))
Aquatic Resources Management Act 2016 s. 369	53 of 2016	29 Nov 2016	To be proclaimed (see s. 2(b))
Mining Amendment Act 2026 Pt. 2	22 of 2026	16 Nov 2026	To be proclaimed (see s. 2(b))

Other notes

[1] Repealed by the *Interpretation Act 1984* s. 77(1).

[2] Repealed by the *Mining Act 1978* s. 3(1).

[3] The *Mining Amendment Act 1981* s. 3 reads as follows:

> **3. Continuation of miners' rights issued under *Mining Act 1904***
>
> (1) A miner's right issued under section 22 of the *Mining Act 1904* and in force immediately before the repeal of that Act by the *Mining Act 1978* shall, notwithstanding such repeal, continue in force and have effect in all respects as if it were issued under section 20 of the *Mining Act 1978*.
>
> (2) Subsection (1) of this section shall not be construed so as to derogate in any way from sections 15 and 16 of the *Interpretation Act 1918*.
>
> (3) A miner's right issued under the *Mining Act 1904* before 8 December 1978 shall be deemed to have been valid and in force until the date of expiry expressed thereon.
>
> (4) Subsection (3) of this section shall not be construed so as to derogate in any way from the effect of the *Mining Act Amendment*

Clause 1978 as set out in Clause 3 of the Second Schedule to the *Mining Act 1978*.

[4] Under the *Alteration of Statutory Designations Order (No. 3) 2001* a reference in a written law to the Department of Mines is, unless the contrary is intended, to be read and construed as a reference to the Department of Industry and Resources.

At the time of this compilation, the department is called the Department of Mines, Industry Regulation and Safety.

[5] The *Mining Legislation Amendment and Validation Act 2008* Pt. 2 Div. 2 and Pt. 3 read as follows:

Division 2 — Validation and pending applications

6. Validation of extension of term of certain exploration licences

If, before the day on which this section comes into operation, the term of a relevant licence was extended as a result of an application lodged at an office of the Department —

(a) the extension of the term of the licence; and

(b) anything done or purportedly done under the licence, or in relation to the licence, after the extension,

are taken to be, and always to have been, as valid and effective as they would have been if the application had been lodged at the office of the mining registrar.

7. Pending applications for extension of term

If —

(a) an application for the extension of the term of a relevant licence has been lodged at an office of the Department; and

(b) the application has not been determined before the day on which this section comes into operation,

the application is to be dealt with and determined as if it had been lodged at the office of the mining registrar.

Part 3 — Provisions relating to miscellaneous licences

8. Validation of grant of certain miscellaneous licences

If, before the day on which this section comes into operation, a miscellaneous licence was granted for a purpose approved or specified by the Director General of Mines —

(a) the grant of the licence; and

(b) anything done or purportedly done under the licence or in relation to the licence,

are taken to be, and always to have been, as valid and effective as they would have been if the purpose so approved or specified had been prescribed for the purposes of the *Mining Act 1978* section 91(1) at the time of the grant.

9. Pending applications for miscellaneous licence

If —

(a) an application has been made for a miscellaneous licence for a purpose approved or specified by the Director General of Mines; and

(b) the application has not been determined before the day on which this section comes into operation,

the application is to be dealt with and determined as if, on and from the time the application was made, the purpose so approved or specified were prescribed for the purposes of the *Mining Act 1978* section 91(1).

[6] The *Mining Amendment Act 1986* Pt. II amended the *Mining Amendment Act 1985* s. 34 and 88. The *Mining Amendment Act 1990* s. 39 repealed the *Mining Amendment Act 1985* s. 88 and 90 before they came into operation.

[7] The *Mining Amendment Act 1990* s. 40 (as amended by the *Mining Amendment Act 1993* s. 30(1) and (2) and the *Mining Amendment Act 1994* s. 53) reads as follows:

40. Savings and transitional

(1) Notwithstanding sections 15, 16, 17, 19 and 34 but subject to this section —

(a) the amendments to the principal Act effected by those sections do not have effect in relation to —

(i) any exploration licence in force before the commencement day;

(ii) any application for an exploration licence lodged with the Department before the commencement day; or

(iii) any exploration licence granted in respect of an application referred to in subparagraph (ii);

(b) where, after the commencement day —

(i) land becomes available from an existing licence; and

(ii) other land in the same block is the subject of an exploration licence granted in respect of an application lodged with the Department on or after the commencement day,

the exploration licence referred to in subparagraph (ii) shall, by virtue, be amended to include the land that has become available from the existing licence;

(c) where, after section 52 of the *Mining Amendment Act 1994* commences —

(i) land becomes available from an existing licence; and

(ii) other land in the same block is the subject of an application for an exploration licence lodged with the Department on or after the commencement day,

the application referred to in subparagraph (ii) is deemed to extend, and to have always extended, to the land that has become available from the existing licence, and, if an exploration licence is granted as a result of the application, that land shall be included in the exploration licence.

(1a) Subsection (1)(b) or (c) does not apply if the land that has become available from an existing licence has been included in an application under section 67 or 70B and a mining lease, general purpose lease or retention licence is granted in respect of that application.

(2) Without affecting anything in subsection (1) the Governor may make regulations providing for such savings and transitional matters as are convenient or necessary for the purposes of giving effect to the amendments effected by this Act to the principal Act.

(3) In this section —

block means a block as described in section 56C of the principal Act as in force after the commencement of section 15 of this Act;

commencement day means the day on which sections 15, 16, 17, 19 and 34 of this Act come into operation;

existing licence means an exploration licence referred to in subsection (1)(a)(i) or (iii).

(4) A reference in this section to land becoming available from an existing licence is a reference to the land being surrendered or forfeited (otherwise than under section 98 of the principal Act) or to the expiry of the existing licence.

[8] The *Mining Amendment Act 1993* s. 5(2), 19(2) and 28(2), and s. 29 and 30(3) (which are in Pt. 3 of the Act) read as follows:

5. Section 45 amended and savings

(2) Notwithstanding subsection (1), section 45 of the principal Act as in force immediately before the commencement of this section continues to have effect in relation to —

(a) any prospecting licence in force before that commencement; and

(b) any application for an extension of the term of a prospecting licence lodged before that commencement.

19. Section 114A inserted and validation

(2) Any act or thing done before the commencement of the section by the holder of a mining tenement as defined in the principal Act is, and is to be regarded as having always been, as valid, lawful and effective as it would have been if —

(a) section 114A of the principal Act as inserted by subsection (1);

(b) section 114(7) of the principal Act as amended by this Act; and

(c) clause 7(5) of the Second Schedule to the principal Act as inserted by this Act,

had been in operation when the act or thing was done.

28. Amendments relating to surveys and savings provision

(2) Notwithstanding subsection (1), section 80(3) of the principal Act as in force immediately before the commencement of this section continues to have effect in relation to survey fees paid under the principal Act before that commencement.

29. Principal Act

In this Part the *Mining Amendment Act 1990* is referred to as the principal Act.

30. *Mining Amendment Act 1990* amended and transitional

(3) Notwithstanding section 40 of the principal Act as amended by this section —

(a) the amendment effected by section 19(b) of the principal Act;

(b) section 65(1c)(b) and (c) of the *Mining Act 1978* as inserted by section 19(c) of the principal Act; and

(c) the repeal effected by section 19(d) of the principal Act,

have effect in relation to an exploration licence referred to in section 40(1)(a)(i) or (iii) of the principal Act.

[9] The *Mining Amendment Act 1994* s. 21(5), 31(4) and 53 read as follows:

21. Section 70 amended and saving

(5) The amendments made to section 70 of the principal Act by subsections (3) and (4) do not affect the term of any special prospecting licence in force under that section immediately before the commencement of this section.

31. Section 85B amended and saving

(4) The amendments made to section 85B of the principal Act by subsections (2) and (3) do not affect the term of any special prospecting licence in force under section 85B immediately before the commencement of this section.

53. Operation of section 30(3)(b) of the *Mining Amendment Act 1993* modified

(1) Despite sections 2(2) and 30(3)(b) of the *Mining Amendment Act 1993*, section 65(1c)(b) and (c) of the *Mining Act 1978* as inserted by section 19(c) of the *Mining Amendment Act 1990* do not have any effect, and are deemed to have never had any effect, in relation to the surrender of an existing licence under section 65 of the *Mining Act 1978* where that surrender took place before 1 July 1994.

(2) In subsection (1) ***existing licence*** means an exploration licence referred to in section 40(1)(a)(i) or (iii) of the *Mining Amendment Act 1990*.

[10] The *Mining Amendment Act 1996* s. 9 had not come into operation when it was deleted by the *Statutes (Repeals and Miscellaneous Amendments) Act 2009* s. 93.

[11] The proclamation for the commencement of s. 3, 4, 6, 8, 11, 12 and 14-22 (*Gazette* 14 Jan 2005 p. 164) was revoked in *Gazette* 24 Mar 2005 p. 1001.

[12] The *Mining Amendment Act 1998* s. 4(3) reads as follows:

> (3) An application for renewal under section 91(4) of the principal Act that has not been determined on the commencement of this Act is to be treated as an application for renewal under section 91A(3)(a) as inserted into the principal Act by section 5.

[13] The proclamation for the commencement of s. 12 (*Gazette* 14 Jan 2005 p. 164) was revoked in *Gazette* 24 Mar 2005 p. 1001.

[14] The *Mining Amendment Act 2004* s. 5(2), 6(2), 11, 15(2) and 19 (as amended by the *Mining Legislation Amendment and Validation Act 2008* s. 5 and the *Mining Amendment Act 2012* Pt. 3), 32(3), 35, 36(2), 39(2), 86, 90(2), s. 98(2)-(4) and Pt. 12 read as follows:

> **5. Section 45 amended and savings provision**
>
> (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**
>
> (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.
>
> **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.

15. Section 63 amended and transitional provision

(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.

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 61(3), 63A, 65(1a), 65(1c) and 65(4)) continue to apply to and in relation to a relevant licence.

(2a) Section 61(3) and (3a) of the *Mining Act 1978* apply to and in relation to an application for the extension of the term of 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 must, 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) each of the following is a ground for exemption —

(a) by reason of difficulties or delays —

(i) occasioned by law; or

(ii) arising from administrative, political, environmental or other requirements of governmental or other authorities, in the State or elsewhere; or

(iii) arising from a requirement to conduct an Aboriginal heritage survey on the land to which the application for exemption relates (the ***relevant land***); or

(iv) in obtaining requisite consents or approvals for exploration or for the marking out of a mining lease or general purpose lease in relation to any part of the relevant land; or

(v) in gaining access to the relevant land because of unfavourable climatic conditions,

the exploration programme, or the marking out and application appropriate to a mining lease or general purpose lease in relation to the relevant land, could not be undertaken or completed or is restricted in a manner that is, or subject to conditions that are, for the time being impracticable;

(b) work already carried out under the licence justifies further exploration.

(7) Despite the amendments made by section 16, section 65(1c) of the old provisions continues to apply to and in relation to a relevant licence as if section 65(1c)(b) were replaced by the following paragraph —

“

(b) shall be lodged at an office of the Department on or before the last day of the third or fourth year, as the case requires, of the term for which it is lodged;

”.

[Section 19 amended: No. 19 of 2008 s. 5; No. 51 of 2012 s. 45.]

32. Section 82 amended and transitional provisions

(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.

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.

36. Section 70F replaced and transitional provision

(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.

39. Section 84A replaced and transitional provision

(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.

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.

90. Section 70H amended and transitional provision

(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.

98. Section 118A inserted and validation and transitional provisions

(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 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.

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.

[15] The proclamation for the commencement of Pt. 9 (*Gazette* 14 Jan 2005 p. 164) was revoked in *Gazette* 24 Mar 2005 p. 1002.

[16] The *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004* Pt. 5, the *State Administrative Tribunal Act 2004* s. 167 and 169,

and the *State Administrative Tribunal Regulations 2004* r. 28 and 42 deal with certain transitional issues some of which may be relevant for this Act.

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