

First print



New South Wales

Mining Legislation Amendment Bill 1996

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Mining Act 1992* in relation to the following matters:

- (a) offences concerning the theft of minerals,
 - (b) unlawful entry to the sites of mineral claims,
 - (c) fossicking,
 - (d) other activities in the nature of prospecting and mining,
 - (e) royalty on coal,
 - (f) fees,
 - (g) security deposits,
 - (h) compensation to owners and occupiers of land,
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- (i) protection of dwelling-houses, gardens and improvements,
- (j) protection of mining operations in connection with privately owned minerals,
- (k) mining purposes,
- (l) renewals of authorities and mineral claims,
- (m) partial transfers of exploration licences,
- (n) cancellation of mineral claims,
- (o) procedural irregularities concerning mineral claims,
- (p) royalty officers and deputy mining registrars,
- (q) powers of entry under certain permits,
- (r) consolidation of mining leases,
- (s) prevention of damage to certain dams,
- (t) miscellaneous matters,
- (u) savings and transitional provisions.

The Bill also makes minor, consequential and ancillary amendments to various other Acts and instruments.

A detailed explanation of each amendment is set out in the Bill immediately after the amendment.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 is a formal provision giving effect to a Schedule of amendments to the *Mining Act 1992*.

Clause 4 is a formal provision giving effect to a Schedule of amendments to various other Acts and instruments. The clause also provides that the amendments made by the proposed Act to the *Mining (General) Regulation 1992* do not affect the future amendment or repeal of that Regulation.

Clause 5 provides that explanatory notes in the proposed Act do not form part of the proposed Act.

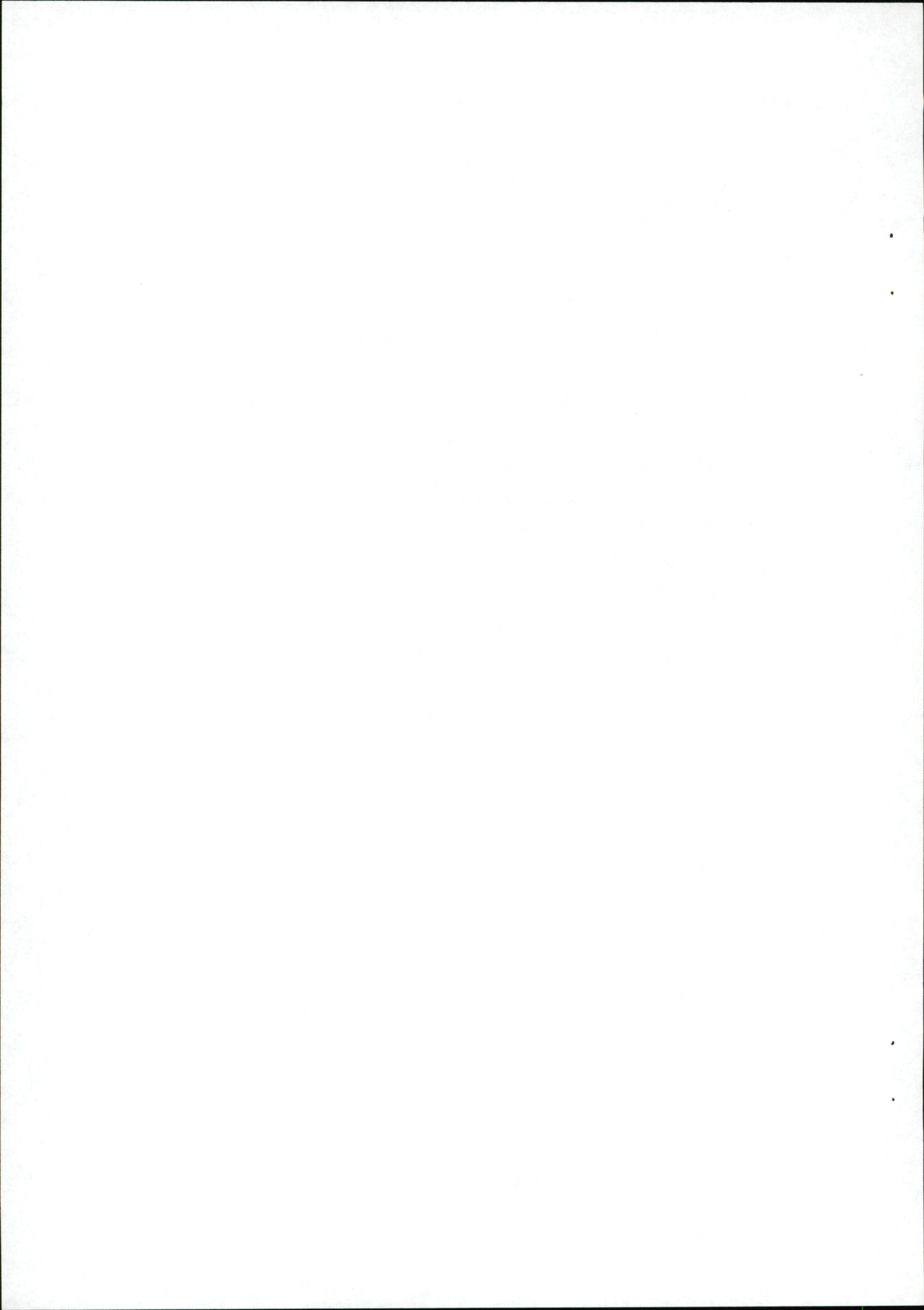
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Schedule 1 contains amendments to the *Mining Act 1992*.

Schedule 2 contains amendments to the following Acts and instruments:

- *Aboriginal Land Rights Act 1983 No 42*
- *Coal Mines Regulation Act 1982 No 67*
- *Crimes Act 1900 No 40*
- *Criminal Procedure Act 1986 No 209*
- *Crown Lands Act 1989 No 6*
- *Mines Inspection Act 1901 No 75*
- *Mining (General) Regulation 1992*
- *National Parks and Wildlife Act 1974 No 80*
- *State Coal Mines Act 1912 No 70*





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New South Wales

Mining Legislation Amendment Bill 1996

No. , 1996

A Bill for

An Act to amend the *Mining Act 1992* and certain other Acts and instruments with respect to various matters; and for other purposes.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Mining Legislation Amendment Act 1996*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation. 5

3 Amendment of Mining Act 1992 No 29

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

4 Amendment of other Acts and instruments

- (1) Each Act and instrument referred to in Schedule 2 is amended as set out in that Schedule. 10
- (2) The amendments made by Schedule 2 to the *Mining (General) Regulation 1992* do not affect the future amendment or repeal of that Regulation.

5 Explanatory notes 15

The matter appearing under the heading "Explanatory note" in Schedule 1 or 2 does not form part of this Act.

Schedule 1 Amendment of Mining Act 1992

(Section 3)

Part 1 Offences concerning the theft of minerals

[1] Part 2 Prospecting and mining generally

Insert before section 5:

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Division 1 General

Explanatory note

This item is consequential on the insertion of proposed Division 2 into Part 2.

[2] Part 2, Division 2

Insert after section 12:

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Division 2 Offences concerning theft of minerals

12A Definitions

In this Division:

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

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

(a) who is authorised (whether under a mining lease or mineral claim or otherwise) to mine for minerals in or on the mine or mining land, or

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(b) who is entitled to receive any minerals recovered from the mine or mining land.

12B Stealing minerals

A person who:

(a) steals, or attempts to steal, a mineral from any mine or mining land, or

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

is guilty of an offence.

Maximum penalty:

- (a) 500 penalty units or imprisonment for 5 years, or both, in the case of an offence dealt with on indictment, or
- (b) 200 penalty units or imprisonment for 2 years, or both, in the case of an offence dealt with summarily. 5

12C Fraudulent removal and concealment of minerals by employees

A person employed in or about any mine or mining land who removes or conceals, or attempts to remove or conceal, a mineral found in that mine or mining land with intent to defraud an owner of the mine or mining land is guilty of an offence. 10

Maximum penalty: 15

- (a) 500 penalty units or imprisonment for 5 years, or both, in the case of an offence dealt with on indictment, or
- (b) 200 penalty units or imprisonment for 2 years, or both, in the case of an offence dealt with summarily. 20

12D Fraudulent removal and concealment of minerals by partners

An owner of any mine or mining land who removes or conceals, or attempts to remove or conceal, a mineral found in that mine or mining land with intent to defraud any other owner of the mine or mining land is guilty of an offence. 25

Maximum penalty:

- (a) 500 penalty units or imprisonment for 5 years, or both, in the case of an offence dealt with on indictment, or 30
- (b) 200 penalty units or imprisonment for 2 years, or both, in the case of an offence dealt with summarily. 35

12E Proceedings for offences under Division 2

- (1) Proceedings for an offence under this Division are to be dealt with summarily before a Warden's Court or before a Local Court constituted by a Magistrate sitting alone unless: 5
- (a) the prosecuting authority or the person charged with the offence (in the case of an offence in which the value of the minerals to which the alleged offence relates is \$5,000 or more), or
 - (b) the prosecuting authority (in the case of an offence in which the value of the minerals to which the alleged offence relates is less than \$5,000), 10
- elects in accordance with Part 9A of the *Criminal Procedure Act 1986* to have the offence dealt with on indictment. 15
- (2) Section 56 of the *Justices Act 1902*, and the provisions of any other Act limiting the time within which proceedings for summary offences may be instituted, do not apply to an indictable offence that is dealt with summarily in accordance with this section. 20
- (3) The conviction of a person of an offence dealt with summarily in accordance with this section has the same effect as a conviction on indictment for the offence.
- (4) For the purposes of dealing with an offence in accordance with this section, a Warden's Court has the functions of, and is taken to be, a Local Court. 25
- (5) In this section, **prosecuting authority** means the Director of Public Prosecutions or other person responsible for the conduct of a prosecution.

Explanatory note 30

This item inserts a new Division 2 into Part 2, re-enacting sections 144, 145 and 147 of the *Crimes Act 1900* which (together with section 146) are to be repealed from that Act. Those offences (proposed sections 12B, 12C and 12D) deal with the theft, concealment and removal of minerals (commonly known as "ratting"). Section 146 is not re-enacted, as its subject-matter is adequately dealt with in Part 14 of the *Mining Act 1992*. The item also includes a definition section (proposed section 12A) and a provision allowing for offences under the Division to be dealt with either summarily or, by election, on indictment (proposed section 12E). 35

[3] Section 375 Proceedings for offences generally

Insert "(other than an offence under Division 2 of Part 2)" after "Act" in section 375 (1).

Explanatory note

This item is consequential on proposed section 12E.

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Part 2 Unlawful entry to the sites of mineral claims

[4] Sections 175A–175D

Insert after section 175:

175A Unlawful entry to site of mineral claim

- (1) Any person who, while in a mineral claims district, is found in or on any land the subject of a mineral claim held by some other person is guilty of an offence. 10

Maximum penalty:

- (a) except as provided by paragraph (b), 10 penalty units or imprisonment for 6 months, or both, or 15
- (b) if, when found on the land, the person is in possession of tools or equipment of a kind generally used for the purposes of prospecting or mining, 20 penalty units or imprisonment for 2 years, or both. 20
- (2) It is a sufficient defence to a prosecution under this section if the defendant establishes that he or she had a reasonable excuse for being in or on the land concerned.

175B Court may make exclusion order against convicted persons

- (1) This section applies to:
- (a) an offence referred to in section 12B, 12C or 12D,
or 5
 - (b) an offence referred to in section 175A in
connection with which the accused was found in
possession of tools or equipment of a kind
generally used for the purposes of prospecting or
mining, 10
- being an offence occurring within a mineral claims
district.
- (2) A court that convicts a person of an offence to which this
section applies may make an order (an *exclusion order*) 15
prohibiting the person from entering the whole or any
part of the mineral claims district concerned, or any
other mineral claims district, for such period (not
exceeding 2 years) as may be specified in the order.
- (3) An exclusion order may be made:
- (a) at any time within 6 months after the person's 20
conviction, and
 - (b) whether or not the person has a legal or equitable
interest in, or is the holder of an authority, mineral
claim or opal prospecting licence over, any of the
land to which the order relates. 25
- (4) Before making an exclusion order against a person, a
court:
- (a) must cause written notice of the fact that it
proposes to make such an order, and of the terms
of the proposed order, to be served on the person, 30
and
 - (b) must give the person a reasonable opportunity to
make representations to the court with respect to
the proposed order, and
 - (c) must take any such representations into 35
consideration.

- (5) An exclusion order takes effect:
 - (a) if the person to whom it relates is present in court when it is made, at the time it is made, or
 - (b) in any other case, when it is served on the person to whom it relates. 5
- (6) A copy of an exclusion order must be sent to the Commissioner of Police as soon as practicable after the order is made.

175C Appeals against, and suspensions and annulments of, exclusion orders 10

- (1) For the purposes of section 122 of the *Justices Act 1902*, an exclusion order made by a Warden's Court or a Local Court is taken to be an order whereby the defendant is punished.
- (2) For the purposes of the *Criminal Appeal Act 1912*, an exclusion order made by a court other than a Warden's Court or a Local Court is taken to be a sentence within the meaning of that Act. 15
- (3) If an appeal (or an application for leave to appeal) is made against the conviction from which an exclusion order arises, the operation of the exclusion order is suspended until the appeal or application is finally determined. 20
- (4) Unless the appeal court orders otherwise, the exclusion order is annulled if the conviction is quashed. 25
- (5) The appeal court may, by order, annul or vary the exclusion order even if the conviction is not quashed.
- (6) In this section, *appeal court* means the court to which an appeal (or an application for leave to appeal) is made as referred to in subsection (3). 30

175D Offence of contravening exclusion order

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

Maximum penalty: 20 penalty units or imprisonment for 2 years, or both. 5

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

Explanatory note

This item inserts provisions relating to unlawful entry to the sites of mineral claims. Proposed section 175A creates an offence of being in or on land the subject of a mineral claim held by some other person. The maximum penalty for the offence is greater if, when found on the land, the accused is in possession of tools or equipment of a kind generally used for the purposes of prospecting or mining. The offence applies only in relation to mineral claims situated within a mineral claims district. Proposed section 175B provides for the making of exclusion orders against persons who have committed offences under proposed sections 12B, 12C or 12D or under proposed section 175A while in possession of prospecting or mining equipment. Proposed section 175C provides for appeals against, and the suspension and annulment of, exclusion orders. Proposed section 175D makes it an offence for a person to contravene an exclusion order. 10
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[5] Dictionary

Insert in alphabetical order:

exclusion order means an exclusion order referred to in section 175B. 25

Explanatory note

This item inserts a definition of *exclusion order* into the Dictionary at the end of the Act.

Part 3 Fossicking

[6] Section 12 Fossicking 30

Insert “and, in particular, does not make fossicking a lawful authority or lawful excuse for the purposes of any such Act or law” after “restricting fossicking” in section 12 (2) (a).

Explanatory note

This item makes it clear that the fact that fossicking is a lawful activity does not constitute a lawful authority or lawful excuse for the purposes of any Act or law that prohibits, restricts or regulates (except with lawful authority or lawful excuse) the kinds of activities commonly associated with fossicking.

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[7] Section 12 (4) and (5)

Insert after section 12 (3):

- (4) A person must not carry out fossicking on any land the subject of an authority, mineral claim or opal prospecting licence except with the consent of the holder of the authority, claim or licence.

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Maximum penalty: 20 penalty units or imprisonment for 6 months, or both.

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

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Explanatory note

This item includes in the Act a restriction on fossicking that currently exists in the regulations under the Act, but provides that the restriction does not apply to land the subject of an exploration licence if the land is in a fossicking district.

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[8] Section 369A

Insert after section 369:

369A Fossicking districts

The Minister may, by order published in the Gazette, constitute any land as a fossicking district and may, by the same or a subsequent order so published, name the district and fix its boundaries.

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Explanatory note

This item enables the Minister to declare fossicking districts for the purposes of proposed section 12 (5).

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[9] Schedule 4 Regulation making powers

Omit item 3.

Explanatory note

This item repeals a provision that enables the making of regulations with respect to fossicking.

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[10] Dictionary

Insert, in alphabetical order:

fossicking district means a fossicking district constituted under section 369A.

Explanatory note

This item includes a definition of *fossicking district* in the Dictionary to the Act.

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Part 4 Other activities in the nature of prospecting and mining

[11] Section 11A

Insert after section 11:

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11A Certain activities taken not to be prospecting or mining

- (1) The regulations may declare that a specified activity is taken not to be prospecting or mining for the purposes of this Act.
- (2) A regulation referred to in subsection (1):
 - (a) may require a person who proposes to carry out any such activity to give notice of intention to do so to the Director-General, and
 - (b) may require a person who carries out any such activity to pay royalty to the Minister in respect of any publicly owned minerals recovered as a consequence of the carrying out of that activity.

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- (3) Part 14 applies to royalty payable under subsection (2) (b) in the same way as it applies to royalty payable on a mineral recovered under a mining lease.

Explanatory note

This item enables the regulations to declare that certain activities (such as major excavations that occur in the context of road construction) are not to be considered to constitute prospecting or mining for the purposes of the Act. Such a regulation may require notice of any such activity to be given and may require royalty to be paid on any minerals recovered as a consequence of the carrying out of such an activity.

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[12] Dictionary

Insert “, but does not include any activity declared not to be mining by a regulation under section 11A” after “has been so extracted” in paragraph (b) of the definition of *mine*.

Explanatory note

This item amends the definition of *mine* in the Dictionary to the Act as a consequence of the proposed section 11A.

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[13] Dictionary

Insert “, but does not include any activity declared not to be prospecting by a regulation under section 11A” after “of the land” in the definition of *prospect*.

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Explanatory note

This item amends the definition of *prospect* in the Dictionary to the Act as a consequence of the proposed section 11A.

Part 5 Royalty on coal

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[14] Part 14, Division 3A, sections 286A–286D

Insert after section 286:

Division 3A Coal reject

286A Definition of coal reject

In this Division:

coal reject means the by-product of the mining or processing of coal that contains a mixture of coal and

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other substances (such as shale) and has either an energy value (the maximum energy capable of being produced by it on combustion) of less than 16 gigajoules per tonne (dry weight) or contains more than 35 per cent ash (by dry weight).

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286B Royalty on coal in coal reject

- (1) Royalty is not payable on the coal in coal reject recovered under a mining lease until the coal reject is used or disposed of.
- (2) The holder of a mining lease is liable to pay royalty under this Division to the Minister on the coal in coal reject recovered under the lease if the holder uses the coal reject in producing energy or disposes of it for use in producing energy.
- (3) If royalty is payable under this Division on the coal in coal reject, Division 1 does not apply to that coal.

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286C Rate of royalty

- (1) Royalty on the coal in coal reject recovered under a mining lease is payable under this Division at the rate determined from time to time by the Minister, with the concurrence of the Treasurer, in respect of the lease or the class of leases concerned.
- (2) The rate of royalty on the coal in coal reject may be a zero rate or may be any other rate up to, but not exceeding, half the base rate of royalty prescribed from time to time in respect of coal under section 283 (1) (a).
- (3) In determining the rate of royalty the Minister is to have regard to:
 - (a) the energy value of the coal reject, and
 - (b) the costs associated with extracting, transporting or processing the coal reject for the purposes of use or disposal, and
 - (c) such other matters as the Minister considers appropriate.

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- (4) Royalty under this Division is payable on the coal in coal reject at the rate applicable:
 - (a) at the time the coal reject is used by the holder of the relevant mining lease in producing energy, or
 - (b) at the time the coal reject is disposed of by that holder for use in producing energy. 5
- (5) Royalty required to be calculated on the basis of the weight of coal is to be calculated by reference to dry weight.

286D Evidentiary matters 10

- (1) The energy value and ash content of the by-product of the mining or processing of coal recovered under a particular mining lease is to be determined, in the manner directed by the Minister, on the basis of the average energy value and average ash content of that by-product. 15
- (2) The Minister may by determination in writing determine any of the following:
 - (a) that the by-product, or any identifiable quantity of the by-product, of the mining or processing of coal recovered under a particular mining lease is coal reject, 20
 - (b) the amount of coal in the coal reject recovered under a particular mining lease or the amount of coal in any identifiable quantity of that coal reject, 25
 - (c) that the coal reject, or any identifiable quantity of the coal reject, recovered under a particular mining lease and used or disposed of by the holder of the lease has been used by the holder in producing energy or disposed of by the holder for use in producing energy. 30
- (3) The Minister's determination is evidence of the matter determined.

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- (4) A determination under subsection (2) (a) or (b) is not open to dispute or challenge on the basis that the determination is not correct or accurate for any particular sample or quantity of the material concerned.

Explanatory note

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This item allows royalty to be charged on coal reject that is used for the purpose of producing energy, but limits the maximum rate of royalty that may be imposed to half the rate of royalty that is payable for coal.

[15] Section 287A

Insert after section 287:

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287A Waiver of payment of additional royalty for coal

- (1) The Minister may, by order in writing made with the concurrence of the Treasurer, waive all or part of the payment by the holder of a mining lease of royalty at the additional rate prescribed in respect of coal under section 283 (1) (b).
- (2) The order may be made only if the Minister is satisfied that it is necessary for the financial viability of the mine, or mines, to which the mining lease relates, having regard to such matters as the Minister considers appropriate.
- (3) The power of the Minister to make an order under this section cannot be delegated, despite section 363.

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Explanatory note

Royalty is payable on minerals at a base rate and, if the regulations so provide, at an additional rate. This item allows the Minister to waive payment of such part of the royalty as is payable at the additional rate in order to protect the financial viability of the mine or mines concerned.

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Part 6 Fees

- [16] Sections 13 (2) (d), 15 (1) (c), 33 (2) (d), 51 (2) (d), 53 (1) (c), 113 (4), 120 (2) (a), 122 (2) (b), 124 (1), 144 (2), 161 (3), 178 (2) (c), 197 (2) (a), 200 (2) (a) and 202 (2) (a)**
- Omit "fee prescribed by the regulations" wherever occurring. 5
Insert instead "appropriate lodgment fee".
- Explanatory note**
This item is part of a series of amendments that will allow fees to be determined by the Minister instead of, as at present, by the regulations.
- [17] Section 63 Power of Minister in relation to applications** 10
- Insert after section 63 (3):
- (3A) A mining lease may not be granted until the appropriate mining lease fee (as determined under section 382A) has been paid for the grant of the lease.
- Explanatory note** 15
This item will require a mining lease fee (to be determined by the Minister) to be paid on the granting of a mining lease. This fee will be additional to the lodgment fee that is payable when an application or tender for the mining lease is made.
- [18] Section 226 Applications**
- Omit section 226 (2). Insert instead: 20
- (2) An application:
- (a) must be accompanied by the appropriate lodgment fee, and
- (b) must be lodged with the mining registrar for the mining division in which the opal prospecting block is situated. 25
- Explanatory note**
This item will require a lodgment fee to accompany an application for an opal prospecting licence. This will replace the licence fee that is currently imposed when an opal prospecting licence is granted. 30

[19] Section 382A

Insert after section 382:

382A Minister to determine certain fees

The Minister may from time to time, with the concurrence of the Treasurer, determine:

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- (a) the lodgment fees payable for the purposes of this Act and the regulations, and
- (b) the mining lease fees payable for the purposes of section 63 (3A).

Explanatory note

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This item will allow the Minister to determine various fees payable in connection with the Act. Those fees are currently prescribed by the regulations.

[20] Dictionary

Insert in alphabetical order:

appropriate lodgment fee means the fee determined for the time being in accordance with section 382A with respect to the matter to which the fee relates.

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Explanatory note

This item inserts a definition of *appropriate lodgment fee* into the Dictionary to the Act.

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Part 7 Security deposits

[21] Section 26 Conditions of exploration licence

Insert "and maintain" after "give" in section 26 (2) (b).

Explanatory note

This item is one of a series of amendments to ensure that a condition to give security can also require security to be maintained.

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[22] Section 26 (4) and (5)

Insert after section 26 (3):

- (4) A condition requiring security to be given and maintained by the holder of an exploration licence (the *new exploration licence*) may be expressed so as to require the security given and maintained in relation to some other exploration licence or licences, whether under this section or under section 29A, to be extended to the new exploration licence. 5
- (5) If the Minister proposes to grant an exploration licence to a person on the condition that the person gives and maintains security, the Minister may cause a written notice to be served on the person requiring the person to lodge the security with the Minister on or before the date specified in the notice. 10
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Explanatory note

This item ensures that new exploration licences can be made the subject of security that has been given in relation to earlier exploration licences held by the same person, and that the Minister may set a deadline by which security must be lodged. 20

[23] Section 29A

Insert after section 29:

29A Amendment of exploration licence in respect of certain conditions

- (1) The Minister may amend an exploration licence that does not contain a condition requiring the holder to give and maintain security for the fulfilment of the obligations of the holder arising under this Act so as to include such a condition. 25
- (2) The Minister may amend an exploration licence that contains such a condition so as to vary the amount and form of the security that is required to be given and maintained. 30

-
- (3) The Minister may amend any 2 or more exploration licences held by the same holder that contain such a condition so as to require a single security to be given and maintained.
- (4) The amendment of an exploration licence takes effect on the date on which written notice of the amendment is served on the holder of the exploration licence or on such later date as may be specified in the notice. 5
- Explanatory note**
This item will allow an exploration licence to be amended in relation to conditions requiring the giving and maintaining of security in the same way as a mining lease can currently be amended. 10
- [24] Section 44 Conditions of assessment lease**
- Insert “and maintain” after “give” in section 44 (2) (b).
- Explanatory note** 15
This item is one of a series of amendments to ensure that a condition to give security can also require security to be maintained.
- [25] Section 44 (4) and (5)**
- Insert after section 44 (3):
- (4) A condition requiring security to be given and maintained by the holder of an assessment lease (the *new assessment lease*) may be expressed so as to require the security given and maintained in relation to some other assessment lease or leases, whether under this section or under section 47A, to be extended to the new assessment lease. 20 25
- (5) If the Minister proposes to grant an assessment lease to a person on the condition that the person gives and maintains security, the Minister may cause a written notice to be served on the person requiring the person to lodge the security with the Minister on or before the date specified in the notice. 30
- Explanatory note**
This item ensures that new assessment leases can be made the subject of security that has been given in relation to earlier assessment leases held by the same person, and that the Minister may set a deadline by which security must be lodged. 35
-

[26] Section 47A

Insert after section 47:

47A Amendment of assessment lease in respect of certain conditions

- (1) The Minister may amend an assessment lease that does not contain a condition requiring the holder to give and maintain security for the fulfilment of the obligations of the holder arising under this Act so as to include such a condition. 5
- (2) The Minister may amend an assessment lease that contains such a condition so as to vary the amount and form of the security that is required to be given and maintained. 10
- (3) The Minister may amend any 2 or more assessment leases held by the same holder that contain such a condition so as to require a single security to be given and maintained. 15
- (4) The amendment of an assessment lease takes effect on the date on which written notice of the amendment is served on the holder of the assessment lease or on such later date as may be specified in the notice. 20

Explanatory note

This item will allow an assessment lease to be amended in relation to conditions requiring the giving and maintaining of security in the same way as a mining lease can currently be amended. 25

[27] Section 70 Conditions of mining lease

Insert "and maintain" after "give" in section 70 (2) (a).

Explanatory note

This item is one of a series of amendments to ensure that a condition to give security can also require security to be maintained. 30

[28] Section 70 (2A)

Insert after section 70 (2):

- (2A) A condition requiring security to be given and maintained by the holder of a mining lease (the *new mining lease*) may be expressed so as to require the security given and maintained in relation to some other mining lease or leases, whether under this section or under section 79, to be extended to the new mining lease. 5

Explanatory note

This item ensures that new mining leases can be made the subject of security that has been given in relation to earlier mining leases held by the same person. 10

[29] Section 70 (3)

Insert "and maintains" after "gives".

Explanatory note

This item is one of a series of amendments to ensure that a condition to give security can also require security to be maintained. 15

[30] Section 79 Amendment of mining lease in respect of certain conditions

Insert "and maintain" after "give" in section 79 (2).

Explanatory note

This item is one of a series of amendments to ensure that a condition to give security can also require security to be maintained. 20

[31] Section 79 (3) and (4)

Insert "and maintained" after "given" wherever occurring.

Explanatory note

This item is one of a series of amendments to ensure that a condition to give security can also require security to be maintained. 25

[32] Section 81 Surface prospecting in relation to subsurface leases

Insert at the end of the section:

- (2) Before carrying out prospecting operations of the kind referred to in subsection (1), the holder of the mining lease: 30

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- (a) must cause notice of intention to do so to be given to the Director-General, and
 - (b) must cause security (in such amount and form, and on or before such date, as the Minister may determine) to be lodged with the Director-General for the fulfilment of the obligations arising under this Act in respect of the lease, including any obligations arising under Part 11 as applied by subsection (3). 5
- (3) Part 11 applies to the land over which the holder of a mining lease carries out such prospecting operations as if that land were land the subject of the mining lease. 10

Explanatory note

This item will require the holder of a mining lease to give notice and, if required, to lodge security before commencing surface prospecting under section 81. The item applies Part 11 (Protection of the environment) to the land concerned, so allowing conditions as to rehabilitation to be imposed on the mining lease in respect of that land and so allowing the security that has been lodged to be applied to the rehabilitation of that land if those conditions are not complied with. 15

[33] Section 190 Power of mining registrar in relation to applications 20

Insert "and maintain" after "give" in section 190 (4).

Explanatory note

This item is one of a series of amendments to ensure that a condition to give security can also require security to be maintained.

[34] Section 190 (4A) and (4B) 25

Insert after section 190 (4):

- (4A) A condition requiring security to be given and maintained by the holder of a mineral claim (the *new mineral claim*) may be expressed so as to require the security given and maintained in relation to some other mineral claim or mineral claims, whether under this section or under section 195A, to be extended to the new mineral claim. 30

-
- (4B) If the mining registrar proposes to grant a mineral claim to a person on the condition that the person gives and maintains security, the mining registrar may cause a written notice to be served on the person requiring the person to lodge the security with the mining registrar on or before the date specified in the notice. 5

Explanatory note

This item ensures that new mineral claims can be made the subject of security that has been given in relation to earlier mineral claims held by the same person, and that a mining registrar may set a deadline by which security must be lodged. 10

[35] Section 195A

Insert after section 195:

195A Amendment of mineral claim in respect of certain conditions

- (1) A mining registrar may amend a mineral claim that does not contain a condition requiring the holder to give and maintain security for the fulfilment of the obligations of the holder arising under this Act so as to include such a condition. 15
- (2) A mining registrar may amend a mineral claim that contains such a condition so as to vary the amount and form of the security that is required to be given and maintained. 20
- (3) A mining registrar may amend any 2 or more mineral claims held by the same holder that contain such a condition so as to require a single security to be given and maintained. 25
- (4) The amendment of a mineral claim takes effect on the date on which written notice of the amendment is served on the holder of the mineral claim or on such later date as may be specified in the notice. 30

Explanatory note

This item will allow a mineral claim to be amended in relation to conditions requiring the giving and maintaining of security in the same way as a mining lease can currently be amended. 35

Part 8 Compensation to owners and occupiers of land

[36] Sections 263 (2), 264 (2) and 265 (2)

Omit “, and lodged with the Director-General” wherever occurring.

Explanatory note

This item will remove the obligation for compensation agreements to be lodged with the Director-General. At present, such an agreement is invalid unless it has been so lodged.

5

[37] Section 266 Compensation arising under mineral claim

Insert after section 266 (3):

(4) Instead of assessing compensation in relation to a particular mineral claim, a warden may assess compensation in relation to:

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(a) all mineral claims within a mining division, or

(b) any particular class of mineral claims within a mining division,

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and, in that event, may assess compensation as a fixed amount per mineral claim or as an amount per mineral claim to be calculated at a fixed rate.

Explanatory note

This item will allow global determinations of compensation instead of, as is presently the case, individual determinations only in connection with the granting of a mineral claim.

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[38] Section 267 Compensation arising under opal prospecting licence

Insert after section 267 (3):

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(4) Instead of assessing compensation in relation to a particular opal prospecting licence, a warden may assess compensation in relation to:

(a) all opal prospecting licences within an opal prospecting area, or

30

(b) any particular class of opal prospecting licences within an opal prospecting area,

and, in that event, may assess compensation as a fixed amount per opal prospecting licence or as an amount per opal prospecting licence to be calculated at a fixed rate.

Explanatory note

This item will allow global determinations of compensation instead of, as is presently the case, individual determinations only in connection with the granting of an opal prospecting licence.

5

[39] Section 278 Appeals

Insert at the end of the section:

(2) No appeal lies against an assessment of compensation made in relation to a particular class of mineral claims, as referred to in section 266 (4) or 267 (4).

10

(3) Subsection (2) does not prevent an appeal being made against an assessment of further compensation under section 276 merely because the original compensation was payable under an assessment of compensation made in relation to a particular class of mineral claims, as referred to in section 266 (4) or 267 (4).

15

Explanatory note

This item will preclude appeals from global determinations of compensation for mineral claims and opal prospecting licences, but will not affect appeals from determinations for additional compensation in particular circumstances.

20

Part 9 Protection of dwelling-houses, gardens and improvements

[40] Section 31 Dwelling-houses, gardens and improvements

25

Insert "on which the dwelling-house is situated" after "of the land" in section 31 (1) (a).

Explanatory note

This item is one of a series that is intended to clarify what dwelling-houses, gardens and improvements are being protected from prospecting and mining operations and whose consent is necessary before that protection can be waived.

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[41] Section 31 (1)

Insert "on which the dwelling-house, garden or improvement is situated" after "of the land" where lastly occurring.

Explanatory note

This item is one of a series that is intended to clarify what dwelling-houses, gardens and improvements are being protected from prospecting and mining operations and whose consent is necessary before that protection can be waived.

5

[42] Section 49 Dwelling-houses, gardens and improvements

Insert "on which the dwelling-house is situated" after "of the land" in section 49 (1) (a).

10

Explanatory note

This item is one of a series that is intended to clarify what dwelling-houses, gardens and improvements are being protected from prospecting and mining operations and whose consent is necessary before that protection can be waived.

[43] Section 49 (1)

15

Insert "on which the dwelling-house, garden or improvement is situated" after "of the land" where lastly occurring.

Explanatory note

This item is one of a series that is intended to clarify what dwelling-houses, gardens and improvements are being protected from prospecting and mining operations and whose consent is necessary before that protection can be waived.

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[44] Section 62 Dwelling-houses, gardens and improvements

Insert "on which the dwelling-house is situated" after "of the land" in section 62 (1) (a).

Explanatory note

This item is one of a series that is intended to clarify what dwelling-houses, gardens and improvements are being protected from prospecting and mining operations and whose consent is necessary before that protection can be waived.

25

[45] Section 62 (1)

Insert “on which the dwelling-house, garden or improvement is situated” after “of the land” where lastly occurring.

Explanatory note

This item is one of a series that is intended to clarify what dwelling-houses, gardens and improvements are being protected from prospecting and mining operations and whose consent is necessary before that protection can be waived.

5

[46] Section 62 (8)

Insert after section 62 (7):

- (8) In this section, *valuable work or structure* includes anything taken to be a valuable work or structure for the purposes of this section by clause 23A of Schedule 1, but does not include anything declared not to be a valuable work or structure by clause 23B of that Schedule.

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Explanatory note

This item will invoke the provisions of Schedule 1 (proposed clauses 23A and 23B) for the purpose of determining, for mineral leases only, what is and what is not a valuable work or structure.

15

[47] Section 188 Dwelling-houses, gardens and improvements

Insert “on which the dwelling-house is situated” after “of the land” in section 188 (1) (a).

20

Explanatory note

This item is one of a series that is intended to clarify what dwelling-houses, gardens and improvements are being protected from prospecting and mining operations and whose consent is necessary before that protection can be waived.

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[48] Section 188 (1) (c)

Omit “, or within the prescribed distance of which,”.

Explanatory note

This item is intended to bring section 188 (1) into line with sections 31, 49 and 62.

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[49] Section 188 (1)

Insert “on which the dwelling-house, woolshed, shearing shed, garden or improvement is situated” after “of the land” where lastly occurring.

Explanatory note

This item is one of a series that is intended to clarify what dwelling-houses, gardens and improvements are being protected from prospecting and mining operations and whose consent is necessary before that protection can be waived.

5

[50] Section 188 (2) (b)

Omit “and (c)”.

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Explanatory note

This item is consequential on the amendment to section 188 (1) (c).

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

Insert “, and claims with respect to valuable works and structures on the land,” after “agricultural land” in clause 21 (2) (c).

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Explanatory note

This item will require a notice to an owner or occupier of land concerning a proposed invitation to tender for a mining lease to state that the owner or occupier may lodge a claim to the effect that a particular work or structure is a valuable work or structure, and that a mining lease should therefore not be granted so as to have effect in the vicinity of the work or structure.

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[52] Schedule 1, clause 21 (4) (c)

Insert “, and claims with respect to valuable works and structures on the land,” after “agricultural land”.

25

Explanatory note

This item will require a notice to an owner or occupier of land concerning a proposed application for a mining lease to state that the owner or occupier may lodge a claim to the effect that a particular work or structure is a valuable work or structure, and that a mining lease should therefore not be granted so as to have effect in the vicinity of the work or structure.

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[53] Schedule 1, clauses 23A, 23B

Insert after clause 23:

23A Identification of valuable works and structures

- (1) An owner or occupier of land to which an invitation for tenders will relate, or over which a mining lease is sought, may make a claim to the Minister that something on the land is a valuable work or structure. 5
- (2) A claim must be in writing and must be lodged with the Director-General on or before the date specified in the relevant notice under clause 21. 10
- (3) On receipt of a claim made under this clause, the Director-General:
 - (a) in the case of a claim relating to an invitation for tenders, must decide whether to accept the claim or to object to the claim, or 15
 - (b) in the case of a claim relating to an application for a mining lease, must cause notice of the claim to be given to the applicant for the lease.
- (4) An applicant for a mining lease to whom such a notice is given may object to the claim. 20
- (5) An objection must be made in writing and lodged with the Director-General within 14 days after notice of the claim was given to the applicant.
- (6) Anything identified in a claim as being a valuable work or structure is taken to be a valuable work or structure for the purposes of section 62 unless it is declared not to be a valuable work or structure under clause 23B. 25

23B Consideration of objections to claims concerning valuable works and structures

- (1) Unless it is earlier withdrawn, the Director-General must refer any objection made under clause 23A to a warden for inquiry and report. 30

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- (2) At the conclusion of the inquiry into the objection, the warden must announce in open court the warden's finding and the purport of the warden's report and must transmit the finding and report to the Minister.
- (3) Anything in respect of which an objection has been made under clause 23A and which the warden's report declares not to be a valuable work or structure is taken not to be a valuable work or structure for the purposes of section 62. 5

Explanatory note

This item provides for a procedure for the making of claims to the effect that a particular work or structure is a valuable work or structure, for the making of objections to such a claim, and for the determination of a claim (where an objection is made) by a warden. 10

Part 10 Protection of mining operations in connection with privately owned minerals 15

[54] Section 8 Mining etc for privately owned minerals without due notice to Director-General

Omit section 8 (2) (a).

Explanatory note

This item will remove the current requirement that a notice with respect to the proposed prospecting or mining for privately owned minerals must specify the date on which prospecting or mining operations are to be commenced. 20

[55] Section 8 (4)

Omit the subsection. Insert instead:

- (4) This section does not apply to a person to the extent to which the person is prospecting or mining in accordance with an authority, mineral claim or opal prospecting licence that is in force in respect of the land and mineral concerned. 25

Explanatory note

This item makes it clear that the requirements of section 8 apply to any person who is prospecting or mining for privately owned minerals, whether or not the person happens to have an authority, mineral claim or opal prospecting licence for some other mineral. 30

[56] Section 20 Land on which private mining operations being carried on

Omit section 20 (1). Insert instead:

- (1) An exploration licence may not be granted over any land: 5
 - (a) if mining operations for a privately owned mineral are being carried out on the land by or with the consent of the owner of the mineral, and
 - (b) if the notice referred to in section 8 (1) (a) and the security referred to in section 8 (1) (b) have each been duly lodged with the Director-General, 10
except with the written consent of the owner of the mineral.

Explanatory note

This item extends the protection of existing section 20 (1) so as to prevent the granting of any exploration licence over land on which mining operations for a privately owned mineral are being carried out, but requires that the requirements of section 8 have been complied with not only with respect to notice but also with respect to the lodging of security. 15

[57] Section 39 Land on which private mining operations being carried on 20

Omit section 39 (1). Insert instead:

- (1) An assessment lease may not be granted over any land: 25
 - (a) if mining operations for a privately owned mineral are being carried out on the land by or with the consent of the owner of the mineral, and
 - (b) if the notice referred to in section 8 (1) (a) and the security referred to in section 8 (1) (b) have each been duly lodged with the Director-General, 30
except with the written consent of the owner of the mineral.

Explanatory note

This item extends the protection of existing section 39 (1) so as to prevent the granting of any assessment lease over land on which mining operations for a privately owned mineral are being carried out, but requires that the requirements of section 8 have been complied with not only with respect to notice but also with respect to the lodging of security. 35

[58] Section 60 Land on which private mining operations being carried on

Omit section 60 (1). Insert instead:

- (1) A mining lease may not be granted over any land:
 - (a) if mining operations for a privately owned mineral are being carried out on the land by or with the consent of the owner of the mineral, and 5
 - (b) if the notice referred to in section 8 (1) (a) and the security referred to in section 8 (1) (b) have each been duly lodged with the Director-General, 10except with the written consent of the owner of the mineral.

Explanatory note

This item extends the protection of existing section 60 (1) so as to prevent the granting of any mining lease over land on which mining operations for a privately owned mineral are being carried out, but requires that the requirements of section 8 have been complied with not only with respect to notice but also with respect to the lodging of security. 15

[59] Section 185 Land on which private mining operations being carried on

Omit section 185 (1). Insert instead:

- (1) A mineral claim may not be granted over any land:
 - (a) if mining operations for a privately owned mineral are being carried out on the land by or with the consent of the owner of the mineral, and 25
 - (b) if the notice referred to in section 8 (1) (a) and the security referred to in section 8 (1) (b) have each been duly lodged with the Director-General, 30except with the written consent of the owner of the mineral.

Explanatory note

This item extends the protection of existing section 185 (1) so as to prevent the granting of any mineral claim over land on which mining operations for a privately owned mineral are being carried out, but requires that the requirements of section 8 have been complied with not only with respect to notice but also with respect to the lodging of security. 35

Part 11 Mining purposes

[60] Section 51 Applications

Insert “, or the mining purpose or mining purposes,” after “minerals” in section 51 (2) (a).

Explanatory note

This item is one of a series of amendments that are intended to enable mining leases to be granted with respect to mining purposes only. Currently, mining leases must be granted with respect to specified minerals, and mining purposes are permissible under the Act merely as a purpose ancillary to that of mining for the specified mineral.

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[61] Section 51 (3)

Insert “, in the case of an application that specifies a mineral or minerals,” after “the required particulars”.

Explanatory note

This item is one of a series of amendments that are intended to enable mining leases to be granted with respect to mining purposes only.

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[62] Section 51 (5)

Insert after section 51 (4):

(5) The required particulars, in the case of an application that specifies a mining purpose or mining purposes, are as follows:

20

(a) a description, prepared in the manner prescribed by the regulations, of the land over which the mining lease is sought,

(b) a description of the nature and extent of the mining purpose or mining purposes to be carried out.

25

Explanatory note

This item is one of a series of amendments that are intended to enable mining leases to be granted with respect to mining purposes only.

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[63] Section 70 Conditions of mining lease

Insert after section 70 (1):

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

5

Explanatory note

This item is one of a series of amendments that are intended to enable mining leases to be granted with respect to mining purposes only.

[64] Section 72 Form of mining lease

Insert “, or the mining purpose or mining purposes,” after “minerals” in section 72 (b).

10

Explanatory note

This item is one of a series of amendments that are intended to enable mining leases to be granted with respect to mining purposes only.

[65] Section 73 Rights under mining lease

15

Insert “granted in respect of a mineral or minerals” after “a mining lease” in section 73 (1).

Explanatory note

This item is one of a series of amendments that are intended to enable mining leases to be granted with respect to mining purposes only.

20

[66] Section 73 (1A)

Insert after section 73 (1):

- (1A) The holder of a mining lease granted in respect of a mining purpose or mining purposes only may, in accordance with the conditions of the lease, carry out the mining purpose or mining purposes specified in the lease.

25

Explanatory note

This item is one of a series of amendments that are intended to enable mining leases to be granted with respect to mining purposes only.

30

[67] Section 75 Mining purposes

Insert after section 75 (1):

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

5

Explanatory note

This item prevents the Minister from exercising the powers conferred by section 75 to order the discontinuing of a mining purpose if the mining purpose is specifically authorised by a mining lease.

[68] Section 77 Addition of mineral to mining lease

10

Insert “granted in respect of a mineral or minerals” after “a mining lease” in section 77 (1).

Explanatory note

This item is one of a series of amendments that are intended to enable mining leases to be granted with respect to mining purposes only.

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[69] Section 178 Application for granting of mineral claim

Insert “, or the mining purpose or mining purposes,” after “minerals” in section 178 (2) (b).

Explanatory note

This item is one of a series of amendments that are intended to enable mineral claims to be granted with respect to mining purposes only. Currently, mineral claims must be granted with respect to specified minerals, and mining purposes are permissible under the Act merely as a purpose ancillary to that of mining for the specified mineral.

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[70] Section 190 Power of mining registrar in relation to applications

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Insert after section 190 (6):

- (7) A mineral claim may not be granted in respect of a mining purpose or mining purposes only unless the applicant for the mineral claim is the holder of, or an applicant for, a mining lease or mineral claim for a mineral or minerals with respect to land in the same mining division.

30

Explanatory note

This item will prevent mineral claims for mining purposes only from being issued unless the applicant is the holder of a mining lease or mineral claim for a mineral or minerals within the same mining division.

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[71] Section 194 Certificate of mineral claim

Insert “, or the mining purpose or mining purposes,” after “minerals” in section 194 (2) (b).

Explanatory note

This item is one of a series of amendments that are intended to enable mineral claims to be granted with respect to mining purposes only. 5

[72] Section 195 Rights under mineral claim

Insert “granted in respect of a mineral or minerals” after “a mineral claim” in section 195 (1).

Explanatory note

This item is one of a series of amendments that are intended to enable mineral claims to be granted with respect to mining purposes only. 10

[73] Section 195 (1A)

Insert after section 195 (1):

(1A) The holder of a mineral claim granted in respect of a mining purpose or mining purposes only may, in accordance with the conditions of the claim, carry out the mining purpose or mining purposes specified in the certificate relating to the claim. 15

Explanatory note

This item is one of a series of amendments that are intended to enable mineral claims to be granted with respect to mining purposes only. 20

Part 12 Renewals of authorities and mineral claims

[74] Section 138 Application of Division

Insert “or renewed” after “granted” in section 138 (2). 25

Explanatory note

This item is one of a series of amendments that are intended to make it clear that certain provisions of the Act with respect to the granting of authorities and mineral claims apply also to their renewal.

[75] Section 138 (2)

Insert "or renewal" after "grant".

Explanatory note

This item is one of a series of amendments that are intended to make it clear that certain provisions of the Act with respect to the granting of authorities and mineral claims apply also to their renewal.

5

[76] Section 197 Application for renewal

Insert ", from time to time," after "may" in section 197 (1).

Explanatory note

This item makes it clear that a mineral claim may be renewed more than once.

10

[77] Section 197 (2) (b)

Omit "within 28 days".

Insert instead "on or within 2 months".

Explanatory note

This item extends, from 28 days to 2 months, the time within which an application for renewal of a mineral claim may be made, and makes it clear that the application can be made as late as the day on which the current mineral claim is due to expire.

15

[78] Section 199A

Insert after section 199:

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199A Term of renewal

(1) A mineral claim that is renewed:

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

25

(b) ceases to have effect at the expiration of such period (not exceeding 5 years or, in the case of a mineral claim over land that is situated within a mineral claims district, not exceeding such shorter period as the special conditions may specify) as the mining registrar may determine.

30

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

Explanatory note

This item applies the provisions relating to the term of an original mineral claim to the term of a mineral claim that is renewed. 5

Part 13 Partial transfers of exploration licences

[79] Section 123 Partial transfers

Omit "assessment lease or mining lease" wherever occurring.
Insert instead "authority". 10

Explanatory note

This item is one of a series of amendments that are intended to apply the partial transfer provisions of section 123 to exploration licences. Those provisions already apply to assessment leases and mining leases.

[80] Section 123 (1) (a) 15

Omit "the lease". Insert instead "the authority".

Explanatory note

This item is one of a series of amendments that are intended to apply the partial transfer provisions of section 123 to exploration licences.

[81] Section 123 20

Omit "original lease" wherever occurring.
Insert instead "original authority".

Explanatory note

This item is one of a series of amendments that are intended to apply the partial transfer provisions of section 123 to exploration licences. 25

[82] Section 123

Omit "new lease" wherever occurring.
Insert instead "new authority".

Explanatory note

This item is one of a series of amendments that are intended to apply the partial transfer provisions of section 123 to exploration licences. 5

Part 14 Cancellation of mineral claims

[83] Section 205 Compensation for cancellation

Omit "Minister" from section 205 (2).
Insert instead "mining registrar".

10

Explanatory note

This item will allow the mining registrar, rather than the Minister, to determine the compensation payable for the cancellation of a mineral claim. The mining registrar is responsible for the granting and cancellation of mineral claims.

[84] Section 206

15

Omit the section. Insert instead:

206 Review of decisions concerning cancellation and compensation

(1) Any person who is aggrieved by the decision of a mining registrar to cancel a mineral claim held by the person, or as to the amount of compensation payable as a consequence of the cancellation, may apply to a Warden's Court for a review of the decision. 20

(2) An application must be filed in a Warden's Court within 14 days after written notice of the decision is served on the person. 25

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- (3) Subject to any order made by the Warden's Court, an application for a review does not operate to stay the decision to which the application relates.
- (4) The decision of the Warden's Court is to be given effect to as if it were the decision of the mining registrar. 5

Explanatory note

This item replaces the appeal provisions concerning the cancellation of mineral claims as a result of the amendment that enables mineral claims to be cancelled by a mining registrar. Instead of going to the District Court, an appeal will in future go to the Warden's Court. 10

[85] Section 296 Jurisdiction of Wardens' Courts

Insert "or of a mining registrar's decision referred to in section 206" after "Part 8" in section 296 (t).

Explanatory note

This item is consequential on the substitution of section 206 which gives jurisdiction to the Warden's Court to hear appeals from a mining registrar's decision to cancel a mineral claim. 15

Part 15 Procedural irregularities concerning mineral claims

[86] Sections 210A, 210B

Insert after section 210: 20

210A Waiver of minor procedural matters

- (1) A mining registrar may grant or renew a mineral claim even though the applicant has failed to comply with a requirement of this Act or the regulations:
 - (a) as to the manner in which the mineral claim has been marked out, or 25
 - (b) as to the time within which anything is required to be done, or

-
- (c) as to the details to be contained in any notice served, lodged or caused to be published by the applicant, or
- (d) as to the particulars to accompany any application, or 5
- (e) as to the furnishing of declarations and other information by the applicant.
- (2) This section does not authorise a mining registrar to grant or renew a mineral claim in the case of an applicant who has failed to comply with such a requirement unless the mining registrar is satisfied that the failure is unlikely: 10
- (a) to adversely affect any person's rights under this Act or the regulations, or
- (b) to result in any person being deprived of information necessary for the effective exercise of those rights. 15

210B Limitation of right to challenge technical defects in mineral claims

- (1) The grant, renewal or transfer of a mineral claim may not be challenged in any legal proceedings commenced later than 3 months after the date on which the mineral claim was granted, renewed or transferred. 20
- (2) This section has effect regardless of the provisions of any other Act, but does not apply so as to affect any appeal from proceedings commenced within the 3 months referred to in subsection (1). 25

Explanatory note

This item repeats in relation to mineral claims certain provisions (sections 135 and 137) that already apply to authorities with respect to the waiver of minor procedural matters and the challenging of technical defects. 30

Part 16 Royalty officers and deputy mining registrars

[87] Section 247A

Insert after section 247:

247A Powers of royalty officers

- (1) For the purposes of this Act, a royalty officer: 5
- (a) may enter any premises occupied by the holder of an authority or mineral claim, and
 - (b) may inspect, and take extracts or copies from, any documents that are found on those premises and that appear to the royalty officer to relate to minerals recovered under the authority or mineral claim. 10
- (2) A royalty officer may direct the person in charge of any such premises to provide the royalty officer with all reasonable facilities and assistance. 15
- (3) A person to whom such a direction is given must not fail to comply with the direction.

Maximum penalty: 20 penalty units.

Explanatory note

This item confers powers of entry on the Department of Mineral Resources' royalty officers to enter the premises of the holder of an authority or mineral claim for the purpose of obtaining information relating to minerals recovered under the authority or mineral claim. 20

[88] Section 248 Certificates of authority

Insert "or royalty officer" after "inspector" wherever occurring. 25

Explanatory note

This item is consequential on proposed section 247A.

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- [89] Sections 255, 256, 257**
- Insert “, royalty officer” after “inspector” wherever occurring.
- Explanatory note**
This item is consequential on proposed section 247A.
- [90] Section 360 Mining registrars, deputy mining registrars, royalty officers and other staff** 5
- Insert “, deputy mining registrars, royalty officers” after “Mining registrars”.
- Explanatory note**
This item will ensure that there is express provision for the employment of deputy mining registrars and royalty officers. 10
- [91] Section 363 Delegation of functions by Minister, Director-General or mining registrar**
- Insert after section 363 (2):
- (2A) A mining registrar may delegate any function under this Act or the regulations (except this power of delegation or any function delegated to the mining registrar by the Minister or the Director-General) to a deputy mining registrar. 15
- Explanatory note** 20
This item will allow a mining registrar to delegate his or her functions to a deputy mining registrar.
- [92] Dictionary**
- Insert in alphabetical order:
- deputy mining registrar* means a deputy mining registrar referred to in section 360. 25
- royalty officer* means a royalty officer referred to in section 360.
- Explanatory note**
This item inserts definitions of *deputy mining registrar* and *royalty officer* into the Dictionary to the Act. 30
-

[93] Dictionary

Omit "appointed under" from paragraph (a) of the definition of *mining registrar*.

Insert instead "referred to in".

Explanatory note

This item is minor statute law revision.

5

Part 17 Powers of entry under certain permits

[94] Sections 250, 251

Omit the sections. Insert instead:

250 Surveys and ore sampling

10

(1) The Minister may grant a permit to any mining surveyor, or any officer of the Department, to enter any land for any of the following purposes:

(a) the carrying out of any geological, geophysical, geochemical or other survey of the land,

15

(b) the removal of soil, rock, mineral or ore samples from the land.

(2) The holder of a permit under this section, and any employee, agent or assistant of the holder, may, in accordance with the permit:

20

(a) enter the land to which the permit relates, and

(b) do on that land all such things as are reasonably necessary to achieve the purpose for which the permit was granted.

Explanatory note

25

This item consolidates the powers of entry currently contained in sections 250 and 251, without any significant change in their nature or extent.

Part 18 Consolidation of mining leases

[95] Section 84 Definitions

Omit the definition of *existing lease* from section 84 (1).
Insert instead:

existing lease means a mining lease that is in force, 5
including a mining lease that is in force by virtue of
section 117 (1).

Explanatory note

This item makes it clear that a mining lease whose effect has been continued
under section 117 remains an existing lease for the purposes of consolidation. 10

[96] Section 98 Minister may grant consolidated mining lease

Insert after section 98 (2):

(3) The granting of a consolidated mining lease over land
the subject of a mining lease in force by virtue of section
117 (1) does not constitute a renewal of that lease. 15

Explanatory note

This item ensures that the provisions that must be complied with in relation to the
renewal of mining leases do not apply to the consolidation of a mining lease
whose effect has been continued under section 117.

[97] Section 114 Power of Minister in relation to applications 20

Insert after section 114 (6):

(7) The Minister may defer dealing with an application for
the renewal of a mining lease over any land if the mining
lease is the subject of action being taken under Part 6 in
connection with the granting of a consolidated mining
lease over that land. 25

Explanatory note

This item enables the Minister to defer dealing with an application for renewal of a
mining lease if the mining lease is in the process of being consolidated.

Part 19 Prevention of damage to certain dams

[98] Sections 80 (1), 89 (1), 91 (2)

Omit "for coal" wherever occurring.

Explanatory note

This item ensures that dams can be protected from mining activities in relation to mining leases generally, not just mining leases with respect to coal as is currently the case.

5

[99] Section 369 Notification areas

Omit "excluding" from section 369 (1).
Insert instead "including".

10

Explanatory note

This item will allow land under a dam to form part of a notification area for the purposes of the Act.

[100] Section 369 (2)

Insert "underlies or" before "surrounds".

15

Explanatory note

This item ensures that a notification area (an area within which the Dams Safety Committee must be notified of proposed mining leases) may include the land underlying a dam as well as the land surrounding the dam.

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

20

Omit "for coal" wherever occurring from clauses 7 (1) and (3), 9 (2) and 25 (1) and (3).

Explanatory note

This item ensures that dams can be protected from mining activities in relation to mining leases generally, not just mining leases with respect to coal as is currently the case.

25

Part 20 Miscellaneous matters

[102] Section 4

Omit the section. Insert instead:

4 Definitions

Expressions used in this Act that are defined in the Dictionary at the end of this Act have the meanings set out in the Dictionary. 5

Explanatory note

This item is intended to omit the Table of definitions in section 4. Such Tables are not part of current drafting practice. 10

[103] Section 29 Rights under exploration licence

Insert “, or such further period as the Minister may approve in a particular case,” after “2 years” in section 29 (3).

Explanatory note

This item will allow an exploration licence to have effect beyond the period of 2 years after its expiry if the Minister so approves and if an application made by its holder for an assessment lease, mining lease or mineral claim is still pending. 15

[104] Section 57 Land in reserve

Omit section 57 (a).

Explanatory note

This item will allow mining leases to be granted over land within an opal prospecting area. 20

[105] Section 78 Inclusion of petroleum in mining lease

Omit “*Petroleum Act 1955*” from section 78 (4) (b) and (6) (e) wherever occurring. 25

Insert instead “*Petroleum (Onshore) Act 1991*”.

Explanatory note

This item merely updates an obsolete reference.

[106] Section 133 Nomination by applicant or tenderer

Insert after section 133 (2):

- (3) In the case of an application or tender for an authority over land in respect of which some other authority held by the applicant or tenderer is in force by operation of section 29 (2), 47 (2), 73 (2) or 195 (2), the person nominated as the person to whom the firstmentioned authority is to be granted is, for the purposes of this Act, taken to be the holder of that other authority also. 5

Explanatory note 10

This item allows the nominee of an applicant or tenderer for an authority over any land to be considered to be the holder of any existing authority that is in force over the same land, by virtue of the application or tender, as well as the applicant or tenderer for the authority to which the application or tender relates.

[107] Section 159 Records 15

Omit section 159 (1). Insert instead:

- (1) The Director-General is to cause a record to be kept of:
- (a) every application for an authority that is duly made under this Act, and
- (b) every authority that is granted, renewed, transferred or cancelled under this Act. 20

Explanatory note

This item removes references to applications being received by the Director-General and authorities being granted, renewed, transferred or cancelled by the Director-General. 25

[108] Section 161 Registration of certain interests

Insert after section 161 (9):

- (10) Section 130 applies to an application under this section in the same way as it applies to an application referred to in section 130 (1). 30

Explanatory note

This item makes it clear that applications for registration of certain interests can be withdrawn, and that their withdrawal is irrevocable.

[109] Section 168 Suspension of conditions

Omit section 168 (4). Insert instead:

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

5

Explanatory note

This item repeals a provision that limits the period for which the conditions of a mining lease may be suspended under section 168 and makes it clear that applications for the suspension of the conditions of a mining lease can be withdrawn, and that their withdrawal is irrevocable.

10

[110] Section 182 Opal prospecting blocks, reserves and mineral allocation areas

Omit "367, or" from section 182 (b). Insert instead "367."

Explanatory note

This item is consequential on the proposed repeal of section 182 (c).

15

[111] Section 182 (c)

Omit the paragraph.

Explanatory note

This item repeals section 182 (1) (c). The effect of the paragraph is to be continued, with modifications, as proposed section 182 (2).

20

[112] Section 182 (2)

Insert at the end of section 182:

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

25

Explanatory note

This item re-enacts the provisions of section 182 (c), but allows the Minister to approve exceptions to the restriction contained in those provisions.

30

[113] Section 215 Suspension of conditions

Insert after section 215 (4):

- (5) Section 208 applies to an application under this section in the same way as it applies to an application referred to in section 208 (1).

5

Explanatory note

This item makes it clear that applications for the suspension of the conditions of a mineral claim can be withdrawn, and that their withdrawal is irrevocable.

[114] Section 227 Restrictions on grant of licence

Omit "10 days" from section 227 (b). Insert instead "14 days".

10

Explanatory note

This item will require a period of 14 days, rather than 10 days, to elapse between the expiry of an opal prospecting licence and the granting of a new opal prospecting licence over the same land.

[115] Section 228

15

Omit the section. Insert instead:

228 Power of mining registrar in relation to applications

- (1) After considering an application for an opal prospecting licence, the mining registrar:

(a) may grant an opal prospecting licence to the applicant, or

20

(b) may refuse the application.

- (2) Without limiting the generality of subsection (1), an application may be refused if the applicant has been convicted of an offence against this Act or the regulations or any other offence relating to mining or minerals.

25

- (3) If the mining registrar refuses to grant an opal prospecting licence, the mining registrar is to cause notice of the decision, and of the reasons for the decision, to be served on the applicant.

30

Explanatory note

This item repeals and re-enacts section 228 so as to give the mining registrar the same power to refuse an application for an opal prospecting licence as is available in relation to applications for mineral claims.

35

[116] Section 235A

Insert after section 235:

235A Records

- (1) A mining registrar is to cause to be kept a record of:
 - (a) every application for an opal prospecting licence that is received by the registrar, and 5
 - (b) every opal prospecting licence granted or cancelled by the mining registrar.
- (2) Such a record must be kept in the form, and must contain the particulars, required by the Director-General. 10
- (3) The record must be kept available at the mining registrar's office for inspection, free of charge, by members of the public.

Explanatory note

This item imposes on a mining registrar the same duty in relation to the keeping of records for opal prospecting licences as is imposed on a mining registrar in relation to the keeping of records for mineral claims. 15

[117] Sections 237, 238, 239

Insert "or mining registrar" after "Minister" wherever occurring.

Explanatory note

This item reflects the fact that mineral claims (to which sections 237, 238 and 239 apply) are granted by a mining registrar, not by the Minister. This item constitutes minor statute law revision. 20

[118] Section 266 Compensation arising under mineral claim

Omit "registered" from section 266 (1) (a). Insert instead "granted". 25

Explanatory note

This item reflects the fact that mineral claims are granted, not registered. This item constitutes minor statute law revision.

[119] Section 286 Royalty payable on petroleum recovered under mining lease for coal

Omit "*Petroleum Act 1955*" from section 286 (2).
Insert instead "*Petroleum (Onshore) Act 1991*".

Explanatory note

This item merely updates an obsolete reference.

5

[120] Section 335 Mining registrar may request inquiry by warden

Insert "whether Division 2 of Part 9 has been complied with by an applicant for a mineral claim or" after "question of" in section 335 (1).

10

Explanatory note

This item will allow a mining registrar to request a warden to consider the question of whether the procedures to be complied with under Division 2 of Part 9 in connection with the making of applications for mineral claims (such as the marking out of land and the giving of notice) have been complied with. Such requests can already be made in connection with the question of whether the procedures to be complied with under Division 3 of Part 9 in connection with the granting of mineral claims have been complied with.

15

[121] Section 363 Delegation of functions by Minister, Director-General or mining registrar

20

Omit "the holder of any office" from section 363 (1) and (2) wherever occurring.

Insert instead "any person".

Explanatory note

This item removes the existing restriction that requires delegations to be made only to the holders of offices. Future delegations will be able to be made to any person, whether or not the holder of an office.

25

[122] Section 363 (3)

Insert "a function under the regulations and" after "a reference to".

[123] Section 387 Government agencies

Insert at the end of the section:

- (2) For the purposes of this section, a State owned corporation (and any of its subsidiaries) within the meaning of the *State Owned Corporations Act 1989* is taken to be a corporation established by an Act. 5

Explanatory note

This item deems State owned corporations and their subsidiaries to be corporations established by an Act, so allowing them to be declared Government agencies for the purposes of the Act. Government agencies are entitled to be given notice of proposed assessment leases and mining leases. 10

[124] Section 387A

Insert after section 387: 15

387A Application of Act in relation to former minerals

- (1) This section applies to a substance that, having been prescribed by the regulations as a mineral for the purposes of the definition of *mineral* in the Dictionary at the end of this Act, ceases to be so prescribed. 20
- (2) This Act continues to apply to a substance to which this section applies as if it were a mineral, but for the purpose only of enabling the holder of a mining lease or mineral claim in respect of the substance to exercise the rights conferred by this Act on the holder of such a mining lease or mineral claim. 25
- (3) This section does not operate so as to allow the renewal or consolidation of a mining lease or mineral claim that relates only to a substance to which this section applies.

Mining Legislation Amendment Bill 1996

Schedule 1 Amendment of Mining Act 1992

Explanatory note

This item will ensure that existing mining leases and mineral claims will continue to have effect, together with the provisions of the Act that are necessary to give them that effect, if substances that have previously been minerals cease to be so. Aside from coal and oil shale, a substance is a mineral only if the regulations so provide.

5

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

Omit "authority" from clause 1 (2) (c).
Insert instead "person or body".

10

Explanatory note

This item avoids the use of the word "authority" to mean something other than a mining title.

[126] Schedule 1, clause 2 (1)

Omit "public authority". Insert instead "person or body".

15

Explanatory note

This item avoids the use of the word "authority" to mean something other than a mining title.

[127] Schedule 1, clause 9 (1)

Omit "An authority". Insert instead "A person or body".

20

Explanatory note

This item avoids the use of the word "authority" to mean something other than a mining title.

[128] Schedule 1, clause 22 (2)

Omit "notice in that regard".
Insert instead "relevant notice under clause 21".

25

Explanatory note

The item constitutes minor statute law revision.

[129] Schedule 1, clause 26 (2)

Omit "notice in that regard".

Insert instead "relevant notice under this Division".

Explanatory note

The item constitutes minor statute law revision.

5

[130] Schedule 1, clause 28

Omit "public authority". Insert instead "person or body".

Explanatory note

This item avoids the use of the word "authority" to mean something other than a mining title.

10

[131] Schedule 2 Agricultural land

Insert "the invitation for tenders for the mining lease concerned was first published or" after "the date on which" in clause 2 (1) (c).

Explanatory note

This item extends clause 2 of Schedule 2 to cover invitations for tenders of leases as well as applications for leases. The item constitutes minor statute law revision.

15

[132] Schedule 2, clause 3

Insert "tenderer or" after "if the".

Explanatory note

This item is consequential on the amendment to clause 2 of Schedule 2.

20

[133] Schedule 2, clause 3

Insert "the invitation for tenders was first published or" after "when".

Explanatory note

This item is consequential on the amendment to clause 2 of Schedule 2.

25

Mining Legislation Amendment Bill 1996

Schedule 1 Amendment of Mining Act 1992

[134] Schedule 2, clause 3

Insert “the invitation for tenders for that licence was first published or” after “the date on which”.

Explanatory note

This item is consequential on the amendment to clause 2 of Schedule 2.

5

[135] Dictionary

Omit “*Petroleum Act 1955*” from the definition of *petroleum*.
Insert instead “*Petroleum (Onshore) Act 1991*”.

Explanatory note

This item merely updates an obsolete reference.

10

Part 21 Savings and transitional provisions

[136] Schedule 6 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

Mining Legislation Amendment Act 1996

Explanatory note

This item enables savings and transitional regulations to be made in relation to matters arising under the proposed Act.

15

[137] Schedule 6, Part 2

Insert after clause 46:

47 Instruments under former Acts

20

Any instrument that had been approved by the Minister under section 107 of the *Mining Act 1973* or section 104 of the *Coal Mining Act 1973* before the commencement of this Act is taken to have been registered under section 161 of this Act.

25

Explanatory note

This item inserts a saving provision with respect to certain instruments under the *Mining Act 1973* and the *Coal Mining Act 1973*. The provision relates back to the date of commencement of the *Mining Act 1992*.

[138] Schedule 6, Part 3

Insert after Part 2:

**Part 3 Provisions consequent on the enactment of
the Mining Legislation Amendment Act 1996**

48 Definition

5

In this Part, *amending Act* means the *Mining Legislation Amendment Act 1996*.

**49 Amendment of exploration licence, assessment lease
and mineral claim conditions**

Sections 29A, 47A and 195A apply to and in respect of
an exploration licence, assessment lease or mineral claim
granted before the commencement of those sections in
the same way as they apply to and in respect of an
exploration licence, assessment lease or mineral claim
granted after that commencement.

10

15

**50 Protection of dwelling-houses, gardens and
improvements**

Sections 31, 49, 62 and 188, as amended by the
amending Act, apply to and in respect of an authority or
mineral claim granted before the commencement of
those amendments in the same way as they apply to and
in respect of an authority or mineral claim granted after
that commencement.

20

**51 Surface prospecting in respect of subsurface mining
leases**

25

Section 81, as amended by the amending Act, applies to
and in respect of all prospecting operations carried out in
relation to a mining lease after the commencement of
that amendment, whether or not prospecting operations
have been carried out in relation to that mining lease
before that commencement.

30

52 Partial transfers of exploration licences

Section 123, as amended by the amending Act, applies to and in respect of an exploration licence granted before the commencement of that amendment in the same way as it applies to and in respect of an exploration licence granted after that commencement. 5

53 Waiver of minor procedural matters concerning applications for mineral claims

Section 210A applies to and in respect of an application for a mineral claim made before the commencement of that section in the same way as it applies to and in respect of an application for a mineral claim made after that commencement. 10

54 Limitation of right to challenge technical defects in mineral claims

Section 210B applies to and in respect of a mineral claim granted before the commencement of that section in the same way as it applies to and in respect of a mineral claim granted after that commencement. 15

55 Restrictions on grant of opal prospecting licence

Section 227, as amended by the amending Act, applies to and in respect of an application for an opal prospecting licence made before the commencement of that amendment in the same way as it applies to and in respect of an application for an opal prospecting licence made after that commencement. 20
25

56 Permits for surveys and ore sampling

A permit that was in force under section 250 or 251, immediately before the repeal of that section by the amending Act, is taken to have been granted under section 250, as inserted by the amending Act. 30

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

Sections 266 and 267, as amended by the amending Act, apply to and in respect of a mineral claim or opal prospecting licence granted before the commencement of those amendments in the same way as they apply to and in respect of a mineral claim or opal prospecting licence granted after that commencement, but do not affect any compensation determined before that commencement in respect of any such mineral claim or opal prospecting licence. 5 10

58 References for determination of agricultural land

Clauses 2 and 3 of Schedule 2, as amended by the amending Act, apply to and in respect of a reference arising before the commencement of those amendments in the same way as they apply to and in respect of a reference arising after that commencement. 15

59 Royalty on coal in coal reject

Division 3A of Part 14 applies to coal reject that the holder of a mining lease uses or disposes of on or after the commencement of that Division (even if the coal reject was recovered before that commencement). 20

60 Waiver of additional royalty for coal

Section 287A applies in respect of coal disposed of on or after the commencement of that section (even if the coal was recovered before that commencement). 25

61 Lodgment fees

A fee that, immediately before the commencement of section 382A, was prescribed by the regulations for the purposes of this Act or the regulations is taken to be an appropriate lodgment fee determined in accordance with that section. 30

Explanatory note

This item inserts savings and transitional provisions consequent on the enactment of the proposed Act. 35

Schedule 2 Amendment of other Acts and instruments

(Section 4)

2.1 Aboriginal Land Rights Act 1983 No 42

Section 45 Mineral rights and mining on Aboriginal land 5

Omit section 45 (13) (b). Insert instead:

- (b) the granting of an authority or mineral claim in accordance with an exclusive right conferred by the *Mining Act 1992*,

Explanatory note 10

This item reflects the fact that mineral claims are granted, not registered. This item constitutes minor statute law revision.

2.2 Coal Mines Regulation Act 1982 No 67

[1] Section 146 Definitions

Omit the definition of *mine*. Insert instead: 15

mine includes an abandoned mine.

Explanatory note

This item extends the definition of *mine* to include an abandoned mine and to exclude the existing exception of mines the subject of a mining lease under the *Mining Act 1992*. 20

[2] Section 148 Issue of tourist and educational permits

Insert after section 148 (1):

- (1A) An application for a permit is to be accompanied by the prescribed fee.

Explanatory note 25

This item will require applications for tourist and educational permits to be accompanied by an application fee.

2.3 Crimes Act 1900 No 40**[1] Section 1 Short title and contents**

Omit “(7) *From mines—ss. 144–147*” from paragraph (d) of the matter appearing in relation to Chapter 1 of Part 4.

Explanatory note

This item is consequential on the repeal of sections 144–147.

5

[2] Sections 144–147

Omit the sections and the heading appearing before the sections.

Explanatory note

This item repeals sections 144–147 in connection with their transfer (section 147 excepted) to the *Mining Act 1992*.

10

[3] Section 428B Offences of specific intent to which Part applies

Omit the matter relating to sections 145 and 147 from paragraph (a) of the Table to section 428B.

Explanatory note

This item is consequential on the repeal of sections 144–147.

15

[4] Section 428B, Table

Omit the matter relating to sections 144 and 146 from paragraph (b) of the Table to section 428B.

Explanatory note

This item is consequential on the repeal of sections 144–147.

20

2.4 Criminal Procedure Act 1986 No 209**[1] Section 33P Application of Part and continued application of certain provisions**

Omit “144,” from item 3 (c) in Part 2 of Table 1 to section 33P.

25

Explanatory note

This item is consequential on the amendments made to the *Crimes Act 1900* by Schedule 2.3.

Mining Legislation Amendment Bill 1996

Schedule 2 Amendment of other Acts and instruments

[2] Section 33P, Table 1

Omit “, 144” from item 4 in Part 2 of the Table.

Explanatory note

This item is consequential on the amendments made to the *Crimes Act 1900* by Schedule 2.3.

5

[3] Section 33P, Table 1

Omit “145, 146,” from item 9 in Part 2 of the Table.

Explanatory note

This item is consequential on the amendments made to the *Crimes Act 1900* by Schedule 2.3.

10

[4] Section 33P, Table 2

Omit “144,” from item 3 (c) in Part 2 of the Table.

Explanatory note

This item is consequential on the amendments made to the *Crimes Act 1900* by Schedule 2.3.

15

2.5 Crown Lands Act 1989 No 6

Section 155 Offences on public land

Insert after section 155 (3):

- (4) It is a sufficient defence to a prosecution for an offence arising under subsection (1) (e) or (h) if the defendant establishes that the activity with which he or she is charged was carried out in the course of fossicking, as referred to in section 12 (1) of the *Mining Act 1992*.

20

Explanatory note

This item ensures that fossicking remains a lawful activity within public land under the *Crown Lands Act 1989*. The item is consequential on amendments being made by Schedule 1 [6] to section 12 of the *Mining Act 1992*.

25

2.6 Mines Inspection Act 1901 No 75**[1] Section 48A Definitions**

Omit the definition of *mine*. Insert instead:

mine includes an abandoned mine.

Explanatory note

This item extends the definition of *mine* to include an abandoned mine and to exclude the existing exception of mines the subject of a mining lease under the *Mining Act 1992*.

5

[2] Section 48C Issue of permits

Insert after section 48C (1):

10

- (1A) An application for a permit is to be accompanied by a fee equivalent to the fee required to accompany an application for a permit under section 148 (Issue of tourist and educational permits) of the *Coal Mines Regulation Act 1982*.

15

Explanatory note

This item will require applications for permits to be accompanied by an application fee.

2.7 Mining (General) Regulation 1992**[1] Clause 10**

20

Omit the clause.

Explanatory note

This item omits a clause that regulates fossicking. The substance of clause 10 (1) is proposed to become part of section 12 of the *Mining Act 1992*.

[2] Clauses 11 (1), 13 (1), 14 (1), 18 (1), 19 (1), 32 (2) and 48 (1)

25

Omit the subclauses.

Explanatory note

This item omits provisions that prescribe fees. The item is consequential on proposed amendments to the *Mining Act 1992* that will result in fees being determined by the Minister rather than by the regulations under that Act.

30

Mining Legislation Amendment Bill 1996

Schedule 2 Amendment of other Acts and instruments

- [3] Clauses 12, 15, 20, 21, 23, 25, 35, 37 and 39**
Omit the clauses.
Explanatory note
This item omits provisions that prescribe fees. The item is consequential on proposed amendments to the *Mining Act 1992* that will result in fees being determined by the Minister rather than by the regulations under that Act. 5
- [4] Clauses 16, 16A (4), 24 (2), 28, 29, 41 (4), 43, 44, 49, 51, 52 and 63**
Omit "the fee specified in Schedule 5" wherever occurring.
Insert instead "the appropriate lodgment fee".
Explanatory note 10
This item is consequential on amendments to the *Mining Act 1992* that will result in fees being determined by the Minister rather than by the regulations.
- [5] Clause 59 Fees for services**
Omit "for which a fee is not prescribed by this Regulation".
Insert instead ", not being a service in respect of which an appropriate lodgment fee is payable under section 382A of the Act". 15
Explanatory note
This item is consequential on amendments to the *Mining Act 1992* that will result in fees being determined by the Minister rather than by the regulations.
- [6] Schedule 1 Minerals** 20
Omit "mineral water".
Explanatory note
This item removes mineral water from the list of substances that are prescribed as minerals for the purposes of the *Mining Act 1992*.
- [7] Schedule 2 Groups of minerals** 25
Omit "mineral water" from Group 2 (Elemental minerals (non-metallics)).
Explanatory note
This item is consequential on the removal of mineral water from the list of substances that are prescribed as minerals for the purposes of the *Mining Act 1992*. 30

[8] Schedule 5

Omit the Schedule.

Explanatory note

This item is consequential on amendments to the *Mining Act 1992* that will result in fees being determined by the Minister rather than by the regulations.

5

[9] Schedule 6 Royalty

Omit the matter relating to mineral water.

Explanatory note

This item is consequential on the removal of mineral water from the list of substances that are prescribed as minerals for the purposes of the *Mining Act 1992*.

10

2.8 National Parks and Wildlife Act 1974 No 80

Section 47J Provisions relating to mining

Omit "registered" from section 47J (6).
Insert instead "granted".

15

Explanatory note

This item reflects the fact that mineral claims are granted, not registered. This item constitutes minor statute law revision.

2.9 State Coal Mines Act 1912 No 70

[1] Section 2 Crown lands may be set apart

20

Omit "registered" from section 2 (2).
Insert instead "granted".

Explanatory note

This item reflects the fact that mineral claims are granted, not registered. This item constitutes minor statute law revision.

25

Mining Legislation Amendment Bill 1996

Schedule 2 Amendment of other Acts and instruments

[2] Section 7 Appeal against valuation

Omit "registered" from section 7 (3).
Insert instead "granted".

Explanatory note

This item reflects the fact that mineral claims are granted, not registered. This 5
item constitutes minor statute law revision.

Second print



New South Wales

Mining Legislation Amendment Bill 1996

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This PUBLIC BILL, originated in the LEGISLATIVE ASSEMBLY and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.

*Clerk of the Legislative Assembly.
Legislative Assembly*



New South Wales

Mining Legislation Amendment Bill 1996

Act No , 1996

An Act to amend the *Mining Act 1992* and certain other Acts and instruments with respect to various matters; and for other purposes.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Mining Legislation Amendment Act 1996*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation. 5

3 Amendment of Mining Act 1992 No 29

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

4 Amendment of other Acts and instruments

- (1) Each Act and instrument referred to in Schedule 2 is amended as set out in that Schedule. 10
- (2) The amendments made by Schedule 2 to the *Mining (General) Regulation 1992* do not affect the future amendment or repeal of that Regulation.

5 Explanatory notes 15

The matter appearing under the heading "Explanatory note" in Schedule 1 or 2 does not form part of this Act.

Schedule 1 Amendment of Mining Act 1992

(Section 3)

Part 1 Offences concerning the theft of minerals

[1] Part 2 Prospecting and mining generally

Insert before section 5:

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Division 1 General

Explanatory note

This item is consequential on the insertion of proposed Division 2 into Part 2.

[2] Part 2, Division 2

Insert after section 12:

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Division 2 Offences concerning theft of minerals

12A Definitions

In this Division:

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

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

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

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12B Stealing minerals

A person who:

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

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is guilty of an offence.

Maximum penalty:

- (a) 1,000 penalty units or imprisonment for 5 years, or both, in the case of an offence dealt with on indictment, or
- (b) 200 penalty units or imprisonment for 2 years, or both, in the case of an offence dealt with summarily. 5

12C Fraudulent removal and concealment of minerals by employees

A person employed in or about any mine or mining land who removes or conceals, or attempts to remove or conceal, a mineral found in that mine or mining land with intent to defraud an owner of the mine or mining land is guilty of an offence. 10

Maximum penalty: 15

- (a) 1,000 penalty units or imprisonment for 5 years, or both, in the case of an offence dealt with on indictment, or
- (b) 200 penalty units or imprisonment for 2 years, or both, in the case of an offence dealt with summarily. 20

12D Fraudulent removal and concealment of minerals by partners

An owner of any mine or mining land who removes or conceals, or attempts to remove or conceal, a mineral found in that mine or mining land with intent to defraud any other owner of the mine or mining land is guilty of an offence. 25

Maximum penalty:

- (a) 1,000 penalty units or imprisonment for 5 years, or both, in the case of an offence dealt with on indictment, or 30
- (b) 200 penalty units or imprisonment for 2 years, or both, in the case of an offence dealt with summarily. 35

12E Proceedings for offences under Division 2

- (1) Proceedings for an offence under this Division are to be dealt with summarily before a Warden's Court or before a Local Court constituted by a Magistrate sitting alone unless: 5
- (a) the prosecuting authority or the person charged with the offence (in the case of an offence in which the value of the minerals to which the alleged offence relates is \$5,000 or more), or
- (b) the prosecuting authority (in the case of an offence in which the value of the minerals to which the alleged offence relates is less than \$5,000), 10
- elects in accordance with Part 9A of the *Criminal Procedure Act 1986* to have the offence dealt with on indictment. 15
- (2) Section 56 of the *Justices Act 1902*, and the provisions of any other Act limiting the time within which proceedings for summary offences may be instituted, do not apply to an indictable offence that is dealt with summarily in accordance with this section. 20
- (3) The conviction of a person of an offence dealt with summarily in accordance with this section has the same effect as a conviction on indictment for the offence.
- (4) For the purposes of dealing with an offence in accordance with this section, a Warden's Court has the functions of, and is taken to be, a Local Court. 25
- (5) In this section, **prosecuting authority** means the Director of Public Prosecutions or other person responsible for the conduct of a prosecution. 30

Explanatory note 30

This item inserts a new Division 2 into Part 2, re-enacting sections 144, 145 and 147 of the *Crimes Act 1900* which (together with section 146) are to be repealed from that Act. Those offences (proposed sections 12B, 12C and 12D) deal with the theft, concealment and removal of minerals (commonly known as "ratting"). Section 146 is not re-enacted, as its subject-matter is adequately dealt with in Part 14 of the *Mining Act 1992*. The item also includes a definition section (proposed section 12A) and a provision allowing for offences under the Division to be dealt with either summarily or, by election, on indictment (proposed section 12E). 35

[3] Section 375 Proceedings for offences generally

Insert "(other than an offence under Division 2 of Part 2)" after "Act" in section 375 (1).

Explanatory note

This item is consequential on proposed section 12E.

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Part 2 Unlawful entry to the sites of mineral claims

[4] Sections 175A–175D

Insert after section 175:

175A Unlawful entry to site of mineral claim

- (1) Any person who, while in a mineral claims district, is found in or on any land the subject of a mineral claim held by some other person is guilty of an offence. 10

Maximum penalty:

- (a) except as provided by paragraph (b), 10 penalty units or imprisonment for 6 months, or both, or 15
- (b) if, when found on the land, the person is in possession of tools or equipment of a kind generally used for the purposes of prospecting or mining, 20 penalty units or imprisonment for 2 years, or both. 20
- (2) It is a sufficient defence to a prosecution under this section if the defendant establishes that he or she had a reasonable excuse for being in or on the land concerned.

175B Court may make exclusion order against convicted persons

- (1) This section applies to:
- (a) an offence referred to in section 12B, 12C or 12D,
or 5
 - (b) an offence referred to in section 175A in
connection with which the accused was found in
possession of tools or equipment of a kind
generally used for the purposes of prospecting or
mining, 10
- being an offence occurring within a mineral claims
district.
- (2) A court that convicts a person of an offence to which this
section applies may make an order (an *exclusion order*)
prohibiting the person from entering the whole or any 15
part of the mineral claims district concerned, or any
other mineral claims district, for such period (not
exceeding 2 years) as may be specified in the order.
- (3) An exclusion order may be made:
- (a) at any time within 6 months after the person's 20
conviction, and
 - (b) whether or not the person has a legal or equitable
interest in, or is the holder of an authority, mineral
claim or opal prospecting licence over, any of the
land to which the order relates. 25
- (4) Before making an exclusion order against a person, a
court:
- (a) must cause written notice of the fact that it
proposes to make such an order, and of the terms
of the proposed order, to be served on the person, 30
and
 - (b) must give the person a reasonable opportunity to
make representations to the court with respect to
the proposed order, and
 - (c) must take any such representations into 35
consideration.

- (5) An exclusion order takes effect:
 - (a) if the person to whom it relates is present in court when it is made, at the time it is made, or
 - (b) in any other case, when it is served on the person to whom it relates. 5
- (6) A copy of an exclusion order must be sent to the Commissioner of Police as soon as practicable after the order is made.

175C Appeals against, and suspensions and annulments of, exclusion orders 10

- (1) For the purposes of section 122 of the *Justices Act 1902*, an exclusion order made by a Warden's Court or a Local Court is taken to be an order whereby the defendant is punished.
- (2) For the purposes of the *Criminal Appeal Act 1912*, an exclusion order made by a court other than a Warden's Court or a Local Court is taken to be a sentence within the meaning of that Act. 15
- (3) If an appeal (or an application for leave to appeal) is made against the conviction from which an exclusion order arises, the operation of the exclusion order is suspended until the appeal or application is finally determined. 20
- (4) Unless the appeal court orders otherwise, the exclusion order is annulled if the conviction is quashed. 25
- (5) The appeal court may, by order, annul or vary the exclusion order even if the conviction is not quashed.
- (6) In this section, *appeal court* means the court to which an appeal (or an application for leave to appeal) is made as referred to in subsection (3). 30

175D Offence of contravening exclusion order

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

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

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

Explanatory note

This item inserts provisions relating to unlawful entry to the sites of mineral claims. Proposed section 175A creates an offence of being in or on land the subject of a mineral claim held by some other person. The maximum penalty for the offence is greater if, when found on the land, the accused is in possession of tools or equipment of a kind generally used for the purposes of prospecting or mining. The offence applies only in relation to mineral claims situated within a mineral claims district. Proposed section 175B provides for the making of exclusion orders against persons who have committed offences under proposed sections 12B, 12C or 12D or under proposed section 175A while in possession of prospecting or mining equipment. Proposed section 175C provides for appeals against, and the suspension and annulment of, exclusion orders. Proposed section 175D makes it an offence for a person to contravene an exclusion order.

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[5] Dictionary

Insert in alphabetical order:

exclusion order means an exclusion order referred to in section 175B.

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Explanatory note

This item inserts a definition of *exclusion order* into the Dictionary at the end of the Act.

Part 3 Fossicking

[6] Section 12 Fossicking

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Insert “and, in particular, does not make fossicking a lawful authority or lawful excuse for the purposes of any such Act or law” after “restricting fossicking” in section 12 (2) (a).

Explanatory note

This item makes it clear that the fact that fossicking is a lawful activity does not constitute a lawful authority or lawful excuse for the purposes of any Act or law that prohibits, restricts or regulates (except with lawful authority or lawful excuse) the kinds of activities commonly associated with fossicking.

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[7] Section 12 (4) and (5)

Insert after section 12 (3):

- (4) A person must not carry out fossicking on any land the subject of an authority, mineral claim or opal prospecting licence except with the consent of the holder of the authority, claim or licence. 10

Maximum penalty: 20 penalty units or imprisonment for 6 months, or both.

- (5) Subsection (4) does not apply to the carrying out of fossicking on land the subject of an exploration licence if the land is within a fossicking district. 15

Explanatory note

This item includes in the Act a restriction on fossicking that currently exists in the regulations under the Act, but provides that the restriction does not apply to land the subject of an exploration licence if the land is in a fossicking district.

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[8] Section 369A

Insert after section 369:

369A Fossicking districts

The Minister may, by order published in the Gazette, constitute any land as a fossicking district and may, by the same or a subsequent order so published, name the district and fix its boundaries. 25

Explanatory note

This item enables the Minister to declare fossicking districts for the purposes of proposed section 12 (5).

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[9] Dictionary

Insert, in alphabetical order:

fossicking district means a fossicking district constituted under section 369A.

Explanatory note

This item includes a definition of *fossicking district* in the Dictionary to the Act.

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Part 4 Other activities in the nature of prospecting and mining

[10] Section 11A

Insert after section 11:

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11A Certain activities taken not to be prospecting or mining

- (1) The regulations may declare that a specified activity is taken not to be prospecting or mining for the purposes of this Act.
- (2) A regulation referred to in subsection (1):
 - (a) may require a person who proposes to carry out any such activity to give notice of intention to do so to the Director-General, and
 - (b) may require a person who carries out any such activity to pay royalty to the Minister in respect of any publicly owned minerals recovered as a consequence of the carrying out of that activity.
- (3) Part 14 applies to royalty payable under subsection (2) (b) in the same way as it applies to royalty payable on a mineral recovered under a mining lease.

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Explanatory note

This item enables the regulations to declare that certain activities (such as major excavations that occur in the context of road construction) are not to be considered to constitute prospecting or mining for the purposes of the Act. Such a regulation may require notice of any such activity to be given and may require royalty to be paid on any minerals recovered as a consequence of the carrying out of such an activity.

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[11] Dictionary

Insert “, but does not include any activity declared not to be mining by a regulation under section 11A” after “has been so extracted” in paragraph (b) of the definition of *mine*.

Explanatory note

This item amends the definition of *mine* in the Dictionary to the Act as a consequence of the proposed section 11A.

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[12] Dictionary

Insert “, but does not include any activity declared not to be prospecting by a regulation under section 11A” after “of the land” in the definition of *prospect*. 10

Explanatory note

This item amends the definition of *prospect* in the Dictionary to the Act as a consequence of the proposed section 11A.

Part 5 Royalty on coal

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[13] Part 14, Division 3A, sections 286A–286D

Insert after section 286:

Division 3A Coal reject

286A Definition of coal reject

In this Division:

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coal reject means the by-product of the mining or processing of coal that contains a mixture of coal and other substances (such as shale) and has either an energy value (the maximum energy capable of being produced by it on combustion) of less than 16 gigajoules per tonne (dry weight) or contains more than 35 per cent ash (by dry weight). 25

286B Royalty on coal in coal reject

- (1) Royalty is not payable on the coal in coal reject recovered under a mining lease until the coal reject is used or disposed of.
- (2) The holder of a mining lease is liable to pay royalty under this Division to the Minister on the coal in coal reject recovered under the lease if the holder uses the coal reject in producing energy or disposes of it for use in producing energy. 5
- (3) If royalty is payable under this Division on the coal in coal reject, Division 1 does not apply to that coal. 10

286C Rate of royalty

- (1) Royalty on the coal in coal reject recovered under a mining lease is payable under this Division at the rate determined from time to time by the Minister, with the concurrence of the Treasurer, in respect of the lease or the class of leases concerned. 15
- (2) The rate of royalty on the coal in coal reject may be a zero rate or may be any other rate up to, but not exceeding, half the base rate of royalty prescribed from time to time in respect of coal under section 283 (1) (a). 20
- (3) In determining the rate of royalty the Minister is to have regard to:
 - (a) the energy value of the coal reject, and
 - (b) the costs associated with extracting, transporting or processing the coal reject for the purposes of use or disposal, and 25
 - (c) such other matters as the Minister considers appropriate.
- (4) Royalty under this Division is payable on the coal in coal reject at the rate applicable: 30
 - (a) at the time the coal reject is used by the holder of the relevant mining lease in producing energy, or

- (b) at the time the coal reject is disposed of by that holder for use in producing energy.
- (5) Royalty required to be calculated on the basis of the weight of coal is to be calculated by reference to dry weight. 5

286D Evidentiary matters

- (1) The energy value and ash content of the by-product of the mining or processing of coal recovered under a particular mining lease is to be determined, in the manner directed by the Minister, on the basis of the average energy value and average ash content of that by-product. 10
- (2) The Minister may by determination in writing determine any of the following:
 - (a) that the by-product, or any identifiable quantity of the by-product, of the mining or processing of coal recovered under a particular mining lease is coal reject, 15
 - (b) the amount of coal in the coal reject recovered under a particular mining lease or the amount of coal in any identifiable quantity of that coal reject, 20
 - (c) that the coal reject, or any identifiable quantity of the coal reject, recovered under a particular mining lease and used or disposed of by the holder of the lease has been used by the holder in producing energy or disposed of by the holder for use in producing energy. 25
- (3) The Minister's determination is evidence of the matter determined.
- (4) A determination under subsection (2) (a) or (b) is not open to dispute or challenge on the basis that the determination is not correct or accurate for any particular sample or quantity of the material concerned. 30

Explanatory note

This item allows royalty to be charged on coal reject that is used for the purpose of producing energy, but limits the maximum rate of royalty that may be imposed to half the rate of royalty that is payable for coal. 35

[14] Section 287A

Insert after section 287:

287A Waiver of payment of additional royalty for coal

- (1) The Minister may, by order in writing made with the concurrence of the Treasurer, waive all or part of the payment by the holder of a mining lease of royalty at the additional rate prescribed in respect of coal under section 283 (1) (b). 5
- (2) The order may be made only if the Minister is satisfied that it is necessary for the financial viability of the mine, or mines, to which the mining lease relates, having regard to such matters as the Minister considers appropriate. 10
- (3) The power of the Minister to make an order under this section cannot be delegated, despite section 363. 15

Explanatory note

Royalty is payable on minerals at a base rate and, if the regulations so provide, at an additional rate. This item allows the Minister to waive payment of such part of the royalty as is payable at the additional rate in order to protect the financial viability of the mine or mines concerned. 20

Part 6 Fees

[15] Sections 13 (2) (d), 15 (1) (c), 33 (2) (d), 51 (2) (d), 53 (1) (c), 113 (4), 120 (2) (a), 122 (2) (b), 124 (1), 144 (2), 161 (3), 178 (2) (c), 197 (2) (a), 200 (2) (a) and 202 (2) (a)

Omit "fee prescribed by the regulations" wherever occurring. 25
Insert instead "appropriate lodgment fee".

Explanatory note

This item is part of a series of amendments that will allow fees to be determined by the Minister instead of, as at present, by the regulations.

[16] Section 63 Power of Minister in relation to applications

Insert after section 63 (3):

- (3A) A mining lease may not be granted until the appropriate mining lease fee (as determined under section 382A) has been paid for the grant of the lease. 5

Explanatory note

This item will require a mining lease fee (to be determined by the Minister) to be paid on the granting of a mining lease. This fee will be additional to the lodgment fee that is payable when an application or tender for the mining lease is made.

[17] Section 226 Applications 10

Omit section 226 (2). Insert instead:

- (2) An application:
- (a) must be accompanied by the appropriate lodgment fee, and
 - (b) must be lodged with the mining registrar for the mining division in which the opal prospecting block is situated. 15

Explanatory note

This item will require a lodgment fee to accompany an application for an opal prospecting licence. This will replace the licence fee that is currently imposed when an opal prospecting licence is granted. 20

[18] Section 382A

Insert after section 382:

382A Minister to determine certain fees

The Minister may from time to time, with the concurrence of the Treasurer, determine: 25

- (a) the lodgment fees payable for the purposes of this Act and the regulations, and
- (b) the mining lease fees payable for the purposes of section 63 (3A). 30

Explanatory note

This item will allow the Minister to determine various fees payable in connection with the Act. Those fees are currently prescribed by the regulations.

[19] Dictionary

Insert in alphabetical order:

appropriate lodgment fee means the fee determined for the time being in accordance with section 382A with respect to the matter to which the fee relates.

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Explanatory note

This item inserts a definition of *appropriate lodgment fee* into the Dictionary to the Act.

Part 7 Security deposits

[20] Section 26 Conditions of exploration licence

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Insert "and maintain" after "give" in section 26 (2) (b).

Explanatory note

This item is one of a series of amendments to ensure that a condition to give security can also require security to be maintained.

[21] Section 26 (4) and (5)

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Insert after section 26 (3):

(4) A condition requiring security to be given and maintained by the holder of an exploration licence (the *new exploration licence*) may be expressed so as to require the security given and maintained in relation to some other exploration licence or licences, whether under this section or under section 29A, to be extended to the new exploration licence.

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(5) If the Minister proposes to grant an exploration licence to a person on the condition that the person gives and maintains security, the Minister may cause a written notice to be served on the person requiring the person to lodge the security with the Minister on or before the date specified in the notice.

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Explanatory note

This item ensures that new exploration licences can be made the subject of security that has been given in relation to earlier exploration licences held by the same person, and that the Minister may set a deadline by which security must be lodged.

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[22] Section 29A

Insert after section 29:

29A Amendment of exploration licence in respect of certain conditions

- (1) The Minister may amend an exploration licence that does not contain a condition requiring the holder to give and maintain security for the fulfilment of the obligations of the holder arising under this Act so as to include such a condition. 10
- (2) The Minister may amend an exploration licence that contains such a condition so as to vary the amount and form of the security that is required to be given and maintained. 15
- (3) The Minister may amend any 2 or more exploration licences held by the same holder that contain such a condition so as to require a single security to be given and maintained. 20
- (4) The amendment of an exploration licence takes effect on the date on which written notice of the amendment is served on the holder of the exploration licence or on such later date as may be specified in the notice. 25

Explanatory note

This item will allow an exploration licence to be amended in relation to conditions requiring the giving and maintaining of security in the same way as a mining lease can currently be amended.

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[23] Section 44 Conditions of assessment lease

Insert "and maintain" after "give" in section 44 (2) (b).

Explanatory note

This item is one of a series of amendments to ensure that a condition to give security can also require security to be maintained.

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[24] Section 44 (4) and (5)

Insert after section 44 (3):

- (4) A condition requiring security to be given and maintained by the holder of an assessment lease (the *new assessment lease*) may be expressed so as to require the security given and maintained in relation to some other assessment lease or leases, whether under this section or under section 47A, to be extended to the new assessment lease. 5
- (5) If the Minister proposes to grant an assessment lease to a person on the condition that the person gives and maintains security, the Minister may cause a written notice to be served on the person requiring the person to lodge the security with the Minister on or before the date specified in the notice. 10 15

Explanatory note

This item ensures that new assessment leases can be made the subject of security that has been given in relation to earlier assessment leases held by the same person, and that the Minister may set a deadline by which security must be lodged. 20

[25] Section 47A

Insert after section 47:

47A Amendment of assessment lease in respect of certain conditions

- (1) The Minister may amend an assessment lease that does not contain a condition requiring the holder to give and maintain security for the fulfilment of the obligations of the holder arising under this Act so as to include such a condition. 25
- (2) The Minister may amend an assessment lease that contains such a condition so as to vary the amount and form of the security that is required to be given and maintained. 30

- (3) The Minister may amend any 2 or more assessment leases held by the same holder that contain such a condition so as to require a single security to be given and maintained.
- (4) The amendment of an assessment lease takes effect on the date on which written notice of the amendment is served on the holder of the assessment lease or on such later date as may be specified in the notice. 5

Explanatory note

This item will allow an assessment lease to be amended in relation to conditions requiring the giving and maintaining of security in the same way as a mining lease can currently be amended. 10

[26] Section 70 Conditions of mining lease

Insert “and maintain” after “give” in section 70 (2) (a).

Explanatory note

This item is one of a series of amendments to ensure that a condition to give security can also require security to be maintained. 15

[27] Section 70 (2A)

Insert after section 70 (2):

- (2A) A condition requiring security to be given and maintained by the holder of a mining lease (the *new mining lease*) may be expressed so as to require the security given and maintained in relation to some other mining lease or leases, whether under this section or under section 79, to be extended to the new mining lease. 20
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Explanatory note

This item ensures that new mining leases can be made the subject of security that has been given in relation to earlier mining leases held by the same person.

[28] Section 70 (3)

Insert “and maintains” after “gives”. 30

Explanatory note

This item is one of a series of amendments to ensure that a condition to give security can also require security to be maintained.

[29] Section 79 Amendment of mining lease in respect of certain conditions

Insert "and maintain" after "give" in section 79 (2).

Explanatory note

This item is one of a series of amendments to ensure that a condition to give security can also require security to be maintained. 5

[30] Section 79 (3) and (4)

Insert "and maintained" after "given" wherever occurring.

Explanatory note

This item is one of a series of amendments to ensure that a condition to give security can also require security to be maintained. 10

[31] Section 81 Surface prospecting in relation to subsurface leases

Insert at the end of the section:

(2) Before carrying out prospecting operations of the kind referred to in subsection (1), the holder of the mining lease: 15

(a) must cause notice of intention to do so to be given to the Director-General, and

(b) must cause security (in such amount and form, and on or before such date, as the Minister may determine) to be lodged with the Director-General for the fulfilment of the obligations arising under this Act in respect of the lease, including any obligations arising under Part 11 as applied by subsection (3). 20 25

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

Explanatory note

This item will require the holder of a mining lease to give notice and, if required, to lodge security before commencing surface prospecting under section 81. The item applies Part 11 (Protection of the environment) to the land concerned, so allowing conditions as to rehabilitation to be imposed on the mining lease in respect of that land and so allowing the security that has been lodged to be applied to the rehabilitation of that land if those conditions are not complied with. 30 35

[32] Section 190 Power of mining registrar in relation to applications

Insert “and maintain” after “give” in section 190 (4).

Explanatory note

This item is one of a series of amendments to ensure that a condition to give security can also require security to be maintained.

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[33] Section 190 (4A) and (4B)

Insert after section 190 (4):

(4A) A condition requiring security to be given and maintained by the holder of a mineral claim (the *new mineral claim*) may be expressed so as to require the security given and maintained in relation to some other mineral claim or mineral claims, whether under this section or under section 195A, to be extended to the new mineral claim.

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(4B) If the mining registrar proposes to grant a mineral claim to a person on the condition that the person gives and maintains security, the mining registrar may cause a written notice to be served on the person requiring the person to lodge the security with the mining registrar on or before the date specified in the notice.

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Explanatory note

This item ensures that new mineral claims can be made the subject of security that has been given in relation to earlier mineral claims held by the same person, and that a mining registrar may set a deadline by which security must be lodged.

[34] Section 195A

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Insert after section 195:

195A Amendment of mineral claim in respect of certain conditions

(1) A mining registrar may amend a mineral claim that does not contain a condition requiring the holder to give and maintain security for the fulfilment of the obligations of the holder arising under this Act so as to include such a condition.

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- (2) A mining registrar may amend a mineral claim that contains such a condition so as to vary the amount and form of the security that is required to be given and maintained.
- (3) A mining registrar may amend any 2 or more mineral claims held by the same holder that contain such a condition so as to require a single security to be given and maintained. 5
- (4) The amendment of a mineral claim takes effect on the date on which written notice of the amendment is served on the holder of the mineral claim or on such later date as may be specified in the notice. 10

Explanatory note

This item will allow a mineral claim to be amended in relation to conditions requiring the giving and maintaining of security in the same way as a mining lease can currently be amended. 15

Part 8 Compensation to owners and occupiers of land

[35] Sections 263 (2), 264 (2) and 265 (2)

Omit “, and lodged with the Director-General” wherever occurring.

Explanatory note

This item will remove the obligation for compensation agreements to be lodged with the Director-General. At present, such an agreement is invalid unless it has been so lodged. 20

[36] Section 266 Compensation arising under mineral claim

Insert after section 266 (3): 25

- (4) Instead of assessing compensation in relation to a particular mineral claim, a warden may assess compensation in relation to:
- (a) all mineral claims within a mining division, or
 - (b) any particular class of mineral claims within a mining division, 30

and, in that event, may assess compensation as a fixed amount per mineral claim or as an amount per mineral claim to be calculated at a fixed rate.

Explanatory note

This item will allow global determinations of compensation instead of, as is presently the case, individual determinations only in connection with the granting of a mineral claim. 5

[37] Section 267 Compensation arising under opal prospecting licence

Insert after section 267 (3): 10

(4) Instead of assessing compensation in relation to a particular opal prospecting licence, a warden may assess compensation in relation to:

(a) all opal prospecting licences within an opal prospecting area, or 15

(b) any particular class of opal prospecting licences within an opal prospecting area,

and, in that event, may assess compensation as a fixed amount per opal prospecting licence or as an amount per opal prospecting licence to be calculated at a fixed rate. 20

Explanatory note

This item will allow global determinations of compensation instead of, as is presently the case, individual determinations only in connection with the granting of an opal prospecting licence.

[38] Section 278 Appeals 25

Insert at the end of the section:

(2) No appeal lies against an assessment of compensation made in relation to a particular class of mineral claims, as referred to in section 266 (4) or 267 (4).

(3) Subsection (2) does not prevent an appeal being made against an assessment of further compensation under section 276 merely because the original compensation was payable under an assessment of compensation made in relation to a particular class of mineral claims, as referred to in section 266 (4) or 267 (4). 30
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Explanatory note

This item will preclude appeals from global determinations of compensation for mineral claims and opal prospecting licences, but will not affect appeals from determinations for additional compensation in particular circumstances.

Part 9	Protection of dwelling-houses, gardens and improvements	5
[39]	Section 31 Dwelling-houses, gardens and improvements	
	Insert "on which the dwelling-house is situated" after "of the land" in section 31 (1) (a).	
	Explanatory note	10
	This item is one of a series that is intended to clarify what dwelling-houses, gardens and improvements are being protected from prospecting and mining operations and whose consent is necessary before that protection can be waived.	
[40]	Section 31 (1)	
	Insert "on which the dwelling-house, garden or improvement is situated" after "of the land" where lastly occurring.	15
	Explanatory note	
	This item is one of a series that is intended to clarify what dwelling-houses, gardens and improvements are being protected from prospecting and mining operations and whose consent is necessary before that protection can be waived.	20
[41]	Section 49 Dwelling-houses, gardens and improvements	
	Insert "on which the dwelling-house is situated" after "of the land" in section 49 (1) (a).	
	Explanatory note	25
	This item is one of a series that is intended to clarify what dwelling-houses, gardens and improvements are being protected from prospecting and mining operations and whose consent is necessary before that protection can be waived.	
[42]	Section 49 (1)	
	Insert "on which the dwelling-house, garden or improvement is situated" after "of the land" where lastly occurring.	30

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Explanatory note

This item is one of a series that is intended to clarify what dwelling-houses, gardens and improvements are being protected from prospecting and mining operations and whose consent is necessary before that protection can be waived.

[43] Section 62 Dwelling-houses, gardens and improvements 5

Insert “on which the dwelling-house is situated” after “of the land” in section 62 (1) (a).

Explanatory note

This item is one of a series that is intended to clarify what dwelling-houses, gardens and improvements are being protected from prospecting and mining operations and whose consent is necessary before that protection can be waived. 10

[44] Section 62 (1)

Insert “on which the dwelling-house, garden or improvement is situated” after “of the land” where lastly occurring.

Explanatory note

This item is one of a series that is intended to clarify what dwelling-houses, gardens and improvements are being protected from prospecting and mining operations and whose consent is necessary before that protection can be waived. 15

[45] Section 62 (8)

Insert after section 62 (7): 20

- (8) In this section, *valuable work or structure* includes anything taken to be a valuable work or structure for the purposes of this section by clause 23A of Schedule 1, but does not include anything declared not to be a valuable work or structure by clause 23B of that Schedule. 25

Explanatory note

This item will invoke the provisions of Schedule 1 (proposed clauses 23A and 23B) for the purpose of determining, for mineral leases only, what is and what is not a valuable work or structure.

[46] Section 188 Dwelling-houses, gardens and improvements

Insert "on which the dwelling-house is situated" after "of the land" in section 188 (1) (a).

Explanatory note

This item is one of a series that is intended to clarify what dwelling-houses, gardens and improvements are being protected from prospecting and mining operations and whose consent is necessary before that protection can be waived.

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[47] Section 188 (1) (c)

Omit ", or within the prescribed distance of which,".

Explanatory note

This item is intended to bring section 188 (1) into line with sections 31, 49 and 62.

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[48] Section 188 (1)

Insert "on which the dwelling-house, woolshed, shearing shed, garden or improvement is situated" after "of the land" where lastly occurring.

Explanatory note

This item is one of a series that is intended to clarify what dwelling-houses, gardens and improvements are being protected from prospecting and mining operations and whose consent is necessary before that protection can be waived.

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[49] Section 188 (2) (b)

Omit "and (c)".

Explanatory note

This item is consequential on the amendment to section 188 (1) (c).

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

Insert ", and claims with respect to valuable works and structures on the land," after "agricultural land" in clause 21 (2) (c).

Explanatory note

This item will require a notice to an owner or occupier of land concerning a proposed invitation to tender for a mining lease to state that the owner or occupier may lodge a claim to the effect that a particular work or structure is a valuable work or structure, and that a mining lease should therefore not be granted so as to have effect in the vicinity of the work or structure.

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[51] Schedule 1, clause 21 (4) (c)

Insert “, and claims with respect to valuable works and structures on the land,” after “agricultural land”.

Explanatory note

This item will require a notice to an owner or occupier of land concerning a proposed application for a mining lease to state that the owner or occupier may lodge a claim to the effect that a particular work or structure is a valuable work or structure, and that a mining lease should therefore not be granted so as to have effect in the vicinity of the work or structure. 5

[52] Schedule 1, clauses 23A, 23B 10

Insert after clause 23:

23A Identification of valuable works and structures

- (1) An owner or occupier of land to which an invitation for tenders will relate, or over which a mining lease is sought, may make a claim to the Minister that something on the land is a valuable work or structure. 15
- (2) A claim must be in writing and must be lodged with the Director-General on or before the date specified in the relevant notice under clause 21.
- (3) On receipt of a claim made under this clause, the Director-General: 20
 - (a) in the case of a claim relating to an invitation for tenders, must decide whether to accept the claim or to object to the claim, or
 - (b) in the case of a claim relating to an application for a mining lease, must cause notice of the claim to be given to the applicant for the lease. 25
- (4) An applicant for a mining lease to whom such a notice is given may object to the claim.
- (5) An objection must be made in writing and lodged with the Director-General within 14 days after notice of the claim was given to the applicant. 30

- (6) Anything identified in a claim as being a valuable work or structure is taken to be a valuable work or structure for the purposes of section 62 unless it is declared not to be a valuable work or structure under clause 23B.

23B Consideration of objections to claims concerning valuable works and structures 5

- (1) Unless it is earlier withdrawn, the Director-General must refer any objection made under clause 23A to a warden for inquiry and report.
- (2) At the conclusion of the inquiry into the objection, the warden must announce in open court the warden's finding and the purport of the warden's report and must transmit the finding and report to the Minister. 10
- (3) Anything in respect of which an objection has been made under clause 23A and which the warden's report declares not to be a valuable work or structure is taken not to be a valuable work or structure for the purposes of section 62. 15

Explanatory note

This item provides for a procedure for the making of claims to the effect that a particular work or structure is a valuable work or structure, for the making of objections to such a claim, and for the determination of a claim (where an objection is made) by a warden. 20

Part 10 Protection of mining operations in connection with privately owned minerals

[53] Section 8 Mining etc for privately owned minerals without due notice to Director-General 25

Omit section 8 (2) (a).

Explanatory note

This item will remove the current requirement that a notice with respect to the proposed prospecting or mining for privately owned minerals must specify the date on which prospecting or mining operations are to be commenced. 30

[54] Section 8 (4)

Omit the subsection. Insert instead:

- (4) This section does not apply to a person to the extent to which the person is prospecting or mining in accordance with an authority, mineral claim or opal prospecting licence that is in force in respect of the land and mineral concerned. 5

Explanatory note

This item makes it clear that the requirements of section 8 apply to any person who is prospecting or mining for privately owned minerals, whether or not the person happens to have an authority, mineral claim or opal prospecting licence for some other mineral. 10

[55] Section 20 Land on which private mining operations being carried on

Omit section 20 (1). Insert instead: 15

- (1) An exploration licence may not be granted over any land:
- (a) if mining operations for a privately owned mineral are being carried out on the land by or with the consent of the owner of the mineral, and 20
- (b) if the notice referred to in section 8 (1) (a) and the security referred to in section 8 (1) (b) have each been duly lodged with the Director-General,
- except with the written consent of the owner of the mineral. 25

Explanatory note

This item extends the protection of existing section 20 (1) so as to prevent the granting of any exploration licence over land on which mining operations for a privately owned mineral are being carried out, but requires that the requirements of section 8 have been complied with not only with respect to notice but also with respect to the lodging of security. 30

[56] Section 39 Land on which private mining operations being carried on

Omit section 39 (1). Insert instead:

- (1) An assessment lease may not be granted over any land:
 - (a) if mining operations for a privately owned mineral are being carried out on the land by or with the consent of the owner of the mineral, and 5
 - (b) if the notice referred to in section 8 (1) (a) and the security referred to in section 8 (1) (b) have each been duly lodged with the Director-General, 10except with the written consent of the owner of the mineral.

Explanatory note

This item extends the protection of existing section 39 (1) so as to prevent the granting of any assessment lease over land on which mining operations for a privately owned mineral are being carried out, but requires that the requirements of section 8 have been complied with not only with respect to notice but also with respect to the lodging of security. 15

[57] Section 60 Land on which private mining operations being carried on 20

Omit section 60 (1). Insert instead:

- (1) A mining lease may not be granted over any land:
 - (a) if mining operations for a privately owned mineral are being carried out on the land by or with the consent of the owner of the mineral, and 25
 - (b) if the notice referred to in section 8 (1) (a) and the security referred to in section 8 (1) (b) have each been duly lodged with the Director-General, 30except with the written consent of the owner of the mineral.

Explanatory note

This item extends the protection of existing section 60 (1) so as to prevent the granting of any mining lease over land on which mining operations for a privately owned mineral are being carried out, but requires that the requirements of section 8 have been complied with not only with respect to notice but also with respect to the lodging of security. 35

[58] Section 185 Land on which private mining operations being carried on

Omit section 185 (1). Insert instead:

- (1) A mineral claim may not be granted over any land:
- (a) if mining operations for a privately owned mineral are being carried out on the land by or with the consent of the owner of the mineral, and 5
 - (b) if the notice referred to in section 8 (1) (a) and the security referred to in section 8 (1) (b) have each been duly lodged with the Director-General, 10
- except with the written consent of the owner of the mineral.

Explanatory note

This item extends the protection of existing section 185 (1) so as to prevent the granting of any mineral claim over land on which mining operations for a privately owned mineral are being carried out, but requires that the requirements of section 8 have been complied with not only with respect to notice but also with respect to the lodging of security. 15

Part 11 Mining purposes

[59] Section 51 Applications 20

Insert “, or the mining purpose or mining purposes,” after “minerals” in section 51 (2) (a).

Explanatory note

This item is one of a series of amendments that are intended to enable mining leases to be granted with respect to mining purposes only. Currently, mining leases must be granted with respect to specified minerals, and mining purposes are permissible under the Act merely as a purpose ancillary to that of mining for the specified mineral. 25

[60] Section 51 (3)

Insert “, in the case of an application that specifies a mineral or minerals,” after “the required particulars”.

Explanatory note

This item is one of a series of amendments that are intended to enable mining leases to be granted with respect to mining purposes only.

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[61] Section 51 (5)

Insert after section 51 (4):

(5) The required particulars, in the case of an application that specifies a mining purpose or mining purposes, are as follows:

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(a) a description, prepared in the manner prescribed by the regulations, of the land over which the mining lease is sought,

(b) a description of the nature and extent of the mining purpose or mining purposes to be carried out.

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Explanatory note

This item is one of a series of amendments that are intended to enable mining leases to be granted with respect to mining purposes only.

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[62] Section 63 Power of Minister in relation to applications

Insert after section 63 (4):

(5) A mining lease may not be granted, in respect of a mining purpose or mining purposes only, unless the Minister is satisfied that the mining purpose or mining purposes is or are to be carried out in connection with and in the immediate vicinity of:

25

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

(b) a mineral claim,

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

Explanatory note

This item is one of a series of amendments that are intended to enable mining leases to be granted with respect to mining purposes only.

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[63] Section 65 Development consents under the Environmental Planning and Assessment Act 1979

Omit section 65 (1). Insert instead:

(1) This section applies:

(a) in relation to a mining lease for a mineral or minerals, to land for which development consent is required before the land may be used for the purpose of obtaining minerals, and 10

(b) in relation to a mining lease for a mining purpose or mining purposes only, to land for which development consent is required before the land may be used for that purpose or those purposes. 15

Explanatory note

This item is one of a series of amendments that are intended to enable mining leases to be granted with respect to mining purposes only.

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[64] Section 70 Conditions of mining lease

Insert after section 70 (1):

(1A) Subsection (1) (a) does not apply to a mining lease that is granted in relation to a mining purpose or mining purposes only. 25

Explanatory note

This item is one of a series of amendments that are intended to enable mining leases to be granted with respect to mining purposes only.

[65] Section 72 Form of mining lease

Insert “, or the mining purpose or mining purposes,” after “minerals” in section 72 (b). 30

Explanatory note

This item is one of a series of amendments that are intended to enable mining leases to be granted with respect to mining purposes only.

[66] Section 73 Rights under mining lease

Insert “granted in respect of a mineral or minerals” after “a mining lease” in section 73 (1).

Explanatory note

This item is one of a series of amendments that are intended to enable mining leases to be granted with respect to mining purposes only.

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[67] Section 73 (1A)

Insert after section 73 (1):

(1A) The holder of a mining lease granted in respect of a mining purpose or mining purposes only may, in accordance with the conditions of the lease, carry out the mining purpose or mining purposes specified in the lease.

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Explanatory note

This item is one of a series of amendments that are intended to enable mining leases to be granted with respect to mining purposes only.

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[68] Section 75 Mining purposes

Insert after section 75 (1):

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

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Explanatory note

This item prevents the Minister from exercising the powers conferred by section 75 to order the discontinuing of a mining purpose if the mining purpose is specifically authorised by a mining lease.

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[69] Section 77 Addition of mineral to mining lease

Insert “granted in respect of a mineral or minerals” after “a mining lease” in section 77 (1).

Explanatory note

This item is one of a series of amendments that are intended to enable mining leases to be granted with respect to mining purposes only.

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[70] Section 178 Application for granting of mineral claim

Insert “, or the mining purpose or mining purposes,” after “minerals” in section 178 (2) (b).

Explanatory note

This item is one of a series of amendments that are intended to enable mineral claims to be granted with respect to mining purposes only. Currently, mineral claims must be granted with respect to specified minerals, and mining purposes are permissible under the Act merely as a purpose ancillary to that of mining for the specified mineral. 5

[71] Section 190 Power of mining registrar in relation to applications 10

Insert after section 190 (6):

- (7) A mineral claim may not be granted in respect of a mining purpose or mining purposes only unless the applicant for the mineral claim is the holder of, or an applicant for, a mining lease or mineral claim for a mineral or minerals with respect to land in the same mining division. 15

Explanatory note

This item will prevent mineral claims for mining purposes only from being issued unless the applicant is the holder of a mining lease or mineral claim for a mineral or minerals within the same mining division. 20

[72] Section 194 Certificate of mineral claim

Insert “, or the mining purpose or mining purposes,” after “minerals” in section 194 (2) (b).

Explanatory note

This item is one of a series of amendments that are intended to enable mineral claims to be granted with respect to mining purposes only. 25

[73] Section 195 Rights under mineral claim

Insert “granted in respect of a mineral or minerals” after “a mineral claim” in section 195 (1). 30

Explanatory note

This item is one of a series of amendments that are intended to enable mineral claims to be granted with respect to mining purposes only.

[74] Section 195 (1A)

Insert after section 195 (1):

- (1A) The holder of a mineral claim granted in respect of a mining purpose or mining purposes only may, in accordance with the conditions of the claim, carry out the mining purpose or mining purposes specified in the certificate relating to the claim. 5

Explanatory note

This item is one of a series of amendments that are intended to enable mineral claims to be granted with respect to mining purposes only. 10

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

Omit clause 12. Insert instead:

12 Application of Division

This Division applies: 15

- (a) in relation to a mining lease for a mineral or minerals, to land for which development consent is required before the land may be used for the purpose of obtaining minerals, and
- (b) in relation to a mining lease for a mining purpose or mining purposes only, to land for which development consent is required before the land may be used for that purpose or those purposes. 20

Explanatory note

This item is one of a series of amendments that are intended to enable mining leases to be granted with respect to mining purposes only. 25

[76] Schedule 1, clause 13

Omit clause 13 (2). Insert instead:

(2) This clause does not apply:

- (a) in relation to a mining lease for a mineral or minerals, to the granting of the mining lease over land in respect of which a development consent to the use of the land for the purpose of obtaining minerals is in force, or 30

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- (b) in relation to a mining lease for a mining purpose or mining purposes only, to the granting of the mining lease over land in respect of which a development consent to the use of the land for that purpose or those purposes is in force. 5

Explanatory note

This item is one of a series of amendments that are intended to enable mining leases to be granted with respect to mining purposes only.

[77] Schedule 1, clause 16

Omit the clause. Insert instead: 10

16 Application of Division

This Division applies:

- (a) in relation to a mining lease for a mineral or minerals, to land for which development consent is not required before the land may be used for the purpose of obtaining minerals, and 15
- (b) in relation to a mining lease for a mining purpose or mining purposes only, to land for which development consent is not required before the land may be used for that purpose or those purposes. 20

Explanatory note

This item is one of a series of amendments that are intended to enable mining leases to be granted with respect to mining purposes only.

Part 12 Renewals of authorities and mineral claims 25

[78] Section 138 Application of Division

Insert "or renewed" after "granted" in section 138 (2).

Explanatory note

This item is one of a series of amendments that are intended to make it clear that certain provisions of the Act with respect to the granting of authorities and mineral claims apply also to their renewal. 30

[79] Section 138 (2)

Insert "or renewal" after "grant".

Explanatory note

This item is one of a series of amendments that are intended to make it clear that certain provisions of the Act with respect to the granting of authorities and mineral claims apply also to their renewal.

5

[80] Section 197 Application for renewal

Insert ", from time to time," after "may" in section 197 (1).

Explanatory note

This item makes it clear that a mineral claim may be renewed more than once.

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[81] Section 197 (2) (b)

Omit "within 28 days".

Insert instead "on or within 2 months".

Explanatory note

This item extends, from 28 days to 2 months, the time within which an application for renewal of a mineral claim may be made, and makes it clear that the application can be made as late as the day on which the current mineral claim is due to expire.

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[82] Section 199A

Insert after section 199:

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199A Term of renewal

(1) A mineral claim that is renewed:

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

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(b) ceases to have effect at the expiration of such period (not exceeding 5 years or, in the case of a mineral claim over land that is situated within a mineral claims district, not exceeding such shorter period as the special conditions may specify) as the mining registrar may determine.

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

Explanatory note

This item applies the provisions relating to the term of an original mineral claim to the term of a mineral claim that is renewed. 5

Part 13 Partial transfers of exploration licences

[83] Section 123 Partial transfers

Omit "assessment lease or mining lease" wherever occurring.
Insert instead "authority". 10

Explanatory note

This item is one of a series of amendments that are intended to apply the partial transfer provisions of section 123 to exploration licences. Those provisions already apply to assessment leases and mining leases.

[84] Section 123 (1) (a) 15

Omit "the lease". Insert instead "the authority".

Explanatory note

This item is one of a series of amendments that are intended to apply the partial transfer provisions of section 123 to exploration licences.

[85] Section 123 20

Omit "original lease" wherever occurring.
Insert instead "original authority".

Explanatory note

This item is one of a series of amendments that are intended to apply the partial transfer provisions of section 123 to exploration licences. 25

[86] Section 123

Omit "new lease" wherever occurring.
Insert instead "new authority".

Explanatory note

This item is one of a series of amendments that are intended to apply the partial transfer provisions of section 123 to exploration licences.

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Part 14 Cancellation of mineral claims

[87] Section 205 Compensation for cancellation

Omit "Minister" from section 205 (2).
Insert instead "mining registrar".

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Explanatory note

This item will allow the mining registrar, rather than the Minister, to determine the compensation payable for the cancellation of a mineral claim. The mining registrar is responsible for the granting and cancellation of mineral claims.

[88] Section 206

15

Omit the section. Insert instead:

206 Review of decisions concerning cancellation and compensation

- (1) Any person who is aggrieved by the decision of a mining registrar to cancel a mineral claim held by the person, or as to the amount of compensation payable as a consequence of the cancellation, may apply to a Warden's Court for a review of the decision.
- (2) An application must be filed in a Warden's Court within 14 days after written notice of the decision is served on the person.

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- (3) Subject to any order made by the Warden's Court, an application for a review does not operate to stay the decision to which the application relates.
- (4) The decision of the Warden's Court is to be given effect to as if it were the decision of the mining registrar. 5

Explanatory note

This item replaces the appeal provisions concerning the cancellation of mineral claims as a result of the amendment that enables mineral claims to be cancelled by a mining registrar. Instead of going to the District Court, an appeal will in future go to the Warden's Court. 10

[89] Section 296 Jurisdiction of Wardens' Courts

Insert "or of a mining registrar's decision referred to in section 206" after "Part 8" in section 296 (t).

Explanatory note

This item is consequential on the substitution of section 206 which gives jurisdiction to the Warden's Court to hear appeals from a mining registrar's decision to cancel a mineral claim. 15

Part 15 Procedural irregularities concerning mineral claims

[90] Sections 210A, 210B

Insert after section 210: 20

210A Waiver of minor procedural matters

- (1) A mining registrar may grant or renew a mineral claim even though the applicant has failed to comply with a requirement of this Act or the regulations:
 - (a) as to the manner in which the mineral claim has been marked out, or 25
 - (b) as to the time within which anything is required to be done, or

-
- (c) as to the details to be contained in any notice served, lodged or caused to be published by the applicant, or
- (d) as to the particulars to accompany any application, or 5
- (e) as to the furnishing of declarations and other information by the applicant.
- (2) This section does not authorise a mining registrar to grant or renew a mineral claim in the case of an applicant who has failed to comply with such a requirement unless the mining registrar is satisfied that the failure is unlikely: 10
- (a) to adversely affect any person's rights under this Act or the regulations, or
- (b) to result in any person being deprived of information necessary for the effective exercise of those rights. 15

210B Limitation of right to challenge technical defects in mineral claims

- (1) The grant, renewal or transfer of a mineral claim may not be challenged in any legal proceedings commenced later than 3 months after the date on which the mineral claim was granted, renewed or transferred. 20
- (2) This section has effect regardless of the provisions of any other Act, but does not apply so as to affect any appeal from proceedings commenced within the 3 months referred to in subsection (1). 25

Explanatory note

This item repeats in relation to mineral claims certain provisions (sections 135 and 137) that already apply to authorities with respect to the waiver of minor procedural matters and the challenging of technical defects. 30

Part 16 Royalty officers and deputy mining registrars

[91] Section 247A

Insert after section 247:

247A Powers of royalty officers

- (1) For the purposes of this Act, a royalty officer: 5
 - (a) may enter any premises occupied by the holder of an authority or mineral claim, and
 - (b) may inspect, and take extracts or copies from, any documents that are found on those premises and that appear to the royalty officer to relate to minerals recovered under the authority or mineral claim. 10
- (2) A royalty officer may direct the person in charge of any such premises to provide the royalty officer with all reasonable facilities and assistance. 15
- (3) A person to whom such a direction is given must not fail to comply with the direction.

Maximum penalty: 20 penalty units.

Explanatory note

This item confers powers of entry on the Department of Mineral Resources' royalty officers to enter the premises of the holder of an authority or mineral claim for the purpose of obtaining information relating to minerals recovered under the authority or mineral claim. 20

[92] Section 248 Certificates of authority

Insert "or royalty officer" after "inspector" wherever occurring. 25

Explanatory note

This item is consequential on proposed section 247A.

[93] Sections 255, 256, 257

Insert ", royalty officer" after "inspector" wherever occurring.

Explanatory note

This item is consequential on proposed section 247A. 30

[94] Section 360 Mining registrars, deputy mining registrars, royalty officers and other staff

Insert “, deputy mining registrars, royalty officers” after “Mining registrars”.

Explanatory note

This item will ensure that there is express provision for the employment of deputy mining registrars and royalty officers.

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[95] Section 363 Delegation of functions by Minister, Director-General or mining registrar

Insert after section 363 (2):

(2A) A mining registrar may delegate any function under this Act or the regulations (except this power of delegation or any function delegated to the mining registrar by the Minister or the Director-General) to a deputy mining registrar.

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Explanatory note

This item will allow a mining registrar to delegate his or her functions to a deputy mining registrar.

[96] Dictionary

Insert in alphabetical order:

deputy mining registrar means a deputy mining registrar referred to in section 360.

royalty officer means a royalty officer referred to in section 360.

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Explanatory note

This item inserts definitions of *deputy mining registrar* and *royalty officer* into the Dictionary to the Act.

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[97] Dictionary

Omit “appointed under” from paragraph (a) of the definition of *mining registrar*.

Insert instead “referred to in”.

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Explanatory note

This item is minor statute law revision.

Part 17 Powers of entry under certain permits

[98] Sections 250, 251

Omit the sections. Insert instead:

250 Surveys and ore sampling

- (1) The Minister may grant a permit to any mining surveyor, or any officer of the Department, to enter any land for any of the following purposes: 5
 - (a) the carrying out of any geological, geophysical, geochemical or other survey of the land,
 - (b) the removal of soil, rock, mineral or ore samples from the land. 10
- (2) The holder of a permit under this section, and any employee, agent or assistant of the holder, may, in accordance with the permit: 15
 - (a) enter the land to which the permit relates, and
 - (b) do on that land all such things as are reasonably necessary to achieve the purpose for which the permit was granted.

Explanatory note

This item consolidates the powers of entry currently contained in sections 250 and 251, without any significant change in their nature or extent. 20

Part 18 Consolidation of mining leases

[99] Section 84 Definitions

Omit the definition of *existing lease* from section 84 (1).
Insert instead: 25

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

Explanatory note

This item makes it clear that a mining lease whose effect has been continued under section 117 remains an existing lease for the purposes of consolidation. 30

[100] Section 98 Minister may grant consolidated mining lease

Insert after section 98 (2):

- (3) The granting of a consolidated mining lease over land the subject of a mining lease in force by virtue of section 117 (1) does not constitute a renewal of that lease. 5

Explanatory note

This item ensures that the provisions that must be complied with in relation to the renewal of mining leases do not apply to the consolidation of a mining lease whose effect has been continued under section 117.

[101] Section 114 Power of Minister in relation to applications 10

Insert after section 114 (6):

- (7) The Minister may defer dealing with an application for the renewal of a mining lease over any land if the mining lease is the subject of action being taken under Part 6 in connection with the granting of a consolidated mining lease over that land. 15

Explanatory note

This item enables the Minister to defer dealing with an application for renewal of a mining lease if the mining lease is in the process of being consolidated.

Part 19 Prevention of damage to certain dams 20

[102] Sections 80 (1), 89 (1), 91 (2)

Omit "for coal" wherever occurring.

Explanatory note

This item ensures that dams can be protected from mining activities in relation to mining leases generally, not just mining leases with respect to coal as is currently the case. 25

Mining Legislation Amendment Bill 1996

Schedule 1 Amendment of Mining Act 1992

[103] Section 369 Notification areas

Omit "excluding" from section 369 (1).
Insert instead "including".

Explanatory note

This item will allow land under a dam to form part of a notification area for the purposes of the Act. 5

[104] Section 369 (2)

Insert "underlies or" before "surrounds".

Explanatory note

This item ensures that a notification area (an area within which the Dams Safety Committee must be notified of proposed mining leases) may include the land underlying a dam as well as the land surrounding the dam. 10

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

Omit "for coal" wherever occurring from clauses 7 (1) and (3), 9 (2) and 25 (1) and (3). 15

Explanatory note

This item ensures that dams can be protected from mining activities in relation to mining leases generally, not just mining leases with respect to coal as is currently the case. 20

Part 20 Miscellaneous matters

[106] Section 4

Omit the section. Insert instead:

4 Definitions

Expressions used in this Act that are defined in the Dictionary at the end of this Act have the meanings set out in the Dictionary. 25

Explanatory note

This item is intended to omit the Table of definitions in section 4. Such Tables are not part of current drafting practice. 30

[107] Section 29 Rights under exploration licence

Insert “, or such further period as the Minister may approve in a particular case,” after “2 years” in section 29 (3).

Explanatory note

This item will allow an exploration licence to have effect beyond the period of 2 years after its expiry if the Minister so approves and if an application made by its holder for an assessment lease, mining lease or mineral claim is still pending.

5

[108] Section 57 Land in reserve

Omit section 57 (a).

Explanatory note

This item will allow mining leases to be granted over land within an opal prospecting area.

10

[109] Section 78 Inclusion of petroleum in mining lease

Omit “*Petroleum Act 1955*” from section 78 (4) (b) and (6) (e) wherever occurring.

Insert instead “*Petroleum (Onshore) Act 1991*”.

15

Explanatory note

This item merely updates an obsolete reference.

[110] Section 133 Nomination by applicant or tenderer

Insert after section 133 (2):

20

- (3) In the case of an application or tender for an authority over land in respect of which some other authority held by the applicant or tenderer is in force by operation of section 29 (2), 47 (2), 73 (2) or 195 (2), the person nominated as the person to whom the firstmentioned authority is to be granted is, for the purposes of this Act, taken to be the holder of that other authority also.

25

Explanatory note

This item allows the nominee of an applicant or tenderer for an authority over any land to be considered to be the holder of any existing authority that is in force over the same land, by virtue of the application or tender, as well as the applicant or tenderer for the authority to which the application or tender relates.

30

[111] Section 159 Records

Omit section 159 (1). Insert instead:

- (1) The Director-General is to cause a record to be kept of:
 - (a) every application for an authority that is duly made under this Act, and 5
 - (b) every authority that is granted, renewed, transferred or cancelled under this Act.

Explanatory note

This item removes references to applications being received by the Director-General and authorities being granted, renewed, transferred or cancelled by the Director-General. 10

[112] Section 161 Registration of certain interests

Insert after section 161 (9):

- (10) Section 130 applies to an application under this section in the same way as it applies to an application referred to in section 130 (1). 15

Explanatory note

This item makes it clear that applications for registration of certain interests can be withdrawn, and that their withdrawal is irrevocable.

[113] Section 168 Suspension of conditions 20

Omit section 168 (4). Insert instead:

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

Explanatory note 25

This item repeals a provision that limits the period for which the conditions of a mining lease may be suspended under section 168 and makes it clear that applications for the suspension of the conditions of a mining lease can be withdrawn, and that their withdrawal is irrevocable.

[114] Section 182 Opal prospecting blocks, reserves and mineral allocation areas

Omit "367, or" from section 182 (b). Insert instead "367."

Explanatory note

This item is consequential on the proposed repeal of section 182 (c).

5

[115] Section 182 (c)

Omit the paragraph.

Explanatory note

This item repeals section 182 (1) (c). The effect of the paragraph is to be continued, with modifications, as proposed section 182 (2).

10

[116] Section 182 (2)

Insert at the end of section 182:

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

15

Explanatory note

This item re-enacts the provisions of section 182 (c), but allows the Minister to approve exceptions to the restriction contained in those provisions.

20

[117] Section 215 Suspension of conditions

Insert after section 215 (4):

- (5) Section 208 applies to an application under this section in the same way as it applies to an application referred to in section 208 (1).

25

Explanatory note

This item makes it clear that applications for the suspension of the conditions of a mineral claim can be withdrawn, and that their withdrawal is irrevocable.

[118] Section 227 Restrictions on grant of licence

Omit "10 days" from section 227 (b). Insert instead "14 days".

Explanatory note

This item will require a period of 14 days, rather than 10 days, to elapse between the expiry of an opal prospecting licence and the granting of a new opal prospecting licence over the same land. 5

[119] Section 228

Omit the section. Insert instead:

228 Power of mining registrar in relation to applications

- (1) After considering an application for an opal prospecting licence, the mining registrar: 10
 - (a) may grant an opal prospecting licence to the applicant, or
 - (b) may refuse the application.
- (2) Without limiting the generality of subsection (1), an application may be refused if the applicant has been convicted of an offence against this Act or the regulations or any other offence relating to mining or minerals. 15
- (3) If the mining registrar refuses to grant an opal prospecting licence, the mining registrar is to cause notice of the decision, and of the reasons for the decision, to be served on the applicant. 20

Explanatory note

This item repeals and re-enacts section 228 so as to give the mining registrar the same power to refuse an application for an opal prospecting licence as is available in relation to applications for mineral claims. 25

[120] Section 235A

Insert after section 235:

235A Records

- (1) A mining registrar is to cause to be kept a record of: 30
 - (a) every application for an opal prospecting licence that is received by the registrar, and

-
- (b) every opal prospecting licence granted or cancelled by the mining registrar.
- (2) Such a record must be kept in the form, and must contain the particulars, required by the Director-General.
- (3) The record must be kept available at the mining registrar's office for inspection, free of charge, by members of the public. 5

Explanatory note

This item imposes on a mining registrar the same duty in relation to the keeping of records for opal prospecting licences as is imposed on a mining registrar in relation to the keeping of records for mineral claims. 10

[121] Sections 237, 238, 239

Insert "or mining registrar" after "Minister" wherever occurring.

Explanatory note

This item reflects the fact that mineral claims (to which sections 237, 238 and 239 apply) are granted by a mining registrar, not by the Minister. This item constitutes minor statute law revision. 15

[122] Section 266 Compensation arising under mineral claim

Omit "registered" from section 266 (1) (a). Insert instead "granted".

Explanatory note

This item reflects the fact that mineral claims are granted, not registered. This item constitutes minor statute law revision. 20

[123] Section 286 Royalty payable on petroleum recovered under mining lease for coal

Omit "*Petroleum Act 1955*" from section 286 (2). 25
Insert instead "*Petroleum (Onshore) Act 1991*".

Explanatory note

This item merely updates an obsolete reference.

[124] Section 335 Mining registrar may request inquiry by warden

Insert “whether Division 2 of Part 9 has been complied with by an applicant for a mineral claim or” after “question of” in section 335 (1).

Explanatory note

This item will allow a mining registrar to request a warden to consider the question of whether the procedures to be complied with under Division 2 of Part 9 in connection with the making of applications for mineral claims (such as the marking out of land and the giving of notice) have been complied with. Such requests can already be made in connection with the question of whether the procedures to be complied with under Division 3 of Part 9 in connection with the granting of mineral claims have been complied with.

5

10

[125] Section 363 Delegation of functions by Minister, Director-General or mining registrar

Omit “the holder of any office” from section 363 (1) and (2) wherever occurring.

Insert instead “any person”.

Explanatory note

This item removes the existing restriction that requires delegations to be made only to the holders of offices. Future delegations will be able to be made to any person, whether or not the holder of an office.

15

20

[126] Section 363 (3)

Insert “a function under the regulations and” after “a reference to”.

[127] Section 387 Government agencies

Insert at the end of the section:

- (2) For the purposes of this section, a State owned corporation (and any of its subsidiaries) within the meaning of the *State Owned Corporations Act 1989* is taken to be a corporation established by an Act.

25

Explanatory note

This item deems State owned corporations and their subsidiaries to be corporations established by an Act, so allowing them to be declared Government agencies for the purposes of the Act. Government agencies are entitled to be given notice of proposed assessment leases and mining leases.

30

[128] Section 387A

Insert after section 387:

387A Application of Act in relation to former minerals

- (1) This section applies to a substance that, having been prescribed by the regulations as a mineral for the purposes of the definition of *mineral* in the Dictionary at the end of this Act, ceases to be so prescribed. 5
- (2) This Act continues to apply to a substance to which this section applies as if it were a mineral, but for the purpose only of enabling the holder of a mining lease or mineral claim in respect of the substance to exercise the rights conferred by this Act on the holder of such a mining lease or mineral claim. 10
- (3) This section does not operate so as to allow the renewal or consolidation of a mining lease or mineral claim that relates only to a substance to which this section applies. 15

Explanatory note

This item will ensure that existing mining leases and mineral claims will continue to have effect, together with the provisions of the Act that are necessary to give them that effect, if substances that have previously been minerals cease to be so. Aside from coal and oil shale, a substance is a mineral only if the regulations so provide. 20

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

Omit "authority" from clause 1 (2) (c). 25
Insert instead "person or body".

Explanatory note

This item avoids the use of the word "authority" to mean something other than a mining title.

[130] Schedule 1, clause 2 (1) 30

Omit "public authority". Insert instead "person or body".

Explanatory note

This item avoids the use of the word "authority" to mean something other than a mining title.

Mining Legislation Amendment Bill 1996

Schedule 1 Amendment of Mining Act 1992

[131] Schedule 1, clause 9 (1)

Omit "An authority". Insert instead "A person or body".

Explanatory note

This item avoids the use of the word "authority" to mean something other than a mining title.

5

[132] Schedule 1, clause 22 (2)

Omit "notice in that regard".
Insert instead "relevant notice under clause 21".

Explanatory note

The item constitutes minor statute law revision.

10

[133] Schedule 1, clause 26 (2)

Omit "notice in that regard".
Insert instead "relevant notice under this Division".

Explanatory note

The item constitutes minor statute law revision.

15

[134] Schedule 1, clause 28

Omit "public authority". Insert instead "person or body".

Explanatory note

This item avoids the use of the word "authority" to mean something other than a mining title.

20

[135] Schedule 2 Agricultural land

Insert "the invitation for tenders for the mining lease concerned was first published or" after "the date on which" in clause 2 (1) (c).

Explanatory note

This item extends clause 2 of Schedule 2 to cover invitations for tenders of leases as well as applications for leases. The item constitutes minor statute law revision.

25

[136] Schedule 2, clause 3

Insert “tenderer or” after “if the”.

Explanatory note

This item is consequential on the amendment to clause 2 of Schedule 2.

[137] Schedule 2, clause 3

5

Insert “the invitation for tenders was first published or” after “when”.

Explanatory note

This item is consequential on the amendment to clause 2 of Schedule 2.

[138] Schedule 2, clause 3

10

Insert “the invitation for tenders for that licence was first published or” after “the date on which”.

Explanatory note

This item is consequential on the amendment to clause 2 of Schedule 2.

[139] Dictionary

15

Omit “*Petroleum Act 1955*” from the definition of *petroleum*.
Insert instead “*Petroleum (Onshore) Act 1991*”.

Explanatory note

This item merely updates an obsolete reference.

Part 21 Savings and transitional provisions

20

[140] Schedule 6 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

Mining Legislation Amendment Act 1996

Explanatory note

This item enables savings and transitional regulations to be made in relation to matters arising under the proposed Act.

25

[141] Schedule 6, Part 2

Insert after clause 46:

47 Instruments under former Acts

Any instrument that had been approved by the Minister under section 107 of the *Mining Act 1973* or section 104 of the *Coal Mining Act 1973* before the commencement of this Act is taken to have been registered under section 161 of this Act. 5

Explanatory note

This item inserts a saving provision with respect to certain instruments under the *Mining Act 1973* and the *Coal Mining Act 1973*. The provision relates back to the date of commencement of the *Mining Act 1992*. 10

[142] Schedule 6, Part 3

Insert after Part 2:

Part 3 Provisions consequent on the enactment of the Mining Legislation Amendment Act 1996 15

48 Definition

In this Part, *amending Act* means the *Mining Legislation Amendment Act 1996*.

49 Amendment of exploration licence, assessment lease and mineral claim conditions 20

Sections 29A, 47A and 195A apply to and in respect of an exploration licence, assessment lease or mineral claim granted before the commencement of those sections in the same way as they apply to and in respect of an exploration licence, assessment lease or mineral claim granted after that commencement. 25

50 Protection of dwelling-houses, gardens and improvements

Sections 31, 49, 62 and 188, as amended by the amending Act, apply to and in respect of an authority or mineral claim granted before the commencement of 30

those amendments in the same way as they apply to and in respect of an authority or mineral claim granted after that commencement.

51 Surface prospecting in respect of subsurface mining leases

5

Section 81, as amended by the amending Act, applies to and in respect of all prospecting operations carried out in relation to a mining lease after the commencement of that amendment, whether or not prospecting operations have been carried out in relation to that mining lease before that commencement.

10

52 Partial transfers of exploration licences

Section 123, as amended by the amending Act, applies to and in respect of an exploration licence granted before the commencement of that amendment in the same way as it applies to and in respect of an exploration licence granted after that commencement.

15

53 Waiver of minor procedural matters concerning applications for mineral claims

Section 210A applies to and in respect of an application for a mineral claim made before the commencement of that section in the same way as it applies to and in respect of an application for a mineral claim made after that commencement.

20

54 Limitation of right to challenge technical defects in mineral claims

25

Section 210B applies to and in respect of a mineral claim granted before the commencement of that section in the same way as it applies to and in respect of a mineral claim granted after that commencement.

30

55 Restrictions on grant of opal prospecting licence

Section 227, as amended by the amending Act, applies to and in respect of an application for an opal prospecting licence made before the commencement of that amendment in the same way as it applies to and in respect of an application for an opal prospecting licence made after that commencement. 5

56 Permits for surveys and ore sampling

A permit that was in force under section 250 or 251, immediately before the repeal of that section by the amending Act, is taken to have been granted under section 250, as inserted by the amending Act. 10

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

Sections 266 and 267, as amended by the amending Act, apply to and in respect of a mineral claim or opal prospecting licence granted before the commencement of those amendments in the same way as they apply to and in respect of a mineral claim or opal prospecting licence granted after that commencement, but do not affect any compensation determined before that commencement in respect of any such mineral claim or opal prospecting licence. 15
20

58 References for determination of agricultural land

Clauses 2 and 3 of Schedule 2, as amended by the amending Act, apply to and in respect of a reference arising before the commencement of those amendments in the same way as they apply to and in respect of a reference arising after that commencement. 25

59 Royalty on coal in coal reject 30

Division 3A of Part 14 applies to coal reject that the holder of a mining lease uses or disposes of on or after the commencement of that Division (even if the coal reject was recovered before that commencement).

60 Waiver of additional royalty for coal

Section 287A applies in respect of coal disposed of on or after the commencement of that section (even if the coal was recovered before that commencement).

61 Lodgment fees

5

A fee that, immediately before the commencement of section 382A, was prescribed by the regulations for the purposes of this Act or the regulations is taken to be an appropriate lodgment fee determined in accordance with that section.

10

Explanatory note

This item inserts savings and transitional provisions consequent on the enactment of the proposed Act.

Schedule 2 Amendment of other Acts and instruments

(Section 4)

2.1 Aboriginal Land Rights Act 1983 No 42

Section 45 Mineral rights and mining on Aboriginal land 5

Omit section 45 (13) (b). Insert instead:

- (b) the granting of an authority or mineral claim in accordance with an exclusive right conferred by the *Mining Act 1992*,

Explanatory note 10

This item reflects the fact that mineral claims are granted, not registered. This item constitutes minor statute law revision.

2.2 Coal Mines Regulation Act 1982 No 67

[1] Section 146 Definitions

Omit the definition of *mine*. Insert instead: 15

mine includes an abandoned mine.

Explanatory note

This item extends the definition of *mine* to include an abandoned mine and to exclude the existing exception of mines the subject of a mining lease under the *Mining Act 1992*. 20

[2] Section 148 Issue of tourist and educational permits

Insert after section 148 (1):

- (1A) An application for a permit is to be accompanied by the prescribed fee.

Explanatory note 25

This item will require applications for tourist and educational permits to be accompanied by an application fee.

2.3 Crimes Act 1900 No 40

[1] Section 1 Short title and contents

Omit “(7) *From mines—ss. 144–147*” from paragraph (d) of the matter appearing in relation to Chapter 1 of Part 4.

Explanatory note

This item is consequential on the repeal of sections 144–147.

5

[2] Sections 144–147

Omit the sections and the heading appearing before the sections.

Explanatory note

This item repeals sections 144–147 in connection with their transfer (section 147 excepted) to the *Mining Act 1992*.

10

[3] Section 428B Offences of specific intent to which Part applies

Omit the matter relating to sections 145 and 147 from paragraph (a) of the Table to section 428B.

Explanatory note

This item is consequential on the repeal of sections 144–147.

15

[4] Section 428B, Table

Omit the matter relating to sections 144 and 146 from paragraph (b) of the Table to section 428B.

Explanatory note

This item is consequential on the repeal of sections 144–147.

20

2.4 Criminal Procedure Act 1986 No 209

[1] Section 33P Application of Part and continued application of certain provisions

Omit “144,” from item 3 (c) in Part 2 of Table 1 to section 33P.

25

Explanatory note

This item is consequential on the amendments made to the *Crimes Act 1900* by Schedule 2.3.

Mining Legislation Amendment Bill 1996

Schedule 2 Amendment of other Acts and instruments

[2] Section 33P, Table 1

Omit “, 144” from item 4 in Part 2 of the Table.

Explanatory note

This item is consequential on the amendments made to the *Crimes Act 1900* by Schedule 2.3.

5

[3] Section 33P, Table 1

Omit “145, 146,” from item 9 in Part 2 of the Table.

Explanatory note

This item is consequential on the amendments made to the *Crimes Act 1900* by Schedule 2.3.

10

[4] Section 33P, Table 2

Omit “144,” from item 3 (c) in Part 2 of the Table.

Explanatory note

This item is consequential on the amendments made to the *Crimes Act 1900* by Schedule 2.3.

15

2.5 Crown Lands Act 1989 No 6

Section 155 Offences on public land

Insert after section 155 (3):

- (4) It is a sufficient defence to a prosecution for an offence arising under subsection (1) (e) or (h) if the defendant establishes that the activity with which he or she is charged was carried out in the course of fossicking, as referred to in section 12 (1) of the *Mining Act 1992*.

20

Explanatory note

This item ensures that fossicking remains a lawful activity within public land under the *Crown Lands Act 1989*. The item is consequential on amendments being made by Schedule 1 [6] to section 12 of the *Mining Act 1992*.

25

2.6 Mines Inspection Act 1901 No 75

[1] Section 48A Definitions

Omit the definition of *mine*. Insert instead:

mine includes an abandoned mine.

Explanatory note

This item extends the definition of *mine* to include an abandoned mine and to exclude the existing exception of mines the subject of a mining lease under the *Mining Act 1992*.

5

[2] Section 48C Issue of permits

Insert after section 48C (1):

(1A) An application for a permit is to be accompanied by a fee equivalent to the fee required to accompany an application for a permit under section 148 (Issue of tourist and educational permits) of the *Coal Mines Regulation Act 1982*.

10

15

Explanatory note

This item will require applications for permits to be accompanied by an application fee.

2.7 Mining (General) Regulation 1992

[1] Clause 10

Omit clause 10 (1).

Explanatory note

This item omits a provision that relates to fossicking. The substance of the provision is proposed to become part of section 12 of the *Mining Act 1992*.

20

[2] Clauses 11 (1), 13 (1), 14 (1), 18 (1), 19 (1), 32 (2) and 48 (1)

Omit the subclauses.

Explanatory note

This item omits provisions that prescribe fees. The item is consequential on proposed amendments to the *Mining Act 1992* that will result in fees being determined by the Minister rather than by the regulations under that Act.

25

30

Mining Legislation Amendment Bill 1996

Schedule 2 Amendment of other Acts and instruments

- [3] Clauses 12, 15, 20, 21, 23, 25, 35, 37 and 39**
- Omit the clauses.
- Explanatory note**
- This item omits provisions that prescribe fees. The item is consequential on proposed amendments to the *Mining Act 1992* that will result in fees being determined by the Minister rather than by the regulations under that Act. 5
- [4] Clauses 16, 16A (4), 24 (2), 28, 29, 41 (4), 43, 44, 49, 51, 52 and 63**
- Omit "the fee specified in Schedule 5" wherever occurring.
Insert instead "the appropriate lodgment fee".
- Explanatory note** 10
- This item is consequential on amendments to the *Mining Act 1992* that will result in fees being determined by the Minister rather than by the regulations.
- [5] Clause 59 Fees for services**
- Omit "for which a fee is not prescribed by this Regulation".
Insert instead ", not being a service in respect of which an appropriate lodgment fee is payable under section 382A of the Act". 15
- Explanatory note**
- This item is consequential on amendments to the *Mining Act 1992* that will result in fees being determined by the Minister rather than by the regulations.
- [6] Schedule 1 Minerals** 20
- Omit "mineral water".
- Explanatory note**
- This item removes mineral water from the list of substances that are prescribed as minerals for the purposes of the *Mining Act 1992*.
- [7] Schedule 2 Groups of minerals** 25
- Omit "mineral water" from Group 2 (Elemental minerals (non-metallics)).
- Explanatory note**
- This item is consequential on the removal of mineral water from the list of substances that are prescribed as minerals for the purposes of the *Mining Act 1992*. 30

[8] Schedule 5

Omit the Schedule.

Explanatory note

This item is consequential on amendments to the *Mining Act 1992* that will result in fees being determined by the Minister rather than by the regulations.

5

[9] Schedule 6 Royalty

Omit the matter relating to mineral water.

Explanatory note

This item is consequential on the removal of mineral water from the list of substances that are prescribed as minerals for the purposes of the *Mining Act 1992*.

10

2.8 National Parks and Wildlife Act 1974 No 80

Section 47J Provisions relating to mining

Omit "registered" from section 47J (6).

Insert instead "granted".

15

Explanatory note

This item reflects the fact that mineral claims are granted, not registered. This item constitutes minor statute law revision.

2.9 State Coal Mines Act 1912 No 70

[1] Section 2 Crown lands may be set apart

20

Omit "registered" from section 2 (2).

Insert instead "granted".

Explanatory note

This item reflects the fact that mineral claims are granted, not registered. This item constitutes minor statute law revision.

25

Mining Legislation Amendment Bill 1996

Schedule 2 Amendment of other Acts and instruments

[2] Section 7 Appeal against valuation

Omit "registered" from section 7 (3).
Insert instead "granted".

Explanatory note

This item reflects the fact that mineral claims are granted, not registered. This 5
item constitutes minor statute law revision.



New South Wales

Mining Legislation Amendment Act 1996 No 137

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New South Wales

Mining Legislation Amendment Act 1996 No 137

Act No 137, 1996

An Act to amend the *Mining Act 1992* and certain other Acts and instruments with respect to various matters; and for other purposes.
[Assented to 16 December 1996]

The Legislature of New South Wales enacts:**1 Name of Act**

This Act is the *Mining Legislation Amendment Act 1996*.

2 Commencement

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

3 Amendment of Mining Act 1992 No 29

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

4 Amendment of other Acts and instruments

- (1) Each Act and instrument referred to in Schedule 2 is amended as set out in that Schedule.
- (2) The amendments made by Schedule 2 to the *Mining (General) Regulation 1992* do not affect the future amendment or repeal of that Regulation.

5 Explanatory notes

The matter appearing under the heading "Explanatory note" in Schedule 1 or 2 does not form part of this Act.

Schedule 1 Amendment of Mining Act 1992

(Section 3)

Part 1 Offences concerning the theft of minerals

[1] Part 2 Prospecting and mining generally

Insert before section 5:

Division 1 General

Explanatory note

This item is consequential on the insertion of proposed Division 2 into Part 2.

[2] Part 2, Division 2

Insert after section 12:

Division 2 Offences concerning theft of minerals

12A Definitions

In this Division:

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

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

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

12B Stealing minerals

A person who:

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

is guilty of an offence.

Maximum penalty:

- (a) 1,000 penalty units or imprisonment for 5 years, or both, in the case of an offence dealt with on indictment, or
- (b) 200 penalty units or imprisonment for 2 years, or both, in the case of an offence dealt with summarily.

12C Fraudulent removal and concealment of minerals by employees

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

Maximum penalty:

- (a) 1,000 penalty units or imprisonment for 5 years, or both, in the case of an offence dealt with on indictment, or
- (b) 200 penalty units or imprisonment for 2 years, or both, in the case of an offence dealt with summarily.

12D Fraudulent removal and concealment of minerals by partners

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

Maximum penalty:

- (a) 1,000 penalty units or imprisonment for 5 years, or both, in the case of an offence dealt with on indictment, or
- (b) 200 penalty units or imprisonment for 2 years, or both, in the case of an offence dealt with summarily.

12E Proceedings for offences under Division 2

- (1) Proceedings for an offence under this Division are to be dealt with summarily before a Warden's Court or before a Local Court constituted by a Magistrate sitting alone unless:
 - (a) the prosecuting authority or the person charged with the offence (in the case of an offence in which the value of the minerals to which the alleged offence relates is \$5,000 or more), or
 - (b) the prosecuting authority (in the case of an offence in which the value of the minerals to which the alleged offence relates is less than \$5,000),elects in accordance with Part 9A of the *Criminal Procedure Act 1986* to have the offence dealt with on indictment.
- (2) Section 56 of the *Justices Act 1902*, and the provisions of any other Act limiting the time within which proceedings for summary offences may be instituted, do not apply to an indictable offence that is dealt with summarily in accordance with this section.
- (3) The conviction of a person of an offence dealt with summarily in accordance with this section has the same effect as a conviction on indictment for the offence.
- (4) For the purposes of dealing with an offence in accordance with this section, a Warden's Court has the functions of, and is taken to be, a Local Court.
- (5) In this section, *prosecuting authority* means the Director of Public Prosecutions or other person responsible for the conduct of a prosecution.

Explanatory note

This item inserts a new Division 2 into Part 2, re-enacting sections 144, 145 and 147 of the *Crimes Act 1900* which (together with section 146) are to be repealed from that Act. Those offences (proposed sections 12B, 12C and 12D) deal with the theft, concealment and removal of minerals (commonly known as "ratting"). Section 146 is not re-enacted, as its subject-matter is adequately dealt with in Part 14 of the *Mining Act 1992*. The item also includes a definition section (proposed section 12A) and a provision allowing for offences under the Division to be dealt with either summarily or, by election, on indictment (proposed section 12E).

[3] Section 375 Proceedings for offences generally

Insert “(other than an offence under Division 2 of Part 2)” after “Act” in section 375 (1).

Explanatory note

This item is consequential on proposed section 12E.

Part 2 Unlawful entry to the sites of mineral claims

[4] Sections 175A–175D

Insert after section 175:

175A Unlawful entry to site of mineral claim

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

Maximum penalty:

- (a) except as provided by paragraph (b), 10 penalty units or imprisonment for 6 months, or both, or
- (b) if, when found on the land, the person is in possession of tools or equipment of a kind generally used for the purposes of prospecting or mining, 20 penalty units or imprisonment for 2 years, or both.
- (2) It is a sufficient defence to a prosecution under this section if the defendant establishes that he or she had a reasonable excuse for being in or on the land concerned.

175B Court may make exclusion order against convicted persons

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

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

- (5) An exclusion order takes effect:
 - (a) if the person to whom it relates is present in court when it is made, at the time it is made, or
 - (b) in any other case, when it is served on the person to whom it relates.
- (6) A copy of an exclusion order must be sent to the Commissioner of Police as soon as practicable after the order is made.

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

- (1) For the purposes of section 122 of the *Justices Act 1902*, an exclusion order made by a Warden's Court or a Local Court is taken to be an order whereby the defendant is punished.
- (2) For the purposes of the *Criminal Appeal Act 1912*, an exclusion order made by a court other than a Warden's Court or a Local Court is taken to be a sentence within the meaning of that Act.
- (3) If an appeal (or an application for leave to appeal) is made against the conviction from which an exclusion order arises, the operation of the exclusion order is suspended until the appeal or application is finally determined.
- (4) Unless the appeal court orders otherwise, the exclusion order is annulled if the conviction is quashed.
- (5) The appeal court may, by order, annul or vary the exclusion order even if the conviction is not quashed.
- (6) In this section, ***appeal court*** means the court to which an appeal (or an application for leave to appeal) is made as referred to in subsection (3).

175D Offence of contravening exclusion order

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

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

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

Explanatory note

This item inserts provisions relating to unlawful entry to the sites of mineral claims. Proposed section 175A creates an offence of being in or on land the subject of a mineral claim held by some other person. The maximum penalty for the offence is greater if, when found on the land, the accused is in possession of tools or equipment of a kind generally used for the purposes of prospecting or mining. The offence applies only in relation to mineral claims situated within a mineral claims district. Proposed section 175B provides for the making of exclusion orders against persons who have committed offences under proposed sections 12B, 12C or 12D or under proposed section 175A while in possession of prospecting or mining equipment. Proposed section 175C provides for appeals against, and the suspension and annulment of, exclusion orders. Proposed section 175D makes it an offence for a person to contravene an exclusion order.

[5] Dictionary

Insert in alphabetical order:

exclusion order means an exclusion order referred to in section 175B.

Explanatory note

This item inserts a definition of *exclusion order* into the Dictionary at the end of the Act.

Part 3 Fossicking

[6] Section 12 Fossicking

Insert “and, in particular, does not make fossicking a lawful authority or lawful excuse for the purposes of any such Act or law” after “restricting fossicking” in section 12 (2) (a).

Explanatory note

This item makes it clear that the fact that fossicking is a lawful activity does not constitute a lawful authority or lawful excuse for the purposes of any Act or law that prohibits, restricts or regulates (except with lawful authority or lawful excuse) the kinds of activities commonly associated with fossicking.

[7] Section 12 (4) and (5)

Insert after section 12 (3):

- (4) A person must not carry out fossicking on any land the subject of an authority, mineral claim or opal prospecting licence except with the consent of the holder of the authority, claim or licence.

Maximum penalty: 20 penalty units or imprisonment for 6 months, or both.

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

Explanatory note

This item includes in the Act a restriction on fossicking that currently exists in the regulations under the Act, but provides that the restriction does not apply to land the subject of an exploration licence if the land is in a fossicking district.

[8] Section 369A

Insert after section 369:

369A Fossicking districts

The Minister may, by order published in the Gazette, constitute any land as a fossicking district and may, by the same or a subsequent order so published, name the district and fix its boundaries.

Explanatory note

This item enables the Minister to declare fossicking districts for the purposes of proposed section 12 (5).

[9] Dictionary

Insert, in alphabetical order:

fossicking district means a fossicking district constituted under section 369A.

Explanatory note

This item includes a definition of *fossicking district* in the Dictionary to the Act.

Part 4 Other activities in the nature of prospecting and mining

[10] Section 11A

Insert after section 11:

11A Certain activities taken not to be prospecting or mining

- (1) The regulations may declare that a specified activity is taken not to be prospecting or mining for the purposes of this Act.
- (2) A regulation referred to in subsection (1):
 - (a) may require a person who proposes to carry out any such activity to give notice of intention to do so to the Director-General, and
 - (b) may require a person who carries out any such activity to pay royalty to the Minister in respect of any publicly owned minerals recovered as a consequence of the carrying out of that activity.
- (3) Part 14 applies to royalty payable under subsection (2) (b) in the same way as it applies to royalty payable on a mineral recovered under a mining lease.

Explanatory note

This item enables the regulations to declare that certain activities (such as major excavations that occur in the context of road construction) are not to be considered to constitute prospecting or mining for the purposes of the Act. Such a regulation may require notice of any such activity to be given and may require royalty to be paid on any minerals recovered as a consequence of the carrying out of such an activity.

[11] Dictionary

Insert “, but does not include any activity declared not to be mining by a regulation under section 11A” after “has been so extracted” in paragraph (b) of the definition of *mine*.

Explanatory note

This item amends the definition of *mine* in the Dictionary to the Act as a consequence of the proposed section 11A.

[12] Dictionary

Insert “, but does not include any activity declared not to be prospecting by a regulation under section 11A” after “of the land” in the definition of *prospect*.

Explanatory note

This item amends the definition of *prospect* in the Dictionary to the Act as a consequence of the proposed section 11A.

Part 5 Royalty on coal

[13] Part 14, Division 3A, sections 286A–286D

Insert after section 286:

Division 3A Coal reject

286A Definition of coal reject

In this Division:

coal reject means the by-product of the mining or processing of coal that contains a mixture of coal and other substances (such as shale) and has either an energy value (the maximum energy capable of being produced by it on combustion) of less than 16 gigajoules per tonne (dry weight) or contains more than 35 per cent ash (by dry weight).

286B Royalty on coal in coal reject

- (1) Royalty is not payable on the coal in coal reject recovered under a mining lease until the coal reject is used or disposed of.
- (2) The holder of a mining lease is liable to pay royalty under this Division to the Minister on the coal in coal reject recovered under the lease if the holder uses the coal reject in producing energy or disposes of it for use in producing energy.
- (3) If royalty is payable under this Division on the coal in coal reject, Division 1 does not apply to that coal.

286C Rate of royalty

- (1) Royalty on the coal in coal reject recovered under a mining lease is payable under this Division at the rate determined from time to time by the Minister, with the concurrence of the Treasurer, in respect of the lease or the class of leases concerned.
- (2) The rate of royalty on the coal in coal reject may be a zero rate or may be any other rate up to, but not exceeding, half the base rate of royalty prescribed from time to time in respect of coal under section 283 (1) (a).
- (3) In determining the rate of royalty the Minister is to have regard to:
 - (a) the energy value of the coal reject, and
 - (b) the costs associated with extracting, transporting or processing the coal reject for the purposes of use or disposal, and
 - (c) such other matters as the Minister considers appropriate.
- (4) Royalty under this Division is payable on the coal in coal reject at the rate applicable:
 - (a) at the time the coal reject is used by the holder of the relevant mining lease in producing energy, or

- (b) at the time the coal reject is disposed of by that holder for use in producing energy.
- (5) Royalty required to be calculated on the basis of the weight of coal is to be calculated by reference to dry weight.

286D Evidentiary matters

- (1) The energy value and ash content of the by-product of the mining or processing of coal recovered under a particular mining lease is to be determined, in the manner directed by the Minister, on the basis of the average energy value and average ash content of that by-product.
- (2) The Minister may by determination in writing determine any of the following:
 - (a) that the by-product, or any identifiable quantity of the by-product, of the mining or processing of coal recovered under a particular mining lease is coal reject,
 - (b) the amount of coal in the coal reject recovered under a particular mining lease or the amount of coal in any identifiable quantity of that coal reject,
 - (c) that the coal reject, or any identifiable quantity of the coal reject, recovered under a particular mining lease and used or disposed of by the holder of the lease has been used by the holder in producing energy or disposed of by the holder for use in producing energy.
- (3) The Minister's determination is evidence of the matter determined.
- (4) A determination under subsection (2) (a) or (b) is not open to dispute or challenge on the basis that the determination is not correct or accurate for any particular sample or quantity of the material concerned.

Explanatory note

This item allows royalty to be charged on coal reject that is used for the purpose of producing energy, but limits the maximum rate of royalty that may be imposed to half the rate of royalty that is payable for coal.

[14] Section 287A

Insert after section 287:

287A Waiver of payment of additional royalty for coal

- (1) The Minister may, by order in writing made with the concurrence of the Treasurer, waive all or part of the payment by the holder of a mining lease of royalty at the additional rate prescribed in respect of coal under section 283 (1) (b).
- (2) The order may be made only if the Minister is satisfied that it is necessary for the financial viability of the mine, or mines, to which the mining lease relates, having regard to such matters as the Minister considers appropriate.
- (3) The power of the Minister to make an order under this section cannot be delegated, despite section 363.

Explanatory note

Royalty is payable on minerals at a base rate and, if the regulations so provide, at an additional rate. This item allows the Minister to waive payment of such part of the royalty as is payable at the additional rate in order to protect the financial viability of the mine or mines concerned.

Part 6 Fees

- [15] Sections 13 (2) (d), 15 (1) (c), 33 (2) (d), 51 (2) (d), 53 (1) (c), 113 (4), 120 (2) (a), 122 (2) (b), 124 (1), 144 (2), 161 (3), 178 (2) (c), 197 (2) (a), 200 (2) (a) and 202 (2) (a)**

Omit "fee prescribed by the regulations" wherever occurring.
Insert instead "appropriate lodgment fee".

Explanatory note

This item is part of a series of amendments that will allow fees to be determined by the Minister instead of, as at present, by the regulations.

[16] Section 63 Power of Minister in relation to applications

Insert after section 63 (3):

- (3A) A mining lease may not be granted until the appropriate mining lease fee (as determined under section 382A) has been paid for the grant of the lease.

Explanatory note

This item will require a mining lease fee (to be determined by the Minister) to be paid on the granting of a mining lease. This fee will be additional to the lodgment fee that is payable when an application or tender for the mining lease is made.

[17] Section 226 Applications

Omit section 226 (2). Insert instead:

- (2) An application:
- (a) must be accompanied by the appropriate lodgment fee, and
 - (b) must be lodged with the mining registrar for the mining division in which the opal prospecting block is situated.

Explanatory note

This item will require a lodgment fee to accompany an application for an opal prospecting licence. This will replace the licence fee that is currently imposed when an opal prospecting licence is granted.

[18] Section 382A

Insert after section 382:

382A Minister to determine certain fees

The Minister may from time to time, with the concurrence of the Treasurer, determine:

- (a) the lodgment fees payable for the purposes of this Act and the regulations, and
- (b) the mining lease fees payable for the purposes of section 63 (3A).

Explanatory note

This item will allow the Minister to determine various fees payable in connection with the Act. Those fees are currently prescribed by the regulations.

[19] Dictionary

Insert in alphabetical order:

appropriate lodgment fee means the fee determined for the time being in accordance with section 382A with respect to the matter to which the fee relates.

Explanatory note

This item inserts a definition of *appropriate lodgment fee* into the Dictionary to the Act.

Part 7 Security deposits

[20] Section 26 Conditions of exploration licence

Insert "and maintain" after "give" in section 26 (2) (b).

Explanatory note

This item is one of a series of amendments to ensure that a condition to give security can also require security to be maintained.

[21] Section 26 (4) and (5)

Insert after section 26 (3):

- (4) A condition requiring security to be given and maintained by the holder of an exploration licence (the *new exploration licence*) may be expressed so as to require the security given and maintained in relation to some other exploration licence or licences, whether under this section or under section 29A, to be extended to the new exploration licence.
- (5) If the Minister proposes to grant an exploration licence to a person on the condition that the person gives and maintains security, the Minister may cause a written notice to be served on the person requiring the person to lodge the security with the Minister on or before the date specified in the notice.

Explanatory note

This item ensures that new exploration licences can be made the subject of security that has been given in relation to earlier exploration licences held by the same person, and that the Minister may set a deadline by which security must be lodged.

[22] Section 29A

Insert after section 29:

29A Amendment of exploration licence in respect of certain conditions

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

Explanatory note

This item will allow an exploration licence to be amended in relation to conditions requiring the giving and maintaining of security in the same way as a mining lease can currently be amended.

[23] Section 44 Conditions of assessment lease

Insert "and maintain" after "give" in section 44 (2) (b).

Explanatory note

This item is one of a series of amendments to ensure that a condition to give security can also require security to be maintained.

[24] Section 44 (4) and (5)

Insert after section 44 (3):

- (4) A condition requiring security to be given and maintained by the holder of an assessment lease (the *new assessment lease*) may be expressed so as to require the security given and maintained in relation to some other assessment lease or leases, whether under this section or under section 47A, to be extended to the new assessment lease.
- (5) If the Minister proposes to grant an assessment lease to a person on the condition that the person gives and maintains security, the Minister may cause a written notice to be served on the person requiring the person to lodge the security with the Minister on or before the date specified in the notice.

Explanatory note

This item ensures that new assessment leases can be made the subject of security that has been given in relation to earlier assessment leases held by the same person, and that the Minister may set a deadline by which security must be lodged.

[25] Section 47A

Insert after section 47:

47A Amendment of assessment lease in respect of certain conditions

- (1) The Minister may amend an assessment lease that does not contain a condition requiring the holder to give and maintain security for the fulfilment of the obligations of the holder arising under this Act so as to include such a condition.
- (2) The Minister may amend an assessment lease that contains such a condition so as to vary the amount and form of the security that is required to be given and maintained.

- (3) The Minister may amend any 2 or more assessment leases held by the same holder that contain such a condition so as to require a single security to be given and maintained.
- (4) The amendment of an assessment lease takes effect on the date on which written notice of the amendment is served on the holder of the assessment lease or on such later date as may be specified in the notice.

Explanatory note

This item will allow an assessment lease to be amended in relation to conditions requiring the giving and maintaining of security in the same way as a mining lease can currently be amended.

[26] Section 70 Conditions of mining lease

Insert “and maintain” after “give” in section 70 (2) (a).

Explanatory note

This item is one of a series of amendments to ensure that a condition to give security can also require security to be maintained.

[27] Section 70 (2A)

Insert after section 70 (2):

- (2A) A condition requiring security to be given and maintained by the holder of a mining lease (the *new mining lease*) may be expressed so as to require the security given and maintained in relation to some other mining lease or leases, whether under this section or under section 79, to be extended to the new mining lease.

Explanatory note

This item ensures that new mining leases can be made the subject of security that has been given in relation to earlier mining leases held by the same person.

[28] Section 70 (3)

Insert “and maintains” after “gives”.

Explanatory note

This item is one of a series of amendments to ensure that a condition to give security can also require security to be maintained.

[29] Section 79 Amendment of mining lease in respect of certain conditions

Insert “and maintain” after “give” in section 79 (2).

Explanatory note

This item is one of a series of amendments to ensure that a condition to give security can also require security to be maintained.

[30] Section 79 (3) and (4)

Insert “and maintained” after “given” wherever occurring.

Explanatory note

This item is one of a series of amendments to ensure that a condition to give security can also require security to be maintained.

[31] Section 81 Surface prospecting in relation to subsurface leases

Insert at the end of the section:

- (2) Before carrying out prospecting operations of the kind referred to in subsection (1), the holder of the mining lease:
 - (a) must cause notice of intention to do so to be given to the Director-General, and
 - (b) must cause security (in such amount and form, and on or before such date, as the Minister may determine) to be lodged with the Director-General for the fulfilment of the obligations arising under this Act in respect of the lease, including any obligations arising under Part 11 as applied by subsection (3).
- (3) Part 11 applies to the land over which the holder of a mining lease carries out such prospecting operations as if that land were land the subject of the mining lease.

Explanatory note

This item will require the holder of a mining lease to give notice and, if required, to lodge security before commencing surface prospecting under section 81. The item applies Part 11 (Protection of the environment) to the land concerned, so allowing conditions as to rehabilitation to be imposed on the mining lease in respect of that land and so allowing the security that has been lodged to be applied to the rehabilitation of that land if those conditions are not complied with.

[32] Section 190 Power of mining registrar in relation to applications

Insert “and maintain” after “give” in section 190 (4).

Explanatory note

This item is one of a series of amendments to ensure that a condition to give security can also require security to be maintained.

[33] Section 190 (4A) and (4B)

Insert after section 190 (4):

(4A) A condition requiring security to be given and maintained by the holder of a mineral claim (the *new mineral claim*) may be expressed so as to require the security given and maintained in relation to some other mineral claim or mineral claims, whether under this section or under section 195A, to be extended to the new mineral claim.

(4B) If the mining registrar proposes to grant a mineral claim to a person on the condition that the person gives and maintains security, the mining registrar may cause a written notice to be served on the person requiring the person to lodge the security with the mining registrar on or before the date specified in the notice.

Explanatory note

This item ensures that new mineral claims can be made the subject of security that has been given in relation to earlier mineral claims held by the same person, and that a mining registrar may set a deadline by which security must be lodged.

[34] Section 195A

Insert after section 195:

195A Amendment of mineral claim in respect of certain conditions

(1) A mining registrar may amend a mineral claim that does not contain a condition requiring the holder to give and maintain security for the fulfilment of the obligations of the holder arising under this Act so as to include such a condition.

- (2) A mining registrar may amend a mineral claim that contains such a condition so as to vary the amount and form of the security that is required to be given and maintained.
- (3) A mining registrar may amend any 2 or more mineral claims held by the same holder that contain such a condition so as to require a single security to be given and maintained.
- (4) The amendment of a mineral claim takes effect on the date on which written notice of the amendment is served on the holder of the mineral claim or on such later date as may be specified in the notice.

Explanatory note

This item will allow a mineral claim to be amended in relation to conditions requiring the giving and maintaining of security in the same way as a mining lease can currently be amended.

Part 8 Compensation to owners and occupiers of land

[35] Sections 263 (2), 264 (2) and 265 (2)

Omit “, and lodged with the Director-General” wherever occurring.

Explanatory note

This item will remove the obligation for compensation agreements to be lodged with the Director-General. At present, such an agreement is invalid unless it has been so lodged.

[36] Section 266 Compensation arising under mineral claim

Insert after section 266 (3):

- (4) Instead of assessing compensation in relation to a particular mineral claim, a warden may assess compensation in relation to:
 - (a) all mineral claims within a mining division, or
 - (b) any particular class of mineral claims within a mining division,

and, in that event, may assess compensation as a fixed amount per mineral claim or as an amount per mineral claim to be calculated at a fixed rate.

Explanatory note

This item will allow global determinations of compensation instead of, as is presently the case, individual determinations only in connection with the granting of a mineral claim.

[37] Section 267 Compensation arising under opal prospecting licence

Insert after section 267 (3):

- (4) Instead of assessing compensation in relation to a particular opal prospecting licence, a warden may assess compensation in relation to:
 - (a) all opal prospecting licences within an opal prospecting area, or
 - (b) any particular class of opal prospecting licences within an opal prospecting area,

and, in that event, may assess compensation as a fixed amount per opal prospecting licence or as an amount per opal prospecting licence to be calculated at a fixed rate.

Explanatory note

This item will allow global determinations of compensation instead of, as is presently the case, individual determinations only in connection with the granting of an opal prospecting licence.

[38] Section 278 Appeals

Insert at the end of the section:

- (2) No appeal lies against an assessment of compensation made in relation to a particular class of mineral claims, as referred to in section 266 (4) or 267 (4).
- (3) Subsection (2) does not prevent an appeal being made against an assessment of further compensation under section 276 merely because the original compensation was payable under an assessment of compensation made in relation to a particular class of mineral claims, as referred to in section 266 (4) or 267 (4).

Explanatory note

This item will preclude appeals from global determinations of compensation for mineral claims and opal prospecting licences, but will not affect appeals from determinations for additional compensation in particular circumstances.

Part 9 Protection of dwelling-houses, gardens and improvements

[39] Section 31 Dwelling-houses, gardens and improvements

Insert "on which the dwelling-house is situated" after "of the land" in section 31 (1) (a).

Explanatory note

This item is one of a series that is intended to clarify what dwelling-houses, gardens and improvements are being protected from prospecting and mining operations and whose consent is necessary before that protection can be waived.

[40] Section 31 (1)

Insert "on which the dwelling-house, garden or improvement is situated" after "of the land" where lastly occurring.

Explanatory note

This item is one of a series that is intended to clarify what dwelling-houses, gardens and improvements are being protected from prospecting and mining operations and whose consent is necessary before that protection can be waived.

[41] Section 49 Dwelling-houses, gardens and improvements

Insert "on which the dwelling-house is situated" after "of the land" in section 49 (1) (a).

Explanatory note

This item is one of a series that is intended to clarify what dwelling-houses, gardens and improvements are being protected from prospecting and mining operations and whose consent is necessary before that protection can be waived.

[42] Section 49 (1)

Insert "on which the dwelling-house, garden or improvement is situated" after "of the land" where lastly occurring.

Explanatory note

This item is one of a series that is intended to clarify what dwelling-houses, gardens and improvements are being protected from prospecting and mining operations and whose consent is necessary before that protection can be waived.

[43] Section 62 Dwelling-houses, gardens and improvements

Insert "on which the dwelling-house is situated" after "of the land" in section 62 (1) (a).

Explanatory note

This item is one of a series that is intended to clarify what dwelling-houses, gardens and improvements are being protected from prospecting and mining operations and whose consent is necessary before that protection can be waived.

[44] Section 62 (1)

Insert "on which the dwelling-house, garden or improvement is situated" after "of the land" where lastly occurring.

Explanatory note

This item is one of a series that is intended to clarify what dwelling-houses, gardens and improvements are being protected from prospecting and mining operations and whose consent is necessary before that protection can be waived.

[45] Section 62 (8)

Insert after section 62 (7):

- (8) In this section, *valuable work or structure* includes anything taken to be a valuable work or structure for the purposes of this section by clause 23A of Schedule 1, but does not include anything declared not to be a valuable work or structure by clause 23B of that Schedule.

Explanatory note

This item will invoke the provisions of Schedule 1 (proposed clauses 23A and 23B) for the purpose of determining, for mineral leases only, what is and what is not a valuable work or structure.

[46] Section 188 Dwelling-houses, gardens and improvements

Insert “on which the dwelling-house is situated” after “of the land” in section 188 (1) (a).

Explanatory note

This item is one of a series that is intended to clarify what dwelling-houses, gardens and improvements are being protected from prospecting and mining operations and whose consent is necessary before that protection can be waived.

[47] Section 188 (1) (c)

Omit “, or within the prescribed distance of which,”.

Explanatory note

This item is intended to bring section 188 (1) into line with sections 31, 49 and 62.

[48] Section 188 (1)

Insert “on which the dwelling-house, woolshed, shearing shed, garden or improvement is situated” after “of the land” where lastly occurring.

Explanatory note

This item is one of a series that is intended to clarify what dwelling-houses, gardens and improvements are being protected from prospecting and mining operations and whose consent is necessary before that protection can be waived.

[49] Section 188 (2) (b)

Omit “and (c)”.

Explanatory note

This item is consequential on the amendment to section 188 (1) (c).

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

Insert “, and claims with respect to valuable works and structures on the land,” after “agricultural land” in clause 21 (2) (c).

Explanatory note

This item will require a notice to an owner or occupier of land concerning a proposed invitation to tender for a mining lease to state that the owner or occupier may lodge a claim to the effect that a particular work or structure is a valuable work or structure, and that a mining lease should therefore not be granted so as to have effect in the vicinity of the work or structure.

[51] Schedule 1, clause 21 (4) (c)

Insert “, and claims with respect to valuable works and structures on the land,” after “agricultural land”.

Explanatory note

This item will require a notice to an owner or occupier of land concerning a proposed application for a mining lease to state that the owner or occupier may lodge a claim to the effect that a particular work or structure is a valuable work or structure, and that a mining lease should therefore not be granted so as to have effect in the vicinity of the work or structure.

[52] Schedule 1, clauses 23A, 23B

Insert after clause 23:

23A Identification of valuable works and structures

- (1) An owner or occupier of land to which an invitation for tenders will relate, or over which a mining lease is sought, may make a claim to the Minister that something on the land is a valuable work or structure.
- (2) A claim must be in writing and must be lodged with the Director-General on or before the date specified in the relevant notice under clause 21.
- (3) On receipt of a claim made under this clause, the Director-General:
 - (a) in the case of a claim relating to an invitation for tenders, must decide whether to accept the claim or to object to the claim, or
 - (b) in the case of a claim relating to an application for a mining lease, must cause notice of the claim to be given to the applicant for the lease.
- (4) An applicant for a mining lease to whom such a notice is given may object to the claim.
- (5) An objection must be made in writing and lodged with the Director-General within 14 days after notice of the claim was given to the applicant.

- (6) Anything identified in a claim as being a valuable work or structure is taken to be a valuable work or structure for the purposes of section 62 unless it is declared not to be a valuable work or structure under clause 23B.

23B Consideration of objections to claims concerning valuable works and structures

- (1) Unless it is earlier withdrawn, the Director-General must refer any objection made under clause 23A to a warden for inquiry and report.
- (2) At the conclusion of the inquiry into the objection, the warden must announce in open court the warden's finding and the purport of the warden's report and must transmit the finding and report to the Minister.
- (3) Anything in respect of which an objection has been made under clause 23A and which the warden's report declares not to be a valuable work or structure is taken not to be a valuable work or structure for the purposes of section 62.

Explanatory note

This item provides for a procedure for the making of claims to the effect that a particular work or structure is a valuable work or structure, for the making of objections to such a claim, and for the determination of a claim (where an objection is made) by a warden.

Part 10 Protection of mining operations in connection with privately owned minerals

[53] Section 8 Mining etc for privately owned minerals without due notice to Director-General

Omit section 8 (2) (a).

Explanatory note

This item will remove the current requirement that a notice with respect to the proposed prospecting or mining for privately owned minerals must specify the date on which prospecting or mining operations are to be commenced.

[54] Section 8 (4)

Omit the subsection. Insert instead:

- (4) This section does not apply to a person to the extent to which the person is prospecting or mining in accordance with an authority, mineral claim or opal prospecting licence that is in force in respect of the land and mineral concerned.

Explanatory note

This item makes it clear that the requirements of section 8 apply to any person who is prospecting or mining for privately owned minerals, whether or not the person happens to have an authority, mineral claim or opal prospecting licence for some other mineral.

[55] Section 20 Land on which private mining operations being carried on

Omit section 20 (1). Insert instead:

- (1) An exploration licence may not be granted over any land:
 - (a) if mining operations for a privately owned mineral are being carried out on the land by or with the consent of the owner of the mineral, and
 - (b) if the notice referred to in section 8 (1) (a) and the security referred to in section 8 (1) (b) have each been duly lodged with the Director-General,

except with the written consent of the owner of the mineral.

Explanatory note

This item extends the protection of existing section 20 (1) so as to prevent the granting of any exploration licence over land on which mining operations for a privately owned mineral are being carried out, but requires that the requirements of section 8 have been complied with not only with respect to notice but also with respect to the lodging of security.

[56] Section 39 Land on which private mining operations being carried on

Omit section 39 (1). Insert instead:

- (1) An assessment lease may not be granted over any land:
 - (a) if mining operations for a privately owned mineral are being carried out on the land by or with the consent of the owner of the mineral, and
 - (b) if the notice referred to in section 8 (1) (a) and the security referred to in section 8 (1) (b) have each been duly lodged with the Director-General,except with the written consent of the owner of the mineral.

Explanatory note

This item extends the protection of existing section 39 (1) so as to prevent the granting of any assessment lease over land on which mining operations for a privately owned mineral are being carried out, but requires that the requirements of section 8 have been complied with not only with respect to notice but also with respect to the lodging of security.

[57] Section 60 Land on which private mining operations being carried on

Omit section 60 (1). Insert instead:

- (1) A mining lease may not be granted over any land:
 - (a) if mining operations for a privately owned mineral are being carried out on the land by or with the consent of the owner of the mineral, and
 - (b) if the notice referred to in section 8 (1) (a) and the security referred to in section 8 (1) (b) have each been duly lodged with the Director-General,except with the written consent of the owner of the mineral.

Explanatory note

This item extends the protection of existing section 60 (1) so as to prevent the granting of any mining lease over land on which mining operations for a privately owned mineral are being carried out, but requires that the requirements of section 8 have been complied with not only with respect to notice but also with respect to the lodging of security.

[58] Section 185 Land on which private mining operations being carried on

Omit section 185 (1). Insert instead:

- (1) A mineral claim may not be granted over any land:
 - (a) if mining operations for a privately owned mineral are being carried out on the land by or with the consent of the owner of the mineral, and
 - (b) if the notice referred to in section 8 (1) (a) and the security referred to in section 8 (1) (b) have each been duly lodged with the Director-General,

except with the written consent of the owner of the mineral.

Explanatory note

This item extends the protection of existing section 185 (1) so as to prevent the granting of any mineral claim over land on which mining operations for a privately owned mineral are being carried out, but requires that the requirements of section 8 have been complied with not only with respect to notice but also with respect to the lodging of security.

Part 11 Mining purposes

[59] Section 51 Applications

Insert “, or the mining purpose or mining purposes,” after “minerals” in section 51 (2) (a).

Explanatory note

This item is one of a series of amendments that are intended to enable mining leases to be granted with respect to mining purposes only. Currently, mining leases must be granted with respect to specified minerals, and mining purposes are permissible under the Act merely as a purpose ancillary to that of mining for the specified mineral.

[60] Section 51 (3)

Insert “, in the case of an application that specifies a mineral or minerals,” after “the required particulars”.

Explanatory note

This item is one of a series of amendments that are intended to enable mining leases to be granted with respect to mining purposes only.

[61] Section 51 (5)

Insert after section 51 (4):

- (5) The required particulars, in the case of an application that specifies a mining purpose or mining purposes, are as follows:
- (a) a description, prepared in the manner prescribed by the regulations, of the land over which the mining lease is sought,
 - (b) a description of the nature and extent of the mining purpose or mining purposes to be carried out.

Explanatory note

This item is one of a series of amendments that are intended to enable mining leases to be granted with respect to mining purposes only.

[62] Section 63 Power of Minister in relation to applications

Insert after section 63 (4):

- (5) A mining lease may not be granted, in respect of a mining purpose or mining purposes only, unless the Minister is satisfied that the mining purpose or mining purposes is or are to be carried out in connection with and in the immediate vicinity of:
- (a) a mining lease in respect of a mineral or minerals,
or
 - (b) a mineral claim,

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

Explanatory note

This item is one of a series of amendments that are intended to enable mining leases to be granted with respect to mining purposes only.

[63] Section 65 Development consents under the Environmental Planning and Assessment Act 1979

Omit section 65 (1). Insert instead:

- (1) This section applies:
 - (a) in relation to a mining lease for a mineral or minerals, to land for which development consent is required before the land may be used for the purpose of obtaining minerals, and
 - (b) in relation to a mining lease for a mining purpose or mining purposes only, to land for which development consent is required before the land may be used for that purpose or those purposes.

Explanatory note

This item is one of a series of amendments that are intended to enable mining leases to be granted with respect to mining purposes only.

[64] Section 70 Conditions of mining lease

Insert after section 70 (1):

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

Explanatory note

This item is one of a series of amendments that are intended to enable mining leases to be granted with respect to mining purposes only.

[65] Section 72 Form of mining lease

Insert “, or the mining purpose or mining purposes,” after “minerals” in section 72 (b).

Explanatory note

This item is one of a series of amendments that are intended to enable mining leases to be granted with respect to mining purposes only.

[66] Section 73 Rights under mining lease

Insert “granted in respect of a mineral or minerals” after “a mining lease” in section 73 (1).

Explanatory note

This item is one of a series of amendments that are intended to enable mining leases to be granted with respect to mining purposes only.

[67] Section 73 (1A)

Insert after section 73 (1):

(1A) The holder of a mining lease granted in respect of a mining purpose or mining purposes only may, in accordance with the conditions of the lease, carry out the mining purpose or mining purposes specified in the lease.

Explanatory note

This item is one of a series of amendments that are intended to enable mining leases to be granted with respect to mining purposes only.

[68] Section 75 Mining purposes

Insert after section 75 (1):

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

Explanatory note

This item prevents the Minister from exercising the powers conferred by section 75 to order the discontinuing of a mining purpose if the mining purpose is specifically authorised by a mining lease.

[69] Section 77 Addition of mineral to mining lease

Insert “granted in respect of a mineral or minerals” after “a mining lease” in section 77 (1).

Explanatory note

This item is one of a series of amendments that are intended to enable mining leases to be granted with respect to mining purposes only.

[70] Section 178 Application for granting of mineral claim

Insert “, or the mining purpose or mining purposes,” after “minerals” in section 178 (2) (b).

Explanatory note

This item is one of a series of amendments that are intended to enable mineral claims to be granted with respect to mining purposes only. Currently, mineral claims must be granted with respect to specified minerals, and mining purposes are permissible under the Act merely as a purpose ancillary to that of mining for the specified mineral.

[71] Section 190 Power of mining registrar in relation to applications

Insert after section 190 (6):

- (7) A mineral claim may not be granted in respect of a mining purpose or mining purposes only unless the applicant for the mineral claim is the holder of, or an applicant for, a mining lease or mineral claim for a mineral or minerals with respect to land in the same mining division.

Explanatory note

This item will prevent mineral claims for mining purposes only from being issued unless the applicant is the holder of a mining lease or mineral claim for a mineral or minerals within the same mining division.

[72] Section 194 Certificate of mineral claim

Insert “, or the mining purpose or mining purposes,” after “minerals” in section 194 (2) (b).

Explanatory note

This item is one of a series of amendments that are intended to enable mineral claims to be granted with respect to mining purposes only.

[73] Section 195 Rights under mineral claim

Insert “granted in respect of a mineral or minerals” after “a mineral claim” in section 195 (1).

Explanatory note

This item is one of a series of amendments that are intended to enable mineral claims to be granted with respect to mining purposes only.

[74] Section 195 (1A)

Insert after section 195 (1):

- (1A) The holder of a mineral claim granted in respect of a mining purpose or mining purposes only may, in accordance with the conditions of the claim, carry out the mining purpose or mining purposes specified in the certificate relating to the claim.

Explanatory note

This item is one of a series of amendments that are intended to enable mineral claims to be granted with respect to mining purposes only.

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

Omit clause 12. Insert instead:

12 Application of Division

This Division applies:

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

Explanatory note

This item is one of a series of amendments that are intended to enable mining leases to be granted with respect to mining purposes only.

[76] Schedule 1, clause 13

Omit clause 13 (2). Insert instead:

- (2) This clause does not apply:
- (a) in relation to a mining lease for a mineral or minerals, to the granting of the mining lease over land in respect of which a development consent to the use of the land for the purpose of obtaining minerals is in force, or

- (b) in relation to a mining lease for a mining purpose or mining purposes only, to the granting of the mining lease over land in respect of which a development consent to the use of the land for that purpose or those purposes is in force.

Explanatory note

This item is one of a series of amendments that are intended to enable mining leases to be granted with respect to mining purposes only.

[77] Schedule 1, clause 16

Omit the clause. Insert instead:

16 Application of Division

This Division applies:

- (a) in relation to a mining lease for a mineral or minerals, to land for which development consent is not required before the land may be used for the purpose of obtaining minerals, and
- (b) in relation to a mining lease for a mining purpose or mining purposes only, to land for which development consent is not required before the land may be used for that purpose or those purposes.

Explanatory note

This item is one of a series of amendments that are intended to enable mining leases to be granted with respect to mining purposes only.

Part 12 Renewals of authorities and mineral claims

[78] Section 138 Application of Division

Insert "or renewed" after "granted" in section 138 (2).

Explanatory note

This item is one of a series of amendments that are intended to make it clear that certain provisions of the Act with respect to the granting of authorities and mineral claims apply also to their renewal.

[79] Section 138 (2)

Insert "or renewal" after "grant".

Explanatory note

This item is one of a series of amendments that are intended to make it clear that certain provisions of the Act with respect to the granting of authorities and mineral claims apply also to their renewal.

[80] Section 197 Application for renewal

Insert ", from time to time," after "may" in section 197 (1).

Explanatory note

This item makes it clear that a mineral claim may be renewed more than once.

[81] Section 197 (2) (b)

Omit "within 28 days".

Insert instead "on or within 2 months".

Explanatory note

This item extends, from 28 days to 2 months, the time within which an application for renewal of a mineral claim may be made, and makes it clear that the application can be made as late as the day on which the current mineral claim is due to expire.

[82] Section 199A

Insert after section 199:

199A Term of renewal

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

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

Explanatory note

This item applies the provisions relating to the term of an original mineral claim to the term of a mineral claim that is renewed.

Part 13 Partial transfers of exploration licences

[83] Section 123 Partial transfers

Omit "assessment lease or mining lease" wherever occurring.
Insert instead "authority".

Explanatory note

This item is one of a series of amendments that are intended to apply the partial transfer provisions of section 123 to exploration licences. Those provisions already apply to assessment leases and mining leases.

[84] Section 123 (1) (a)

Omit "the lease". Insert instead "the authority".

Explanatory note

This item is one of a series of amendments that are intended to apply the partial transfer provisions of section 123 to exploration licences.

[85] Section 123

Omit "original lease" wherever occurring.
Insert instead "original authority".

Explanatory note

This item is one of a series of amendments that are intended to apply the partial transfer provisions of section 123 to exploration licences.

[86] Section 123

Omit "new lease" wherever occurring.
Insert instead "new authority".

Explanatory note

This item is one of a series of amendments that are intended to apply the partial transfer provisions of section 123 to exploration licences.

Part 14 Cancellation of mineral claims

[87] Section 205 Compensation for cancellation

Omit "Minister" from section 205 (2).
Insert instead "mining registrar".

Explanatory note

This item will allow the mining registrar, rather than the Minister, to determine the compensation payable for the cancellation of a mineral claim. The mining registrar is responsible for the granting and cancellation of mineral claims.

[88] Section 206

Omit the section. Insert instead:

206 Review of decisions concerning cancellation and compensation

- (1) Any person who is aggrieved by the decision of a mining registrar to cancel a mineral claim held by the person, or as to the amount of compensation payable as a consequence of the cancellation, may apply to a Warden's Court for a review of the decision.
- (2) An application must be filed in a Warden's Court within 14 days after written notice of the decision is served on the person.

- (3) Subject to any order made by the Warden's Court, an application for a review does not operate to stay the decision to which the application relates.
- (4) The decision of the Warden's Court is to be given effect to as if it were the decision of the mining registrar.

Explanatory note

This item replaces the appeal provisions concerning the cancellation of mineral claims as a result of the amendment that enables mineral claims to be cancelled by a mining registrar. Instead of going to the District Court, an appeal will in future go to the Warden's Court.

[89] Section 296 Jurisdiction of Wardens' Courts

Insert "or of a mining registrar's decision referred to in section 206" after "Part 8" in section 296 (t).

Explanatory note

This item is consequential on the substitution of section 206 which gives jurisdiction to the Warden's Court to hear appeals from a mining registrar's decision to cancel a mineral claim.

Part 15 Procedural irregularities concerning mineral claims

[90] Sections 210A, 210B

Insert after section 210:

210A Waiver of minor procedural matters

- (1) A mining registrar may grant or renew a mineral claim even though the applicant has failed to comply with a requirement of this Act or the regulations:
 - (a) as to the manner in which the mineral claim has been marked out, or
 - (b) as to the time within which anything is required to be done, or

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

210B Limitation of right to challenge technical defects in mineral claims

- (1) The grant, renewal or transfer of a mineral claim may not be challenged in any legal proceedings commenced later than 3 months after the date on which the mineral claim was granted, renewed or transferred.
- (2) This section has effect regardless of the provisions of any other Act, but does not apply so as to affect any appeal from proceedings commenced within the 3 months referred to in subsection (1).

Explanatory note

This item repeats in relation to mineral claims certain provisions (sections 135 and 137) that already apply to authorities with respect to the waiver of minor procedural matters and the challenging of technical defects.

Part 16 Royalty officers and deputy mining registrars

[91] Section 247A

Insert after section 247:

247A Powers of royalty officers

- (1) For the purposes of this Act, a royalty officer:
 - (a) may enter any premises occupied by the holder of an authority or mineral claim, and
 - (b) may inspect, and take extracts or copies from, any documents that are found on those premises and that appear to the royalty officer to relate to minerals recovered under the authority or mineral claim.
- (2) A royalty officer may direct the person in charge of any such premises to provide the royalty officer with all reasonable facilities and assistance.
- (3) A person to whom such a direction is given must not fail to comply with the direction.

Maximum penalty: 20 penalty units.

Explanatory note

This item confers powers of entry on the Department of Mineral Resources' royalty officers to enter the premises of the holder of an authority or mineral claim for the purpose of obtaining information relating to minerals recovered under the authority or mineral claim.

[92] Section 248 Certificates of authority

Insert "or royalty officer" after "inspector" wherever occurring.

Explanatory note

This item is consequential on proposed section 247A.

[93] Sections 255, 256, 257

Insert ", royalty officer" after "inspector" wherever occurring.

Explanatory note

This item is consequential on proposed section 247A.

[94] Section 360 Mining registrars, deputy mining registrars, royalty officers and other staff

Insert “, deputy mining registrars, royalty officers” after “Mining registrars”.

Explanatory note

This item will ensure that there is express provision for the employment of deputy mining registrars and royalty officers.

[95] Section 363 Delegation of functions by Minister, Director-General or mining registrar

Insert after section 363 (2):

(2A) A mining registrar may delegate any function under this Act or the regulations (except this power of delegation or any function delegated to the mining registrar by the Minister or the Director-General) to a deputy mining registrar.

Explanatory note

This item will allow a mining registrar to delegate his or her functions to a deputy mining registrar.

[96] Dictionary

Insert in alphabetical order:

deputy mining registrar means a deputy mining registrar referred to in section 360.

royalty officer means a royalty officer referred to in section 360.

Explanatory note

This item inserts definitions of *deputy mining registrar* and *royalty officer* into the Dictionary to the Act.

[97] Dictionary

Omit “appointed under” from paragraph (a) of the definition of *mining registrar*.

Insert instead “referred to in”.

Explanatory note

This item is minor statute law revision.

Part 17 Powers of entry under certain permits

[98] Sections 250, 251

Omit the sections. Insert instead:

250 Surveys and ore sampling

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

Explanatory note

This item consolidates the powers of entry currently contained in sections 250 and 251, without any significant change in their nature or extent.

Part 18 Consolidation of mining leases

[99] Section 84 Definitions

Omit the definition of *existing lease* from section 84 (1).

Insert instead:

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

Explanatory note

This item makes it clear that a mining lease whose effect has been continued under section 117 remains an existing lease for the purposes of consolidation.

[100] Section 98 Minister may grant consolidated mining lease

Insert after section 98 (2):

- (3) The granting of a consolidated mining lease over land the subject of a mining lease in force by virtue of section 117 (1) does not constitute a renewal of that lease.

Explanatory note

This item ensures that the provisions that must be complied with in relation to the renewal of mining leases do not apply to the consolidation of a mining lease whose effect has been continued under section 117.

[101] Section 114 Power of Minister in relation to applications

Insert after section 114 (6):

- (7) The Minister may defer dealing with an application for the renewal of a mining lease over any land if the mining lease is the subject of action being taken under Part 6 in connection with the granting of a consolidated mining lease over that land.

Explanatory note

This item enables the Minister to defer dealing with an application for renewal of a mining lease if the mining lease is in the process of being consolidated.

Part 19 Prevention of damage to certain dams

[102] Sections 80 (1), 89 (1), 91 (2)

Omit "for coal" wherever occurring.

Explanatory note

This item ensures that dams can be protected from mining activities in relation to mining leases generally, not just mining leases with respect to coal as is currently the case.

[103] Section 369 Notification areas

Omit "excluding" from section 369 (1).
Insert instead "including".

Explanatory note

This item will allow land under a dam to form part of a notification area for the purposes of the Act.

[104] Section 369 (2)

Insert "underlies or" before "surrounds".

Explanatory note

This item ensures that a notification area (an area within which the Dams Safety Committee must be notified of proposed mining leases) may include the land underlying a dam as well as the land surrounding the dam.

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

Omit "for coal" wherever occurring from clauses 7 (1) and (3), 9 (2) and 25 (1) and (3).

Explanatory note

This item ensures that dams can be protected from mining activities in relation to mining leases generally, not just mining leases with respect to coal as is currently the case.

Part 20 Miscellaneous matters

[106] Section 4

Omit the section. Insert instead:

4 Definitions

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

Explanatory note

This item is intended to omit the Table of definitions in section 4. Such Tables are not part of current drafting practice.

[107] Section 29 Rights under exploration licence

Insert “, or such further period as the Minister may approve in a particular case,” after “2 years” in section 29 (3).

Explanatory note

This item will allow an exploration licence to have effect beyond the period of 2 years after its expiry if the Minister so approves and if an application made by its holder for an assessment lease, mining lease or mineral claim is still pending.

[108] Section 57 Land in reserve

Omit section 57 (a).

Explanatory note

This item will allow mining leases to be granted over land within an opal prospecting area.

[109] Section 78 Inclusion of petroleum in mining lease

Omit “*Petroleum Act 1955*” from section 78 (4) (b) and (6) (e) wherever occurring.

Insert instead “*Petroleum (Onshore) Act 1991*”.

Explanatory note

This item merely updates an obsolete reference.

[110] Section 133 Nomination by applicant or tenderer

Insert after section 133 (2):

- (3) In the case of an application or tender for an authority over land in respect of which some other authority held by the applicant or tenderer is in force by operation of section 29 (2), 47 (2), 73 (2) or 195 (2), the person nominated as the person to whom the firstmentioned authority is to be granted is, for the purposes of this Act, taken to be the holder of that other authority also.

Explanatory note

This item allows the nominee of an applicant or tenderer for an authority over any land to be considered to be the holder of any existing authority that is in force over the same land, by virtue of the application or tender, as well as the applicant or tenderer for the authority to which the application or tender relates.

[111] Section 159 Records

Omit section 159 (1). Insert instead:

- (1) The Director-General is to cause a record to be kept of:
 - (a) every application for an authority that is duly made under this Act, and
 - (b) every authority that is granted, renewed, transferred or cancelled under this Act.

Explanatory note

This item removes references to applications being received by the Director-General and authorities being granted, renewed, transferred or cancelled by the Director-General.

[112] Section 161 Registration of certain interests

Insert after section 161 (9):

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

Explanatory note

This item makes it clear that applications for registration of certain interests can be withdrawn, and that their withdrawal is irrevocable.

[113] Section 168 Suspension of conditions

Omit section 168 (4). Insert instead:

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

Explanatory note

This item repeals a provision that limits the period for which the conditions of a mining lease may be suspended under section 168 and makes it clear that applications for the suspension of the conditions of a mining lease can be withdrawn, and that their withdrawal is irrevocable.

[114] Section 182 Opal prospecting blocks, reserves and mineral allocation areas

Omit “367, or” from section 182 (b). Insert instead “367.”.

Explanatory note

This item is consequential on the proposed repeal of section 182 (c).

[115] Section 182 (c)

Omit the paragraph.

Explanatory note

This item repeals section 182 (1) (c). The effect of the paragraph is to be continued, with modifications, as proposed section 182 (2).

[116] Section 182 (2)

Insert at the end of section 182:

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

Explanatory note

This item re-enacts the provisions of section 182 (c), but allows the Minister to approve exceptions to the restriction contained in those provisions.

[117] Section 215 Suspension of conditions

Insert after section 215 (4):

- (5) Section 208 applies to an application under this section in the same way as it applies to an application referred to in section 208 (1).

Explanatory note

This item makes it clear that applications for the suspension of the conditions of a mineral claim can be withdrawn, and that their withdrawal is irrevocable.

[118] Section 227 Restrictions on grant of licence

Omit "10 days" from section 227 (b). Insert instead "14 days".

Explanatory note

This item will require a period of 14 days, rather than 10 days, to elapse between the expiry of an opal prospecting licence and the granting of a new opal prospecting licence over the same land.

[119] Section 228

Omit the section. Insert instead:

228 Power of mining registrar in relation to applications

- (1) After considering an application for an opal prospecting licence, the mining registrar:
 - (a) may grant an opal prospecting licence to the applicant, or
 - (b) may refuse the application.
- (2) Without limiting the generality of subsection (1), an application may be refused if the applicant has been convicted of an offence against this Act or the regulations or any other offence relating to mining or minerals.
- (3) If the mining registrar refuses to grant an opal prospecting licence, the mining registrar is to cause notice of the decision, and of the reasons for the decision, to be served on the applicant.

Explanatory note

This item repeals and re-enacts section 228 so as to give the mining registrar the same power to refuse an application for an opal prospecting licence as is available in relation to applications for mineral claims.

[120] Section 235A

Insert after section 235:

235A Records

- (1) A mining registrar is to cause to be kept a record of:
 - (a) every application for an opal prospecting licence that is received by the registrar, and

- (b) every opal prospecting licence granted or cancelled by the mining registrar.
- (2) Such a record must be kept in the form, and must contain the particulars, required by the Director-General.
- (3) The record must be kept available at the mining registrar's office for inspection, free of charge, by members of the public.

Explanatory note

This item imposes on a mining registrar the same duty in relation to the keeping of records for opal prospecting licences as is imposed on a mining registrar in relation to the keeping of records for mineral claims.

[121] Sections 237, 238, 239

Insert "or mining registrar" after "Minister" wherever occurring.

Explanatory note

This item reflects the fact that mineral claims (to which sections 237, 238 and 239 apply) are granted by a mining registrar, not by the Minister. This item constitutes minor statute law revision.

[122] Section 266 Compensation arising under mineral claim

Omit "registered" from section 266 (1) (a). Insert instead "granted".

Explanatory note

This item reflects the fact that mineral claims are granted, not registered. This item constitutes minor statute law revision.

[123] Section 286 Royalty payable on petroleum recovered under mining lease for coal

Omit "*Petroleum Act 1955*" from section 286 (2).

Insert instead "*Petroleum (Onshore) Act 1991*".

Explanatory note

This item merely updates an obsolete reference.

[124] Section 335 Mining registrar may request inquiry by warden

Insert “whether Division 2 of Part 9 has been complied with by an applicant for a mineral claim or” after “question of” in section 335 (1).

Explanatory note

This item will allow a mining registrar to request a warden to consider the question of whether the procedures to be complied with under Division 2 of Part 9 in connection with the making of applications for mineral claims (such as the marking out of land and the giving of notice) have been complied with. Such requests can already be made in connection with the question of whether the procedures to be complied with under Division 3 of Part 9 in connection with the granting of mineral claims have been complied with.

[125] Section 363 Delegation of functions by Minister, Director-General or mining registrar

Omit “the holder of any office” from section 363 (1) and (2) wherever occurring.

Insert instead “any person”.

Explanatory note

This item removes the existing restriction that requires delegations to be made only to the holders of offices. Future delegations will be able to be made to any person, whether or not the holder of an office.

[126] Section 363 (3)

Insert “a function under the regulations and” after “a reference to”.

[127] Section 387 Government agencies

Insert at the end of the section:

- (2) For the purposes of this section, a State owned corporation (and any of its subsidiaries) within the meaning of the *State Owned Corporations Act 1989* is taken to be a corporation established by an Act.

Explanatory note

This item deems State owned corporations and their subsidiaries to be corporations established by an Act, so allowing them to be declared Government agencies for the purposes of the Act. Government agencies are entitled to be given notice of proposed assessment leases and mining leases.

[128] Section 387A

Insert after section 387:

387A Application of Act in relation to former minerals

- (1) This section applies to a substance that, having been prescribed by the regulations as a mineral for the purposes of the definition of *mineral* in the Dictionary at the end of this Act, ceases to be so prescribed.
- (2) This Act continues to apply to a substance to which this section applies as if it were a mineral, but for the purpose only of enabling the holder of a mining lease or mineral claim in respect of the substance to exercise the rights conferred by this Act on the holder of such a mining lease or mineral claim.
- (3) This section does not operate so as to allow the renewal or consolidation of a mining lease or mineral claim that relates only to a substance to which this section applies.

Explanatory note

This item will ensure that existing mining leases and mineral claims will continue to have effect, together with the provisions of the Act that are necessary to give them that effect, if substances that have previously been minerals cease to be so. Aside from coal and oil shale, a substance is a mineral only if the regulations so provide.

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

Omit "authority" from clause 1 (2) (c).
Insert instead "person or body".

Explanatory note

This item avoids the use of the word "authority" to mean something other than a mining title.

[130] Schedule 1, clause 2 (1)

Omit "public authority". Insert instead "person or body".

Explanatory note

This item avoids the use of the word "authority" to mean something other than a mining title.

[131] Schedule 1, clause 9 (1)

Omit "An authority". Insert instead "A person or body".

Explanatory note

This item avoids the use of the word "authority" to mean something other than a mining title.

[132] Schedule 1, clause 22 (2)

Omit "notice in that regard".
Insert instead "relevant notice under clause 21".

Explanatory note

The item constitutes minor statute law revision.

[133] Schedule 1, clause 26 (2)

Omit "notice in that regard".
Insert instead "relevant notice under this Division".

Explanatory note

The item constitutes minor statute law revision.

[134] Schedule 1, clause 28

Omit "public authority". Insert instead "person or body".

Explanatory note

This item avoids the use of the word "authority" to mean something other than a mining title.

[135] Schedule 2 Agricultural land

Insert "the invitation for tenders for the mining lease concerned was first published or" after "the date on which" in clause 2 (1) (c).

Explanatory note

This item extends clause 2 of Schedule 2 to cover invitations for tenders of leases as well as applications for leases. The item constitutes minor statute law revision.

[136] Schedule 2, clause 3

Insert “tenderer or” after “if the”.

Explanatory note

This item is consequential on the amendment to clause 2 of Schedule 2.

[137] Schedule 2, clause 3

Insert “the invitation for tenders was first published or” after “when”.

Explanatory note

This item is consequential on the amendment to clause 2 of Schedule 2.

[138] Schedule 2, clause 3

Insert “the invitation for tenders for that licence was first published or” after “the date on which”.

Explanatory note

This item is consequential on the amendment to clause 2 of Schedule 2.

[139] Dictionary

Omit “*Petroleum Act 1955*” from the definition of *petroleum*.
Insert instead “*Petroleum (Onshore) Act 1991*”.

Explanatory note

This item merely updates an obsolete reference.

Part 21 Savings and transitional provisions

[140] Schedule 6 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

Mining Legislation Amendment Act 1996

Explanatory note

This item enables savings and transitional regulations to be made in relation to matters arising under the proposed Act.

[141] Schedule 6, Part 2

Insert after clause 46:

47 Instruments under former Acts

Any instrument that had been approved by the Minister under section 107 of the *Mining Act 1973* or section 104 of the *Coal Mining Act 1973* before the commencement of this Act is taken to have been registered under section 161 of this Act.

Explanatory note

This item inserts a saving provision with respect to certain instruments under the *Mining Act 1973* and the *Coal Mining Act 1973*. The provision relates back to the date of commencement of the *Mining Act 1992*.

[142] Schedule 6, Part 3

Insert after Part 2:

Part 3 Provisions consequent on the enactment of the Mining Legislation Amendment Act 1996

48 Definition

In this Part, *amending Act* means the *Mining Legislation Amendment Act 1996*.

49 Amendment of exploration licence, assessment lease and mineral claim conditions

Sections 29A, 47A and 195A apply to and in respect of an exploration licence, assessment lease or mineral claim granted before the commencement of those sections in the same way as they apply to and in respect of an exploration licence, assessment lease or mineral claim granted after that commencement.

50 Protection of dwelling-houses, gardens and improvements

Sections 31, 49, 62 and 188, as amended by the amending Act, apply to and in respect of an authority or mineral claim granted before the commencement of

those amendments in the same way as they apply to and in respect of an authority or mineral claim granted after that commencement.

51 Surface prospecting in respect of subsurface mining leases

Section 81, as amended by the amending Act, applies to and in respect of all prospecting operations carried out in relation to a mining lease after the commencement of that amendment, whether or not prospecting operations have been carried out in relation to that mining lease before that commencement.

52 Partial transfers of exploration licences

Section 123, as amended by the amending Act, applies to and in respect of an exploration licence granted before the commencement of that amendment in the same way as it applies to and in respect of an exploration licence granted after that commencement.

53 Waiver of minor procedural matters concerning applications for mineral claims

Section 210A applies to and in respect of an application for a mineral claim made before the commencement of that section in the same way as it applies to and in respect of an application for a mineral claim made after that commencement.

54 Limitation of right to challenge technical defects in mineral claims

Section 210B applies to and in respect of a mineral claim granted before the commencement of that section in the same way as it applies to and in respect of a mineral claim granted after that commencement.

55 Restrictions on grant of opal prospecting licence

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

56 Permits for surveys and ore sampling

A permit that was in force under section 250 or 251, immediately before the repeal of that section by the amending Act, is taken to have been granted under section 250, as inserted by the amending Act.

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

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

58 References for determination of agricultural land

Clauses 2 and 3 of Schedule 2, as amended by the amending Act, apply to and in respect of a reference arising before the commencement of those amendments in the same way as they apply to and in respect of a reference arising after that commencement.

59 Royalty on coal in coal reject

Division 3A of Part 14 applies to coal reject that the holder of a mining lease uses or disposes of on or after the commencement of that Division (even if the coal reject was recovered before that commencement).

60 Waiver of additional royalty for coal

Section 287A applies in respect of coal disposed of on or after the commencement of that section (even if the coal was recovered before that commencement).

61 Lodgment fees

A fee that, immediately before the commencement of section 382A, was prescribed by the regulations for the purposes of this Act or the regulations is taken to be an appropriate lodgment fee determined in accordance with that section.

Explanatory note

This item inserts savings and transitional provisions consequent on the enactment of the proposed Act.

Schedule 2 Amendment of other Acts and instruments

(Section 4)

2.1 Aboriginal Land Rights Act 1983 No 42

Section 45 Mineral rights and mining on Aboriginal land

Omit section 45 (13) (b). Insert instead:

- (b) the granting of an authority or mineral claim in accordance with an exclusive right conferred by the *Mining Act 1992*,

Explanatory note

This item reflects the fact that mineral claims are granted, not registered. This item constitutes minor statute law revision.

2.2 Coal Mines Regulation Act 1982 No 67

[1] Section 146 Definitions

Omit the definition of *mine*. Insert instead:

mine includes an abandoned mine.

Explanatory note

This item extends the definition of *mine* to include an abandoned mine and to exclude the existing exception of mines the subject of a mining lease under the *Mining Act 1992*.

[2] Section 148 Issue of tourist and educational permits

Insert after section 148 (1):

- (1A) An application for a permit is to be accompanied by the prescribed fee.

Explanatory note

This item will require applications for tourist and educational permits to be accompanied by an application fee.

2.3 Crimes Act 1900 No 40

[1] Section 1 Short title and contents

Omit “(7) *From mines—ss. 144–147*” from paragraph (d) of the matter appearing in relation to Chapter 1 of Part 4.

Explanatory note

This item is consequential on the repeal of sections 144–147.

[2] Sections 144–147

Omit the sections and the heading appearing before the sections.

Explanatory note

This item repeals sections 144–147 in connection with their transfer (section 147 excepted) to the *Mining Act 1992*.

[3] Section 428B Offences of specific intent to which Part applies

Omit the matter relating to sections 145 and 147 from paragraph (a) of the Table to section 428B.

Explanatory note

This item is consequential on the repeal of sections 144–147.

[4] Section 428B, Table

Omit the matter relating to sections 144 and 146 from paragraph (b) of the Table to section 428B.

Explanatory note

This item is consequential on the repeal of sections 144–147.

2.4 Criminal Procedure Act 1986 No 209

[1] Section 33P Application of Part and continued application of certain provisions

Omit “144,” from item 3 (c) in Part 2 of Table 1 to section 33P.

Explanatory note

This item is consequential on the amendments made to the *Crimes Act 1900* by Schedule 2.3.

[2] Section 33P, Table 1

Omit “, 144” from item 4 in Part 2 of the Table.

Explanatory note

This item is consequential on the amendments made to the *Crimes Act 1900* by Schedule 2.3.

[3] Section 33P, Table 1

Omit “145, 146,” from item 9 in Part 2 of the Table.

Explanatory note

This item is consequential on the amendments made to the *Crimes Act 1900* by Schedule 2.3.

[4] Section 33P, Table 2

Omit “144,” from item 3 (c) in Part 2 of the Table.

Explanatory note

This item is consequential on the amendments made to the *Crimes Act 1900* by Schedule 2.3.

2.5 Crown Lands Act 1989 No 6

Section 155 Offences on public land

Insert after section 155 (3):

- (4) It is a sufficient defence to a prosecution for an offence arising under subsection (1) (e) or (h) if the defendant establishes that the activity with which he or she is charged was carried out in the course of fossicking, as referred to in section 12 (1) of the *Mining Act 1992*.

Explanatory note

This item ensures that fossicking remains a lawful activity within public land under the *Crown Lands Act 1989*. The item is consequential on amendments being made by Schedule 1 [6] to section 12 of the *Mining Act 1992*.

2.6 Mines Inspection Act 1901 No 75

[1] Section 48A Definitions

Omit the definition of *mine*. Insert instead:

mine includes an abandoned mine.

Explanatory note

This item extends the definition of *mine* to include an abandoned mine and to exclude the existing exception of mines the subject of a mining lease under the *Mining Act 1992*.

[2] Section 48C Issue of permits

Insert after section 48C (1):

- (1A) An application for a permit is to be accompanied by a fee equivalent to the fee required to accompany an application for a permit under section 148 (Issue of tourist and educational permits) of the *Coal Mines Regulation Act 1982*.

Explanatory note

This item will require applications for permits to be accompanied by an application fee.

2.7 Mining (General) Regulation 1992

[1] Clause 10

Omit clause 10 (1).

Explanatory note

This item omits a provision that relates to fossicking. The substance of the provision is proposed to become part of section 12 of the *Mining Act 1992*.

[2] Clauses 11 (1), 13 (1), 14 (1), 18 (1), 19 (1), 32 (2) and 48 (1)

Omit the subclauses.

Explanatory note

This item omits provisions that prescribe fees. The item is consequential on proposed amendments to the *Mining Act 1992* that will result in fees being determined by the Minister rather than by the regulations under that Act.

[3] Clauses 12, 15, 20, 21, 23, 25, 35, 37 and 39

Omit the clauses.

Explanatory note

This item omits provisions that prescribe fees. The item is consequential on proposed amendments to the *Mining Act 1992* that will result in fees being determined by the Minister rather than by the regulations under that Act.

[4] Clauses 16, 16A (4), 24 (2), 28, 29, 41 (4), 43, 44, 49, 51, 52 and 63

Omit "the fee specified in Schedule 5" wherever occurring.
Insert instead "the appropriate lodgment fee".

Explanatory note

This item is consequential on amendments to the *Mining Act 1992* that will result in fees being determined by the Minister rather than by the regulations.

[5] Clause 59 Fees for services

Omit "for which a fee is not prescribed by this Regulation".
Insert instead ", not being a service in respect of which an appropriate lodgment fee is payable under section 382A of the Act".

Explanatory note

This item is consequential on amendments to the *Mining Act 1992* that will result in fees being determined by the Minister rather than by the regulations.

[6] Schedule 1 Minerals

Omit "mineral water".

Explanatory note

This item removes mineral water from the list of substances that are prescribed as minerals for the purposes of the *Mining Act 1992*.

[7] Schedule 2 Groups of minerals

Omit "mineral water" from Group 2 (Elemental minerals (non-metallics)).

Explanatory note

This item is consequential on the removal of mineral water from the list of substances that are prescribed as minerals for the purposes of the *Mining Act 1992*.

[8] Schedule 5

Omit the Schedule.

Explanatory note

This item is consequential on amendments to the *Mining Act 1992* that will result in fees being determined by the Minister rather than by the regulations.

[9] Schedule 6 Royalty

Omit the matter relating to mineral water.

Explanatory note

This item is consequential on the removal of mineral water from the list of substances that are prescribed as minerals for the purposes of the *Mining Act 1992*.

2.8 National Parks and Wildlife Act 1974 No 80

Section 47J Provisions relating to mining

Omit "registered" from section 47J (6).

Insert instead "granted".

Explanatory note

This item reflects the fact that mineral claims are granted, not registered. This item constitutes minor statute law revision.

2.9 State Coal Mines Act 1912 No 70

[1] Section 2 Crown lands may be set apart

Omit "registered" from section 2 (2).

Insert instead "granted".

Explanatory note

This item reflects the fact that mineral claims are granted, not registered. This item constitutes minor statute law revision.

[2] Section 7 Appeal against valuation

Omit "registered" from section 7 (3).
Insert instead "granted".

Explanatory note

This item reflects the fact that mineral claims are granted, not registered. This item constitutes minor statute law revision.

[Minister's second reading speech made in—
Legislative Assembly on 30 October 1996
Legislative Council on 4 December 1996]

BY AUTHORITY