

# **MINERAL RESOURCES AMENDMENT BILL 1995**

## **EXPLANATORY NOTE**

### **GENERAL OUTLINE**

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

To amend the *Mineral Resources Act 1989*—

- to provide a mechanism for regional prospecting in addition to the present parcel based approach
- to provide for any person to object to the granting of mining claims and mining leases through the Warden's Court process
- to address the control of contaminated land and hazardous substances that may be generated by exploration or mining activities
- to provide for life of mine environmental and rehabilitation planning by use of an Environmental Management Overview Strategy (EMOS)
- to modify the Environmental Impact Assessment (EIA) process to conform with the Inter-Governmental Agreement on the Environment (IGAE)
- to provide for Mining Registrars to convene conferences between parties to address issues of concern
- to provide for a number of mainly administrative changes to refine and streamline current practices and to improve the practical application of the existing legislation

**Reasons for the Bill**

The *Mineral Resources Act 1989* was assented to on 25 October 1989 after more than two years of consultation between Government, the mining industry and other affected parties, particularly major rural organisations.

The Act contains a number of major conceptual changes from those contained in the repealed legislation. It adopts a totally new approach to the definition of land, the mechanisms available to the mining industry for accessing land as well as setting a framework for improved environmental management and rehabilitation.

However, the proclamation of the legislation was delayed pending the outcome of the 1989 State election. Following the election the Honourable K Vaughan, then Minister for Resource Industries, convened a meeting (together with the Honourable E Casey, Minister for Primary Industries) of representatives from various rural, landholder and mining organisations as well as Local Government Association to address issues of concern.

In response to a joint submission from Ministers Vaughan and Casey Cabinet endorsed the basic principles of the legislation and agreed to amend the *Mineral Resources Act 1989* prior to its proclamation only in relation to those matters agreed between the parties.

The *Mineral Resources Act 1989* took effect as from 1 September 1990.

Minister Vaughan gave an undertaking to review the operations of the Act at the end of 12 months. It was envisaged that this would not be a general review of the Act and the principles on which it was based, but a review of its practical application.

A Committee consisting of representatives from both rural/landholder and mining industry organisations, as well as from the Local Government Association and the Department of Resources Industries (now Minerals and Energy) was established to assist in this regard.

The Committee only met twice (in November 1990 and December 1992) as no major issues were raised in the context of the practical application of the provisions of the legislation.

However, submissions were subsequently received from small scale prospectors and miners, recreational fossickers as well as large scale miners and explorers, landowners, conservation organisations, local authorities, educational institutions, other Government Departments and the legal

fraternity. A number of issues, particularly in relation to administrative matters, have also been raised by Departmental officers or as a result of legal advice. Other recent legislation and comments by EARC have also impacted on the legislation as currently drafted.

As a result of the submissions received it was decided to divorce recreational fossicking activities from commercial mining activities under a new Fossicking Bill.

The submissions and issues (other than those raised by recreational fossickers) form the basis of the Bill.

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

It is expected that the amendments should not create any material incremental costs to Government.

### **Consultation**

The contents of the Options Paper prepared following the review of the operations of the Act were discussed with the Queensland Mining Council, conservation groups, Local Government and peak rural organisations. Copies of the initial draft of the amendments were circulated to affected Government agencies, landowner groups and the mining industry and a number of minor concerns were addressed. Copies of a draft of the Bill were circulated on a confidential basis to all the above parties.

Landowner groups and the mining industry have indicated general acceptance of the Bill.

## NOTES ON PROVISIONS

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

*Clause 2* provides for the commencement of the Bill.

*Clause 3* sets out the Act which is being amended.

*Clause 4* updates the legislation to agree with current Commonwealth terminology.

*Clause 5* provides for the interpretation of certain words and phrases used in the legislation, the redefining of certain words and phrases and for the deletion of certain definitions.

“Act relating to mining” has been deleted as the “*Miners’ Homestead Leases Act 1913*” and the “*Mining Titles Freeholding Act 1980*” have been repealed. The purpose of the definition was to make it clear that these Acts were not included as Acts relating to mining.

“Director-General” has been deleted as this term has been replaced by “Chief Executive” in the legislation. “Chief Executive” is defined in the *Acts Interpretation Act 1954*.

“Member of the family” has been deleted as this definition is no longer applicable to this Act as it was used in relation to the granting of prospecting permits to recreational and tourist fossickers. These activities are now catered for under the Fossicking Act.

The definition of “company” now is in line with the National Code which supersedes the Queensland Code.

The definitions of “contaminated land”, “hazardous substance” and “rehabilitation” are inserted in line with the objective of this Bill to address the control of contaminated land and hazardous substances that may be generated by exploration or mining activities and the rehabilitation of land disturbed by mining.

Definitions of “district prospecting permit” and “parcel prospecting permit” have been inserted which refer to the relevant sections of the Act.

“Educational institution” is defined to allow for such institutions to hold permits for field excursions or mining tenures for educational and training purposes.

“Eligible person” has been expanded to provide for a local government to hold a mining claim or mining lease which is acquired under the *Local Government Act 1993* to allow the recovery of unpaid rates and for an educational institution to hold a prospecting permit, mining claim or mining lease under defined circumstances.

“Environment”, “environmental impact” and “environmental impact statement” provide an interpretation of these terms to clarify the scope of matters to be addressed in the Environmental Management Overview Strategy (EMOS).

The definition of “hand mining” has been updated in the current drafting style.

The definition of “holder” has been updated in the current drafting style.

Definitions for—

“prospecting permit”

“mining claim”

“exploration permit”

“mineral development licence” and

“mining lease”

establish the legal basis for these tenures and also allow police to take action under the Vagrants, Gaming and Other Offences Act over activities on the tenure.

A definition of “adjoining lots” has been inserted to clarify that lots separated only by a road are considered to be “adjoining lots” for the purposes of the issue of a parcel prospecting permit.

A “building” is defined to mean a fixed, roofed structure, completely or partly enclosed by walls.

To “enter” has been defined to clarify that a person may enter and remain on the land. This will eliminate the need to insert “and be upon” in various sections of the Act relating to entering land.

A definition of “mining project” has been inserted. A mining project refers to a mining operation worked as a single integrated unit and can include 1 or more mining leases.

“Mining registrar” has been defined to clarify who is the mining registrar for a mining district or in respect of particular land.

The definition of “occupier” is included to cater for circumstances where the owner of the land cannot be contacted eg the owner is overseas and there is no current address, travelling or unable to give consent because of illness.

The definition of “occupied land” has been updated to reflect the terminology used in the *Land Act 1994*.

The National Code supersedes the Queensland Code and “Officer” has been redefined to cater for this change.

A “permanent building” has been defined to mean a building not of a temporary nature.

Definitions of “restricted land”, “restricted land (category A)” and “restricted land (category B)” have been inserted. This will simplify the provisions in the various parts of the Act which relate to land where the holder of a tenure has no right to enter or have land included in the surface area of a tenure without the consent of the owner of the land.

“Road” has been redefined to give a road the meaning it is given by the *Land Act 1994*.

Definitions for “section 4.18 conference”, “section 5.39 conference”, “section 6.33 conference” and “section 7.19 conference” relate to the sections mentioned.

“Termination” has been defined to include expiry of a tenure.

The definition of “owner” has been amended to reflect the terminology now used in the *Land Act 1994*.

The definition of “Reserve” now reflects the current titles for the Government agencies.

The definition of “explore” has been amended to read ‘doing anything else prescribed under the regulation’ in place of ‘carrying on any other operation that the Minister in writing in the particular case approves’.

The definition of “mineral” has been expanded to include rock in slab or block form used for monumental purposes so that the mining of this rock is properly managed. In addition “clay”, “limestone” and “silica” have been amended to clarify that these are minerals when ‘mined for use’ rather than merely ‘used’.

*Clause 6* clarifies the meaning of “contaminated land” and sets out when an educational institution is eligible to apply for and hold a prospecting permit, mining claim or mining lease.

*Clauses 7 and 8* have been updated to reflect terminology used in the *Land Act 1994*.

*Clauses 9 and 10* remove the provision for a family prospecting permit and provides for two classes of prospecting permits, a district prospecting permit and a parcel prospecting permit. Entitlements under prospecting permits are pegging mining claims or mining leases, hand sampling, the use of metal detectors or other like hand held instruments and hand mining with the consent of the landowner.

A district prospecting permit provides for regional prospecting as distinct from parcel or property based prospecting. More than one district prospecting permit may be issued at the one time for a district. This will assist particularly small scale prospectors but will also enable exploration companies to do preliminary wide ranging reconnaissance. A district prospecting permit includes the whole of the mining district concerned but access to particular properties can only be made with the prior written consent of the landowner/occupier. Also camping is allowed only with the consent of the landowner/occupier.

A parcel prospecting permit is issued for a particular property (or adjoining properties of the one owner) only. The landowner does not have the right to deny entry on a parcel prospecting permit for the purpose of pegging mining claims or mining leases and camping is permitted with the consent of the landowner/occupier or if the mining registrar has endorsed on the permit that staying on the land is permitted. The mining registrar may impose conditions in that regard. In regard to reserve land, the consent of the owner is required before entry can be made for prospecting purposes. The consent of landowners is required before hand mining can be undertaken. Provision is made for the exclusion of particular land (restricted land (category A) and restricted land (category B)) from the holder’s entitlement to enter without the consent of the owner.

The consent of the holder of the exploration permit must be obtained before entry can be made on land that is within 50 metres laterally of where activities are being carried out under an exploration permit.

Sections of the Act relating to prospecting permits have been omitted and new sections inserted whilst other sections have been amended to reflect the

new categories of prospecting permits and also to update existing sections in the current drafting style.

*Clause 11* provides for an amount of security to be deposited. Also the provision to allow security to be used in payment of a penalty imposed has been removed.

Also the section is amended to provide for the mining registrar to extend the period after expiration of the prospecting permit during which the landowner may seek rectification of damage from 28 days to a maximum of 3 months where he considers that circumstances warrant such action. This will give a landowner more time to locate any areas disturbed and not rehabilitated by holders of prospecting permits.

The mining registrar must not refund security until any claim made against the security is decided.

*Clause 12* details the term for which district prospecting permits and parcel prospecting permits may be issued.

*Clause 13* amends the existing provisions to clarify that the section relates only to parcel prospecting permits.

*Clause 14* amends the existing section to allow notice of entry to be served on the occupier of the land to provide for giving notices in the case where an owner is not available.

This clause also provides for the advertisement of a notice of entry where the holder of a prospecting permit satisfies the mining registrar that it is impracticable to give the owner or occupier the notice.

*Clause 15* provides for appeals from decisions of the mining registrar in relation to prospecting permits to be heard by the Warden's Court rather than the Minister to bring the process into line with the requirements outlined in EARC Issues Paper No 14—Appeals from Administrative Decisions.

To start an appeal a written notice of appeal must be filed with the relevant mining registrar within 28 days of receiving notice of a decision. If the aggrieved person was not given reasons for the decision, the person can ask for a statement of reasons and then may file the notice of appeal within 28 days of being given the statement of reasons. The Wardens Court may extend the period for filing a notice of appeal.

A Wardens Court may stay a decision appealed against.



In deciding an appeal, the Wardens Court is not bound by any rules of evidence, must observe natural justice and may hear the appeal in court or chambers.

The Wardens Court may confirm the decision, set the decision aside and substitute another decision or set aside the decision and return the issue to the mining registrar with directions considered appropriate.

*Clause 16* makes it clear that the holder of a district prospecting permit may stay on land overnight only with the written consent of the owner whereas the holder of a parcel prospecting permit may stay on land overnight with the written consent of the owner or the mining registrar. The consent may be conditioned either by the landowner or, where the mining registrar gives consent, by the mining registrar. The holders are also required to dispose of rubbish and human waste in a safe and sanitary manner. A penalty for breach of the section is provided.

*Clause 17* amends the current section to clarify that the consent of the holder of any exploration permit (coal or mineral) on which the claim application is situated must be obtained to prevent the situation where a person could apply for a mining claim in an area of a known coal deposit which could inhibit the development of the resource.

Land excluded from the surface area of a mining claim unless the consent of the owner of the land has been obtained is no longer detailed, the existing section has been updated to use “restricted land” which is now defined in the Act.

*Clause 18* now provides for the dimensions of a mining claim to be prescribed by regulation.

*Clause 19* provides for an application for a mining claim to include a statement satisfactory to the mining registrar outlining the mining program proposed, giving the expected start of the operation, describing measures planned to minimise adverse environmental impact and including proposals to rehabilitate the land.

*Clause 20* amends the section to extend the time for lodgement of objections to the grant of a mining claim to at least 28 days from the issue of the certificate of application. The increased period will provide a local government with more opportunity to hold a Council meeting to consider an application.

*Clause 21* expands the existing provisions for a conference from one

requested by the landowner to provide for a mining registrar to hold a conference between parties in any circumstance where he considers it desirable and updates the section in the current drafting style.

*Clause 22* amends the existing section to allow objections to the grant of a mining claim to be made by an entity rather than be limited to an eligible person, local authority or owner of land. This will allow conservation and other interest groups the right to object to the grant of a mining claim. The sections are also updated in the current drafting style.

*Clauses 23 and 26* insert new provisions requiring the person granted a mining claim to give written notice to the owner of the land within 28 days of receipt of the notice of grant. Landowners will then be aware of the grant of the claim.

*Clause 24* is updated in conformity with other amendments.

*Clause 25* omits the words “one hearing” in the title of the section as this was misleading as the public and miners interpreted this as meaning the matter had to be completed at one sitting.

*Clause 27* amends the section to remove the provision to allow security to be used in payment of a penalty imposed.

In addition *Clause 27(4)* amends the section to include a provision for security to be also used on termination of a mining claim for payment of outstanding local government rates.

*Clause 28* amends the existing section to clarify that the determination of the Warden’s Court (or Land Court on appeal) in relation to compensation is binding on any subsequent owners of the land.

*Clause 29* clarifies that the Land Court when deciding an appeal is to consider the same matters as are provided for consideration in the Warden’s Court.

*Clause 30* inserts a new provision requiring the holder of a mining claim which is renewed to give written notice to the owner of the land within 28 days of receipt of the notice of renewal.

*Clause 31* changes the date before which rental must be paid to 1 April of each year.

*Clause 32* amends the existing section to make it clear that a certificate of grant of mining claim can only be corrected because of inaccuracies of grant description and that the correction applies only to mining issues.

*Clause 33* inserts a new provision that requires the holder of a mining claim which is being surrendered, other than for the purpose of taking up another mining claim or mining lease over the same land, to lodge a final rehabilitation report with the notice of surrender.

By giving a notice to the holder the mining registrar may direct the holder to rehabilitate the land to a level specified in the notice.

The mining registrar may accept the surrender of the mining claim only when satisfied that the land has been rehabilitated.

*Clause 34* inserts a new section that requires the holder of a mining claim which has been terminated to lodge a final rehabilitation report within 28 days after the termination of the claim.

By giving a notice to the holder the mining registrar may direct the holder to provide additional information in relation to the rehabilitation. The mining registrar may by notice direct the holder to rehabilitate the land to a level specified in the notice.

Authorisation is provided for entry on the land to comply with the directions given.

This provision does not apply where a final rehabilitation report and environmental audit report has been lodged when the mining claim was surrendered or where the claim was terminated for the grant of a new mining claim or mining lease over the same land.

*Clause 35* amends the existing section to provide for an appeal against a mining registrar's decision to require further rehabilitation of a mining claim. The section is also updated in respect of the current drafting style.

*Clause 36* amends the existing provisions to clarify that all property on a mining claim at the time of termination is to divest to the State. Owners of any of the property will be able to apply to remove their property.

The clause also provides for the power to return property to be discretionary so that proceeds from any sale can be used towards rectification of any damage or to cover other costs.

Provision is also made for the disposal or destruction of equipment or structures as well as sale.

The application of the proceeds of a sale are set out in order of importance.

The clause also specifies that no compensation is payable in respect of the sale or disposal of the property.

*Clause 37* updates the existing section in respect of the current drafting style. Land excluded from entry by the holder of an exploration permit without the consent of the owner of the land has been obtained is no longer detailed, the existing section has been updated to use “restricted land” which is now defined in the Act.

*Clause 38* ensures that the statement regarding the applicants financial and technical resources are separate from other statements. These particulars can then be kept confidential.

*Clause 39* amends the existing provisions to refer to exploration permits for minerals other than coal only. Provision is also made that compensation is not payable in respect of any reduction.

*Clause 40* inserts a new provision to provide for the periodic reduction in land subject to an exploration permit for coal from time to time as the Minister determines but not more than that specified for exploration permits for minerals other than coal. Provision is also made that compensation is not payable in respect of any reduction.

*Clause 41(1)* amends the present section to provide for the rehabilitation of the surface of the land. With the definition of rehabilitation this will include remediation of contaminated land.

*Clause 41(2)* inserts additional conditions to provide that the holder of an exploration permit give the Minister, if required, materials from the land and an environmental management plan for the activities undertaken.

*Clause 41(3)* makes provision for codes of practice in addition to codes of conduct.

*Clause 42* inserts a new provision to allow the holder of an exploration permit to give notice to the Minister of plans to carry out an environmental impact statement and for the Minister to provide guidelines for the preparation of the statement. A notice advising of the availability of draft guidelines for public comment is to be published. Comments can be made on the draft guidelines within a specified time.

*Clause 43(1)* and *(3)* amends the existing sections to remove provisions to allow security to be used in payment of a penalty imposed. Sub clause *(3)* is also updated in the current drafting style.

*Clause 43(2)* inserts a new provision to allow one security to be lodged in respect of all exploration permits held by a person and for the Minister to decide the amount of security required.

*Clause 43(4)* and (5) updates the existing section in the current drafting style.

*Clause 43(6)* and (7) insert new provisions to allow the Minister to refund the security held within 6 months of the termination of the exploration permit if the owner of the land gives written advice that the land does not need rehabilitation and that he will not be making a claim on the security. Refund in these circumstances will not be made in those cases where 1 security has been lodged in respect of a number of exploration permits. In these cases at the holder's request, the amount of security held may be reduced.

*Clause 44* amends the existing section to make it clear that an instrument of exploration permit can only be corrected because of inaccuracies of grant description and that the correction applies only to mining issues.

*Clause 45(1)* removes the ban on assignments of exploration permits during the first 12 months of their grant.

*Clause 45(2)* inserts a provision to allow approval of an assignment without the requirement for prior notification that the assignment will be approved to bring the assignment of exploration permits into line with the provisions of other sections of the Act where the Minister has discretion.

*Clause 46* inserts a new provision that requires the holder of an exploration permit which is being surrendered, other than for the purpose of taking up another exploration permit, a mineral development licence or a mining lease over the same land, to lodge a final rehabilitation report with the notice of surrender.

By giving a notice to the holder the Minister may direct the holder to rehabilitate the land to a specified level.

The Minister may accept the surrender of the exploration permit only if satisfied that the land has been rehabilitated.

*Clause 47* amends the existing legislation to provide for the holder of an exploration permit to give the landowner with the notice of entry, a copy of any relevant code of conduct or practice and of any statement given to the Minister relating to proposals to protect the environment and rehabilitate the

land. The notice is to describe the activities proposed. Notice is required to be given even when the entry is for the purpose of marking out a lease only. A copy of the notice is to be given to the mining registrar of the relevant Mining District.

Provision is also made for the notice of entry to be given to the occupier of the land in the case where a landowner is not available.

The existing section has also been updated in the current drafting style.

*Clause 48* inserts a new provision that requires the holder of an exploration permit which has been terminated, to lodge a final rehabilitation report within 28 days of the termination of the permit.

By giving a notice to the holder the Minister may direct the holder to provide additional information in relation to the rehabilitation. The Minister may by notice direct the holder to rehabilitate the land to a level specified in the notice. Authorisation is provided for entry on the land to comply with the directions given.

This provision does not apply when a final rehabilitation report has been lodged with a notice of surrender or where the permit is terminated for the grant of another exploration permit, mineral development licence or a mining lease for the same land.

*Clause 49* amends the existing section to include provision for the mining registrar to hold a conference between parties in any circumstance where he considers it desirable and updates the section in the current drafting style.

*Clause 50* updates the existing section in respect of the current drafting style. Land excluded from entry by the holder of a mineral development licence without the consent of the owner of the land having been obtained is no longer detailed, the existing section has been updated to use “restricted land” which is now defined in the Act.

*Clause 51* inserts a new provision, in line with the provisions relating to exploration permits, to allow land to be automatically added to a mineral development licence where a prior mining claim or mining lease (excluded from the licence) is terminated.

*Clause 52(1)* amends the present section to clarify that the exploration permit referred to is the prerequisite tenure.

*Clause 52(2)* amends the present section to require the application for a

mineral development licence to include, if the activities proposed could affect the environment, a statement containing proposals to protect the environment and for progressive and final rehabilitation of the land.

The section is also amended to ensure that the statement regarding the applicants' financial and technical resources are separate from other statements. These particulars can then be kept confidential.

*Clause 53(1), (2) and (4)* amends the section to remove the provision to allow security to be used in payment of a penalty imposed.

*Clause 53(3)* deletes "the expiration of" as this is no longer necessary in view of the insertion of a definition for "termination".

*Clause 54* changes the date before which rental must be paid to 1 April of each year.

*Clause 55(1)* amends the present section to provide for the rehabilitation of the surface of the land. With the definition of rehabilitation this will include remediation of contaminated land.

*Clause 55(2)* removes the requirement to lodge relinquishment reports as there is no reduction requirement attached to mineral development licences and inserts additional conditions to provide that the holder of a mineral development licence give the Minister, if required, materials from the land and an environmental management plan for the activities undertaken.

*Clause 55(3)* makes provision for codes of practice in addition to codes of conduct.

*Clause 56* inserts a new provision to allow the holder of a mineral development licence to give notice to the Minister of plans to carry out an environmental impact statement and for the Minister to provide guidelines for the preparation of the statement. A notice advising of the availability of draft guidelines for public comment is to be published. Comments can be made on the draft guidelines within a specified time.

*Clause 57* inserts a provision to allow approval of an assignment without the requirement for prior notification that assignment will be approved to bring the assignment of mineral development licences into line with the provisions of other sections of the Act where the Minister has discretion.

*Clause 58* amends the existing section to make it clear that an instrument of mineral development licence can only be corrected because of inaccuracies of grant description and that the correction applies only to

mining issues.

*Clause 59* inserts a provision to allow the holder of a mineral development licence to make application to add other minerals to the licence. Approval may be given on conditions including conditions requiring the lodgement of additional security.

*Clause 60* inserts a new provision that requires the holder of a mineral development licence which is being surrendered, other than for the purpose of taking up another mineral development licence or a mining lease over the same land, to lodge a final rehabilitation report with the notice of surrender.

By giving a notice to the holder the Minister may direct the holder to rehabilitate the land to a level specified in the notice.

The Minister may accept the surrender of the mineral development licence only if satisfied that the land has been rehabilitated.

*Clause 61* amends the existing legislation to provide for the holder of a mineral development licence to give the landowner with the notice of entry, a copy of any relevant code and of any statement given to the Minister relating to proposals to protect the environment and rehabilitate the land. A copy of the notice is to be given to the mining registrar of the relevant Mining District.

Provision is also made for the notice of entry to be given to the occupier of the land in the case where a landowner is not available.

The existing section has also been rewritten in the current drafting style. Separate sections deal with giving notice of entry and renewal of the notice.

*Clause 62* inserts a new provision that requires the holder of a mineral development licence which has been terminated, to lodge a final rehabilitation report within 28 days of the termination of the licence.

By giving a notice to the holder the Minister may direct the holder to provide additional information in relation to the rehabilitation. The Minister may by notice direct the holder to rehabilitate the land to a level specified in the notice. Authorisation is provided for entry on the land to comply with the directions given.

This provision does not apply when a final rehabilitation report has been lodged with the surrender of the licence or where the licence is terminated for the grant of a further mineral development licence or a mining lease for the same land.



*Clause 63* amends the existing section to include provision for the mining registrar to hold a conference between parties in any circumstance where he considers it desirable and updates the section in the current drafting style.

*Clause 64* amends the existing provisions to clarify that all property on a mineral development licence at the time of termination is to divest to the State. Owners of any of the property will be able to apply to remove their property.

The clause also makes the power to return property discretionary so that proceeds from any sale can be used towards rectification of any damage or to cover other costs.

Provision is also made for the disposal or destruction of equipment as well as sale.

The application of the proceeds of a sale are set out in order of importance.

The clause also specifies that no compensation is payable in respect of the sale or disposal of the property.

*Clause 65* inserts a new section to provide for the holder of a mining lease to have access with the written approval of the Minister for the purpose of drilling or other activities associated with the development of the mine, to land within the lease boundaries not being part of the surface area of the lease. The Minister's approval will be subject to the consent of the landowner (and payment of any required compensation), and any conditions and security as determined by the Minister.

*Clause 66* updates the existing section in respect of the current drafting style. Land excluded from the surface area of a mining lease unless the consent of the owner of the land has been obtained is no longer detailed, the existing section has been updated to use "restricted land" which is now defined in the Act.

*Clause 67(1)* amends the present section to clarify that the exploration permit or mineral development licence referred to is the prerequisite tenure.

*Clause 67(2)* amends the present section to ensure that the statement regarding the applicants' financial and technical resources is separate from other statements. These particulars can then be kept confidential.

The section is also amended to require the application for a mining lease

to be accompanied by an environmental management overview strategy.

*Clause 67(3)* provides for an environmental management overview strategy to cover all leases in a mining project.

*Clause 68* inserts new sections to provide that when a mining lease application is made in respect of land that is the subject of an exploration permit or a mineral development licence or a prior application for a permit or licence, then

- if it is for the same mineral or minerals the consent in writing of the holder of the prior title or application must be lodged with the mining registrar on or before the date for the lodgement of objections; or
- if it is for a different mineral or minerals the views in writing of the holder of the prior title or application must be lodged with the mining registrar on or before the last date for the lodgement of objections.

In the case of prior applications which have not been determined provision is made for the application for the mining lease not to proceed to hearing in the Warden's Court until the exploration permit or mineral development licence has been determined. In this case the consent of the holder is to be obtained within 28 days after the exploration permit or mineral development licence is granted.

Where consent is not received within the time stated, the mining registrar must recommend the mining lease application to the Minister for rejection.

If the views cannot be obtained the applicant must lodge a statutory declaration to this effect with the mining registrar and the mining lease application can proceed to the Warden's Court for consideration.

*Clause 69* clarifies that the mineral development licence referred to is not the prerequisite tenure.

*Clause 70(1)* amends the section to extend the time for lodgement of objections to the grant of a mining lease to at least 28 days from the issue of the certificate of application. The increased period will provide a local government with more opportunity to hold a Council meeting to consider the application.

*Clause 70(2)* amends the section to require the applicant for a mining lease to also give a copy of the application and the certificate of application

to the holders of, or applicants for, exploration permits and mineral development licences for the same mineral or minerals and also to the holders of, or applicants for, exploration permits and mineral development licences for another mineral or minerals. It also specifies that the statement detailing the applicant's financial and technical resources is not a part of the application for these purposes.

The clause also updates the section to reflect the current term used of local government (formerly local authority).

*Clause 71* inserts a new provision to allow the mining registrar to issue a replacement certificate of application.

*Clause 72* expands the existing provisions for a conference from one requested by the landowner to provide for a mining registrar to hold a conference between parties in any circumstance where he considers it necessary and/or appropriate and updates the section in the current drafting style.

*Clause 73* amends the existing section to allow objections to the grant of a mining lease to be made by an entity rather than be limited to an eligible person, local authority or owner of land. This will allow conservation and other groups the right to object to the grant of a mining lease.

*Clause 74* replaces the current provisions to provide for additional public participation in the environmental impact process.

The Minister may, prior to the last day set by the mining registrar for the lodgement of objections, notify the applicant for a mining lease that a study into the environmental impact of any mining or other activities proposed will be required to be undertaken and an acceptable environmental impact statement submitted before consideration will be given to the grant of a mining lease.

The mining registrar is to post at his office a notice advising—

- the Minister's requirement for an environmental impact statement;
- the extension of time for the lodgement of objections until two months after the availability of the completed environmental impact statement and the deferral of the hearing of the application in the Warden's Court accordingly.

The mining registrar must forward a copy of this notice to the applicant,

the owner of the land, the local government and each objector, if any.

The applicant must publish a copy of the notice in a newspaper circulating in the mining district.

The Warden is not to commence the hearing of the application where an environmental impact statement is requested until after the last date fixed for objections as a result of the Minister calling for the statement.

The Minister is to provide draft guidelines to the applicant within 28 days of giving notice to the applicant that an environmental impact statement is required.

The mining registrar is to post at his office a notice advising that the draft guidelines are available for public comment for 28 days and forward a copy of this notice to the applicant, the owner of the land, the local government and each objector, if any.

The mining lease applicant must place a notice in a newspaper approved by the mining registrar and circulating in the district, advising that an environmental impact statement is required in respect of the lease, the period of lodgement of objections has been extended until 2 months after the availability of the completed statement and that guidelines are available from the mining registrar for public comment for 28 days. A statutory declaration in this regard must also be lodged by the applicant with the mining registrar.

The Minister must give final guidelines to the applicant, owner of land covered by the application, local government and any person who had already lodged an objection within 28 days of the last date for the receipt of written comments.

After the environmental impact statement is prepared the applicant is to lodge as many copies as the Director General considers appropriate with the Department.

The Director General will forward a copy of the statement to the mining registrar who after receiving the copy must—

- fix a date on or before which objections to the application may be lodged, such date to be 2 months after notification of availability of the statement to the public;
- post at his office and keep posted until the last date for the receipt of objections a notice that—

- the statement has been received and may be inspected at the office during normal hours of business;
  - a copy of the statement may be obtained from the mining registrar at a cost as near as possible to the actual cost of providing the copy; and
  - objections may be lodged in writing with the mining registrar on or before the date fixed for lodgement of objections;
- forward a copy of the notice to the applicant, the owner of the land, the local government and each objector, if any.

The applicant is required also to place a copy of the notice in a newspaper approved by the mining registrar and circulating in the district. He must also lodge a statutory declaration in this regard with the mining registrar.

*Clause 75(1)* inserts a provision to require the Warden to consider the rights of holders of or applicants for prior exploration permits or mineral development licences when making a recommendation to the Minister.

*Clause 75(2)* changes the word “effect” to “impact” to reflect the term used in the definition.

*Clause 76(1)* and (3) replaces existing provisions relating to plans of operations and rehabilitation to place emphasis on the environmental management overview strategy (EMOS) and plans of operations to require—

- plans of operations to be in accordance with the accepted environmental management overview strategy;
- mining activities to be conducted in line with the accepted environmental management overview strategy and the plan of operations; and
- the holder to conduct an environmental audit for any plan of operations or variation thereto and submit a report.

*Clause 76(2)* inserts an additional condition to provide that the holder of a mining lease give materials to the Minister, if required.

*Clause 76(4)* makes provision for codes of practice in addition to codes of conduct.

*Clause 77(1)* updates the existing section in respect of the current

drafting style and removes the requirement for the Minister to determine the amount of security prior to grant or renewal of the lease. Provision is made for security to be lodged for all mining leases in a mining project with the plan of operations (before mining commences).

*Clause 77(2), (3) and (4)* amends the section to remove the provision to allow security to be used in payment of a penalty imposed.

*Clause 77(5)* amends the section to include a provision for security to be used also on termination of a mining lease for payment of outstanding local government rates.

*Clause 77(6)* inserts a section establishing the order of importance of the uses to which a security may be put.

*Clause 78* amends the section to clarify that the determination of the Warden's Court (or Land Court on appeal) in relation to compensation is binding on any subsequent owners of the land.

*Clause 79* clarifies that the Land Court when deciding an appeal is to consider the same matters as are required for consideration in the Warden's Court.

*Clause 80* replaces the existing sub section to include provisions to require the application for renewal of a mining lease to be accompanied by—

- an endorsement of the current environmental management overview strategy and plan of operations; or
- an amended environmental management overview strategy and plan of operations or variation thereto which are acceptable to the Minister.

*Clause 81* inserts a new section to require the holder of a mining lease to advise the landowner of the grant or renewal of the lease within 28 days of receiving notice of the grant or renewal.

*Clause 82* omits the section which required that a mining lease should be surveyed prior to grant.

*Clause 83* replaces the existing section and provides that a mining lease may be granted or renewed and the instrument of lease issued even though the lease has not been surveyed.

*Clause 84* changes the date before which rental must be paid to 1 April

of each year.

*Clause 85* replaces the existing section to strengthen the relationship between the environmental management overview strategy (EMOS) and the plan of operations by providing for holders of mining leases to submit an environmental audit statement of the plan of operations or variation thereof. The plan and statement can relate to a mining project which may include more than 1 lease.

*Clause 86* amends the existing section to make it clear that a mining lease can be varied only because of inaccuracies of grant description and that the variation applies only to mining issues.

*Clause 87* inserts an additional provision in the section to give the opportunity to the holder of adjoining leases who desires to consolidate the leases to include any gaps between areas by making application to the Warden's Court to have the leases deemed to be contiguous.

The survey requirement has been removed and the phrase "on the recommendation of the Minister" prior to "the Governor in Council" has been omitted in line with current drafting practice.

*Clause 88* inserts a new provision that requires the holder of a mining lease which is being surrendered, other than for the purpose of taking up another mining lease over the same land, to lodge a final rehabilitation report and an environmental audit statement with the notice of surrender.

The Minister may by notice direct the holder to further rehabilitate the land and lodge a further rehabilitation report and environmental audit statement.

The Minister may accept the surrender of the mining lease only when satisfied that the land has been rehabilitated.

*Clause 88(4)* omits words in line with current drafting principles.

*Clause 89* amends the existing provisions to clarify that all property on a mining lease at the time of termination is to divest to the State. Owners of any of the property will be able to apply to remove their property.

The clause also makes the power to return property discretionary so that proceeds from any sale can be used, where insufficient security is held, towards rectification of any damage or to recover other costs.

Provision is also made for the disposal or destruction of equipment or structures as well as sale. The application of the proceeds of a sale are set

out in order of importance.

The clause also specifies that no compensation is payable in respect of the sale or disposal of property.

*Clause 90* clarifies the intention of the legislation that, with the approval of the Minister, exploration and other activities (excluding the winning or extracting of minerals) which are not entitlements from a pre-requisite tenure can be conducted on the mining lease application.

The clause also clarifies that the section does not limit the entitlements of the applicant for the mining lease.

*Clause 91* amends the present section to allow an application for a mining lease for carriage through land to be lodged and accepted by the mining registrar even though the land may be covered by an exploration permit or mineral development licence. Mechanism is provided for the holder of the exploration permit or mineral development licence to be notified and given the opportunity to object to the mining lease application. The consent of the holder of the exploration permit or mineral development licence is no longer required for a lease for this purpose.

*Clause 92* inserts a new provision that requires the holder of a mining lease which has been terminated, other than for the grant of a further mining lease, to lodge a final rehabilitation report and an environmental audit statement within 28 days of the notice of termination.

The Minister may by notice direct the holder to further rehabilitate the land and lodge a further rehabilitation report and environmental audit statement. Authorisation is provided for entry on the land to comply with the directions given.

This provision does not apply where a final rehabilitation report and environmental audit report has been lodged when the mining lease was surrendered or the lease was terminated for the grant of a further mining lease or mining claim for the same land.

*Clause 93* omits provisions which are catered for under the *Acts Interpretation Act 1954*.

*Clause 94* inserts an additional subsection to provide for an officer specified by regulation.

*Clause 95* replaces the existing provisions relating to the appointment, terms and conditions of employment of Wardens to clarify these issues.



*Clause 96* omits the existing section as the appointment of acting wardens is dealt with in Clause 95.

*Clause 97* inserts a new section to provide that where the Warden cannot hold the Court, a mining registrar has the jurisdiction and powers of a Warden for purposes of setting a matter down for hearing, adjourning a matter which is before the Wardens Court or entering judgment for an amount limited to the monetary jurisdiction prescribed by the Magistrates Court Act.

*Clause 98* provides for an increase in the powers of the warden concerning the granting of orders regarding information obtained during the course of an investigation for a Warden's Court hearing or inquiry.

*Clause 99* replaces the current section to provide for a person aggrieved by a direction given by a mining registrar, field officer or other authorised officer to apply to the warden for a review of the direction rather than to the Minister.

*Clause 100* amends the current provisions to delete the requirement for the surveyor to be approved by the Minister and the reference to Section 7.45 which has been omitted from the legislation.

*Clause 101* updates the existing section to conform with current drafting principles.

*Clause 102* updates the existing section in respect of the current drafting style and also deletes the reference to forms which are no longer prescribed in the Regulation.

*Clause 103* amends the present provisions to delete reference to orders in council which are now included in the Regulation.

*Clause 104* inserts new sections to provide—

- that any reference to “Director-General” means “Chief Executive” in line with current definitions in the *Acts Interpretation Act 1954*;
- that a reference in an Act or document to the *Mining Act 1898* and the *Mining Act 1968* is taken to be a reference to the Mineral Resources Act;
- for the renumbering of the sections of the Mineral Resources Act when next reprinted in line with the numbering required by the *Reprints Act 1992*.

*Clause 105(1)* amends the existing clause in Schedule 2 to provide for the continuance of a caveat or mortgage registered in respect of a mining claim converted to a mining lease.

*Clause 105(2)* inserts an additional clause to provide that the consent of the owner or the Governor in Council has to be obtained to disturb the surface of a reserve included in a mining lease that was granted under the *Mining Act 1968*.

*Clause 105(3)* amends the existing clause in Schedule 2 to clarify that the lease is granted under the *Mining Act 1968*.

*Clause 105(4)* inserts an additional clause in Schedule 2 to provide for the continuance of a caveat or mortgage registered in respect of a mining lease converted to a mineral development licence.

*Clause 106* clarifies that Schedule 2 to the Draft Bill amends the Acts mentioned in the Schedule.

## **SCHEDULE 1**

### **MINOR AMENDMENTS**

The minor amendments made in this schedule reflect other amendments made and changes in drafting practices. Unnecessary transitional provisions have also been removed.

## **SCHEDULE 2**

### **ACTS AMENDED**

#### **JUDGES' SALARIES AND PENSIONS ACT 1967**

The *Judges' Salaries and Pensions Act 1967* is amended to provide for the salary of mining wardens to be fixed under that Act.

## CONTAMINATED LAND ACT 1991

The *Contaminated Land Act 1991* is amended to provide for delegation to an officer of the public service.

## PENALTIES AND SENTENCES ACT 1992

The *Penalties and Sentences Act 1992* is amended to provide the Warden's Court with the power to impose penalties as provided under that Act.