

# **MINERAL RESOURCES AMENDMENT BILL 1994**

## **EXPLANATORY NOTE**

### **GENERAL OUTLINE**

#### **Objectives of the Legislation**

The objective of this Bill is to confirm the obligation of a lease holder of a renewed mining lease to pay rental, at the prescribed rate, from the date of commencement of the renewed term of that lease.

#### **Reasons for the Bill**

Under provisions of the now repealed *Mining Act 1968* and the *Mineral Resources Act 1989*, holders of mining leases are bound to pay prescribed rental, prescribed royalties and other lawful charges.

In the case of a renewed lease, rental is payable at the rate prescribed at the time the lease is due for renewal. Because of the need to settle certain conditions pertaining to a renewed lease, renewal applications may not be finalised for an extended period of time. It is standard administrative practice in the case of a renewed lease, that the lease holder is charged back-rental for the interim period between the expiry of the lease and the date on which it is renewed.

That standard practice was challenged in the Supreme Court (Re: Cape Flattery Silica Mines Pty Ltd) whereby it was successfully contended that the new rental rate was payable only from the date of grant of the renewal of the lease. Provisions in the Instrument of Lease prescribed by the Mining Regulations 1968 triggered the operation of the exception contained in s.7.43(6) of the Mineral Resources Act which provides that the conditions of a renewed mining lease that differ from the expired lease are to apply from the commencement of the term, or the date the renewal is granted, whichever is the later.

The intention of the Mineral Resources Act is to prevent retrospective and onerous application of conditions of mining leases rather than provide an opportunity for a leaseholder to continue mining operations for an extended period of time at a reduced rental.

### **Estimated Cost for Government Implementation**

There will be no cost for Government as this is a long standing administrative practice which will continue once the legislation has put beyond doubt the matter of the right of the State to collect back-rentals on renewed mining leases.

### **Consultation**

The Crown Solicitor gave an opinion supporting the need for legislation. As this is an internal administrative matter which is well understood and accepted by the industry no external consultation was warranted.

### **NOTES ON PROVISIONS**

*Clause 1* sets out the short title of the Bill.

*Clause 2* provides for the commencement of the Bill. This commencement is to have retrospective effect to the date of proclamation of the Act in order to give statutory expression to long standing administrative practice of collecting back-rentals due on mining leases for the interim period between expiry of the lease and its renewal.

This provision does not impose a new obligation as the practice of collecting such back-rental is well understood and accepted by industry.

*Clause 3* the Mineral Resources Act 1989 is amended by this Act.

*Clause 4* this clause amends provisions relating to:

- . the renewal of a mining lease to give effect to administrative practice of allowing a lease which has not been renewed or rejected on or prior to its expiry, to continue in force and effect until such time as an application for renewal has been granted, rejected or withdrawn;

- . the date of commencement of the term of a renewed lease to be the day immediately after the day on which the lease expired;
- . new conditions of a renewed mining lease, other than rental, to take effect from the start of the term of the renewed lease or the day renewal is granted, whichever is the later. The rate of rental, however, is calculated at the rate which applies at the time the renewed term commences.

*Clause 5* provides for the amendment not to affect the Supreme Court decision (*Re: Cape Flattery Silica Mines Pty Ltd*) which indemnified that company from paying back-rental at the rate prescribed at the time the lease was due for renewal.

The provision regarding the court decision will expire on the day after the date of assent. Once that provision has taken effect the provision is then spent and need no longer exist.

*Clause 6* provides that standard procedures relating to the payment of rental on mining leases also apply to leases that have expired but are allowed to continue in force. Provision has been made to enable change by means of regulation if it is found in certain circumstances that imposition of those provisions is unworkable in respect of continuing leases.

*Clause 7* provides that rental on leases which are renewed under the Mineral Resources Act or have expired and are continuing in force until renewal under that Act, must be paid at the rate which applies in accordance with that Act.