



Western Australia

Mining Act 1978

**Incorporating the amendments proposed by
the *Mining Amendment Bill 2022* that relate to
prescribed fees for objections**

Note:

Pt. I-III A, Pt. IV Div. 4 and 5, Pt. IVA-VIII, and First-Third Sch. have been omitted as they are not amended by the amendments that are incorporated into this consultation draft.

Mining Act 1978

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Western Australia

Mining Act 1978

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

Consultation Draft

[\[Parts I-III A omitted as they are not amended by the Mining Amendment Bill 2022, or not amended by the amendments that are incorporated into this consultation draft.\]](#)

Part IV — Mining tenements

Division 1 — Prospecting licence

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

40. Grant of prospecting licence

- (1) Subject to this Act, the mining registrar or the warden, in accordance with section 42, may, on the application of any person grant to that person a licence to be known as a prospecting licence which shall be subject to such conditions as are prescribed or are imposed pursuant to section 24, 24A or 25 or are specified in the licence.
- (2) The area of land in respect of which any one prospecting licence may be granted shall not exceed 200 ha.
- (3) A person may be granted more than one prospecting licence.

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

41. Application for prospecting licence

- (1) An application for a prospecting licence —
 - (a) shall be made in the prescribed form; and
 - (b) shall be accompanied by the amount of the prescribed rent for the first year or portion thereof as prescribed; and
 - (c) shall be made by reference to a written description of the area of land in respect of which the licence is sought, and be accompanied by a map on which are clearly delineated the boundaries of that area; and
 - [(d) deleted]*
 - (e) shall be lodged in the prescribed manner; and
 - (f) shall be accompanied by the prescribed application fee.
- (2) Within the prescribed period the applicant shall serve such notice of the application as may be prescribed, on the owner and occupier of the land to which the application relates and on such other persons as may be prescribed.

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

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

42. Determination of application for prospecting licence

- (1) A person who wishes to object to the granting of an application for a prospecting licence must lodge a notice of objection. ~~shall lodge a notice of objection within the prescribed time and in the prescribed manner.~~

(1A) A notice of objection must be —

- (a) lodged within the prescribed time and in the prescribed manner; and
(b) accompanied by the prescribed fee.

- (2) Where no notice of objection is lodged within the prescribed time, or any notice of objection is withdrawn, the mining registrar may —
- (a) grant the prospecting licence if satisfied that the applicant has complied in all respects with the provisions of this Act; or
 - (b) refuse the prospecting licence if not so satisfied.
- (3) Where a notice of objection —
- (a) is lodged within the prescribed time; or
 - (b) is not lodged within the prescribed time but is lodged before the mining registrar has granted or refused the prospecting licence under subsection (2) and the warden is satisfied that there are reasonable grounds for late lodgment,

and the notice of objection is not withdrawn, the warden shall hear and determine the application for the prospecting licence on a day appointed by the warden and may give any person who

has lodged such a notice of objection an opportunity to be heard.

[Section 42 inserted: No. 58 of 1994 s. 9(1); amended: No. 39 of 2004 s. 56; No. 12 of 2010 s. 17; [Mining Amendment Bill 2022.](#)]

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

- (1) Where an application for a prospecting licence relates to land that is, or was when the application was made, the subject of a mining tenement, any prospecting licence granted in respect of that application shall not include that land.
- (2) Subsection (1) does not apply in relation to a special prospecting licence granted under section 56A, 70 or 85B or a prospecting licence granted in respect of an application under section 56B or a reversion licence application.

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

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

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

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

45. Term of prospecting licence

- (1) A prospecting licence shall, subject to this Act, remain in force for a period of 4 years from and including the date on which it was granted, and shall then expire.
- (1a) Notwithstanding subsection (1) the Minister may, if satisfied that a prescribed ground for extension exists, extend the term of a prospecting licence —
 - (a) by one period of 4 years; and
 - (b) if the licence has retention status, by a further period or periods of 4 years.

- (1b) An application for the extension of the term of a prospecting licence under subsection (1a) (an *extension application*) shall be made within the prescribed time and in the prescribed manner.
- (1c) If an extension application is made in respect of a prospecting licence and the term of the licence would but for this subsection expire, the licence continues in force in respect of the land the subject of the extension application until the application is determined.
- (1d) If —
- (a) an extension application is made in respect of a prospecting licence the term of which has been extended under subsection (1a)(a); and
 - (b) an application for retention status in respect of the prospecting licence —
 - (i) is pending when the extension application is made; or
 - (ii) is made at the same time as the extension application,the extension application shall not be determined until the application for retention status has been determined.
- (1e) If the holder of a prospecting licence transfers the licence after making an extension application in respect of the licence, the extension application continues in the name of the transferee of the licence as if the transferee had made it.
- (2) When a prospecting licence is surrendered, forfeited or expires the land the subject of the prospecting licence or any part thereof shall not be marked out or applied for as a prospecting licence or an exploration licence —
- (a) by or on behalf of the person who was the holder of the prospecting licence immediately prior to the date of the surrender, forfeiture or expiry; or
 - (b) by or on behalf of any person who had an interest in the prospecting licence immediately prior to that date; or
 - (c) by or on behalf of any person who is related to a person referred to in paragraph (a) or (b),
- within a period of 3 months from and including that date.

- (2a) For the purposes of subsection (2)(b) the holding of shares in a listed public company which held the prospecting licence in question does not of itself constitute an interest in the prospecting licence.

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

46. Conditions attached to every prospecting licence

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

- (a) that all minerals of economic interest discovered in or on the land the subject of the prospecting licence be promptly reported in writing by the holder to the Minister;
- (aa) that no ground disturbing equipment will be used by the holder when prospecting on the land the subject of the prospecting licence unless —
 - (i) the holder has lodged in the prescribed manner a programme of work in respect of that use; and
 - (iia) the holder has paid the prescribed assessment fee in respect of the programme of work; and
 - (ii) the programme of work has been approved in writing by the Minister or a prescribed official;
- (b) that all holes, pits, trenches and other disturbances to the surface of the land the subject of the prospecting licence which are —
 - (i) made while prospecting; and
 - (ii) in the opinion of a prescribed official, likely to endanger the safety of any person or animal,will be filled in or otherwise made safe to the satisfaction of the prescribed official;

- (c) that all necessary steps are taken by the holder to prevent fire, damage to trees or other property and to prevent damage to any property or damage to livestock by the presence of dogs, the discharge of firearms, the use of vehicles or otherwise.

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

46A. Conditions for prevention or reduction of injury to land

- (1) Reasonable conditions may be imposed on the holder of a prospecting licence for the purpose of preventing or reducing, or making good, injury to the land in respect of which the licence is sought or was granted, or injury to anything on or below the natural surface of that land or consequential damage to any other land.
- (2) A condition may be imposed under this section —
- (a) by the mining registrar, the warden or the Minister on the granting of the licence; or
- (b) by the Minister at any subsequent time.
- (3) A condition imposed under this section may be cancelled or varied by the Minister at any time.
- (4) A condition imposed in relation to a licence under this section —
- (a) may, either in full or with sufficient particularity as to identify the recommendation or other source from which it derives, be endorsed on the licence, for which purpose the holder of the licence shall produce the licence on demand; and
- (b) whether or not so endorsed, on notice of the imposition of the condition being given in writing to the holder of the licence shall for all purposes have effect as a condition to which the licence is subject.

[Section 46A inserted: No. 22 of 1990 s. 12; amended: No. 58 of 1994 s. 9(2); No. 12 of 2010 s. 5.]

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

- (1) On an application for a prospecting licence or on a prospecting licence being granted the land affected is not thereby required to be surveyed, but where a dispute arises with respect to the position of such land or the boundaries or any boundary thereof the warden or Minister may require a survey to be made of the boundaries or the boundary in order to settle the dispute.
- (2) A survey required under subsection (1) shall be —
 - (a) arranged in accordance with the regulations; and
 - (b) paid for by such party or parties to the dispute as the warden or the Minister determines.

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

48. Rights conferred by prospecting licence

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

- (a) to enter and re-enter the land the subject of the licence with such agents, employees, vehicles, machinery and equipment as may be necessary or expedient for the purpose of prospecting for minerals in, on or under the land;
- (b) to prospect, subject to any conditions imposed under section 24, 24A or 25, for minerals, and to carry on such operations and carry out such works as are necessary for that purpose on such land including digging pits, trenches and holes, and sinking bores and tunnels to the extent necessary for the purpose in, on or under the land;
- (c) to excavate, extract or remove, subject to any conditions imposed under section 24, 24A or 25, from such land, earth, soil, rock, stone, fluid or mineral bearing substances in such amount, in total during the period for which the licence remains in force, as does not exceed the prescribed limit, or in such greater amount as the Minister may, in any case, approve in writing;

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

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

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

- (1) The holder of a prospecting licence has —
- (a) subject to this Act and to any conditions to which the prospecting licence is subject; and
 - (b) while the prospecting licence continues in force,
- the right to apply for, and subject to section 75(9) to have granted pursuant to section 75(7), one or more mining leases or one or more general purpose leases or both in respect of any part or parts of the land the subject of the prospecting licence.
- (2) Where an application for a mining lease or a general purpose lease is made by the holder of a prospecting licence in respect of any land and the term of the prospecting licence would but for this subsection expire, that licence shall continue in force in respect to the land the subject of that application until the application for a lease is determined.
- (3) If, after an application is made under subsection (1) in respect of land the subject of a prospecting licence —
- (a) the holder of the licence transfers the licence; or
 - (b) where there are 2 or more holders of the licence, a holder transfers the holder's interest in the licence,
- the application continues in the name of the transferee of the licence or interest as if the transferee were the applicant or one of the applicants, as the case requires.

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

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

50. Compliance with expenditure conditions

- (1) During the currency of a prospecting licence the holder thereof shall comply with the prescribed expenditure conditions relating thereto unless in accordance with this Act total or partial exemption therefrom is granted.
- (2) In the case of a prospecting licence that has retention status, expenditure conditions prescribed for the purposes of subsection (1) —
- (a) shall provide for a reduction calculated in the prescribed manner of the amount of expenditure required during the year of the term of the licence in which retention status is approved; and
- (b) shall not require expenditure during any subsequent year of the term of the licence.

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

51. Reports of work and expenditure

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

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

51A. Geological samples

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

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

52. Security relating to prospecting licence

- (1) The applicant for a prospecting licence shall lodge in the prescribed manner and within the prescribed period a security, in respect of each prospecting licence to which the application relates, for compliance with the conditions to which the prospecting licence, if granted, will from time to time be subject and with the provisions of this Part and the regulations.
- (1a) The Minister may require the holder of a prospecting licence to lodge, in the prescribed manner and within such period as the Minister specifies in writing, an additional security for compliance with conditions imposed in relation to the licence under section 46A.
- (2) A security referred to in subsection (1) or (1a) shall be in accordance with and subject to the provisions of section 126.
- (3) A prospecting licence shall not be granted unless a security has been lodged by the applicant for the prospecting licence in accordance with subsection (1).
- (4) Notwithstanding section 154(1), an applicant for a prospecting licence who fails to comply with subsection (1) does not commit an offence against this Act.

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

53. Application for retention status

- (1) In this section —
prospecting licence does not include a prospecting licence that is a primary tenement for the purposes of Division 2A.
- (2) The holder of a prospecting licence may apply to the Minister for approval of retention status under section 54.
- (3) An application under subsection (2) —
 - (a) shall be in writing; and
 - (b) shall be made in the prescribed manner; and
 - (c) shall contain the prescribed information; and
 - (d) shall be accompanied by any map, statement or other information required by the regulations; and
 - (e) shall be accompanied by the prescribed application fee.

- (4) For the purposes of subsection (3)(d), but without limiting section 162(5), the regulations may require a statement or other information to be in the form of a statutory declaration.
- (5) If the holder of a prospecting licence transfers the licence after making an application under subsection (2) in respect of the licence, the application continues in the name of the transferee of the licence as if the transferee had made it.

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

54. Approval of retention status

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

- (6) If retention status is approved for part of the land the subject of a prospecting licence, the holder of the prospecting licence shall mark out in the prescribed manner the boundaries of the land covered by the approval as soon as practicable after the day on which the approval takes effect.
- (7) If retention status is approved for part of the land the subject of a prospecting licence, the land not covered by the approval ceases to be the subject of the licence on the day on which the approval takes effect.

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

55. Consultation with other Ministers

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

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

55A. Programme of work

- (1) On the approval of retention status under section 54, or at any subsequent time, the Minister may impose on the holder of the prospecting licence a condition requiring the holder to comply with a specified programme of work in respect of the land the subject of the licence within a specified period.

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

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

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

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

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

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

56. Appeal against refusal to grant prospecting licence

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

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

56A. Special prospecting licences

- (1) Where any land is the subject of a prospecting licence (in this section called the *primary tenement*) then, notwithstanding section 117, a person may at any time after the expiry of 12 months from —
 - (a) in the case of land which was the subject of a mineral claim or dredging claim granted under the repealed Act that by the operation of the transitional provisions set forth in the Second Schedule Division 1 became subject to the primary tenement, the date of approval of the claim; and
 - (b) in any other case, unless subsection (1aa) applies, the date on which the primary tenement was granted,mark out and, in accordance with section 41, apply for a prospecting licence for gold (in this section called a *special prospecting licence*) in respect of any part of the land the subject of the primary tenement.

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

Mining Act 1978

Part IV

Mining tenements

Division 1

Prospecting licence

s. 56A

- (2) Unless subsection (5a) applies, an applicant for a special prospecting licence shall, within the prescribed period, serve notice of his application on the holder of the primary tenement as if that holder were the occupier of the land to which that application relates, and subsections (3) to (5) apply in respect of that application.
- (3) If, after being served with notice of an application for a special prospecting licence, the holder of the primary tenement does not lodge an objection against that application, the mining registrar may, subject to this Act, grant that application as provided in subsection (6).

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

(a) the notice of objection must be —

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

(ii) accompanied by the prescribed fee;

and

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

~~(4) If the holder of the primary tenement lodges an objection to an application for a special prospecting licence, the warden shall obtain a report from the Director, Geological Survey, in respect of the prospecting carried on by the holder of the primary tenement on the land to which the application relates.~~

- (4a) A report prepared by the Director, Geological Survey for the purposes of subsection (4)(b)~~subsection (4)~~ is to be based solely on information contained in reports filed by or on behalf of the holder of the primary tenement under section 51 or 115A.
- (5) After hearing an objection referred to in subsection (4), the warden may refuse the application for the special prospecting licence concerned on the ground that prospecting for gold on the land to which that application relates would result in undue detriment to the prospecting being carried on by the holder of the primary tenement or he may recommend that application to the Minister, who may —
- (a) refuse that application; or

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

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

- (5a) If at the time when an applicant for a special prospecting licence marked out the land to which his application relates —
- (a) a special prospecting licence was in force in respect of land the subject of the primary tenement; or
 - (b) another application for a special prospecting licence in respect of land the subject of the primary tenement had been made, but had not been determined, under this section,

the applicant shall, within the prescribed period and in the prescribed manner, lodge the written consent of the holder of the primary tenement to the grant of his application.

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

- (6) Subject to this section, the mining registrar or the Minister may grant an application for a special prospecting licence on such terms and conditions as he thinks fit, but a special prospecting licence so granted —
- (a) shall not exceed 10 ha in area; and
 - (b) shall authorise the holder thereof to prospect only for gold; and
 - (c) shall not, unless the Minister otherwise directs, prevent the holder of the primary tenement from prospecting for minerals other than gold in or on the land the subject of the special prospecting licence; and
 - (d) does not authorise the holder thereof to excavate, extract or remove during the period for which the tenement remains in force a total amount of earth, soil, rock, stone, fluid or mineral bearing substances in excess of 500 t, except in so far as the prior written approval of the Minister may otherwise permit; and

- (e) does not authorise mining to be carried out in any portion of the land that is —
- (i) below a depth specified in the terms and conditions of the special prospecting licence, and any depth so specified shall be less than 50 m below the lowest part of the natural surface of the land the subject of the special prospecting licence; or
 - (ii) if a depth is not so specified, 50 m or more below the lowest part of the natural surface of the land the subject of the special prospecting licence, except in so far as both the prior written consent of the holder of the primary tenement and the prior written approval of the Minister may otherwise permit.
- (6aa) A special prospecting licence may be granted for a period of 3 months or for any period which is a multiple of 3 months but which does not exceed 4 years.
- (6a) A special prospecting licence —
- (a) continues in force notwithstanding that the holder of the primary tenement may apply for and be granted a retention licence, mining lease or general purpose lease in respect to the land; but
 - (b) ceases (and the land in respect to which it was granted reverts to the primary tenement holder as an integral part of the tenement held by him) on the surrender, forfeiture or expiry of that special prospecting licence.
- (7) No legal or equitable interest in or affecting —
- (a) a special prospecting licence; or
 - (b) a mining lease in respect of the land or any part thereof the subject of a special prospecting licence,
- is capable of being created, affected or dealt with, whether directly or indirectly, except with the prior written consent of the holder of the primary tenement, and no person shall hold or have any beneficial, legal or equitable interest in —
- (c) more than 10 such special prospecting licences; or
 - (d) more than one such mining lease.

- (7a) A reference in subsection (7) to a person includes a reference to any other person who would, for the purposes of the Corporations Act, be taken to be an associate of the first-mentioned person.
- (7b) No more than one mining lease in respect of the land or any part thereof which is the subject of a special prospecting licence shall be granted in respect of the primary tenement.
- (8) The holder of a special prospecting licence granted for a period of 4 years may make an application for a mining lease for gold in respect of the land or any part thereof which is the subject of the special prospecting licence, and on an application being made the Minister may, subject to subsection (7b), grant the application for a lease in respect to that portion of the land to which the special prospecting licence relates that is less than a depth of 50 m, or such greater depth as the Minister approves with the prior written consent of the holder of the primary tenement, below the lowest part of the natural surface of the land and on such terms and conditions as the Minister thinks fit, and thereupon the area of land in respect of which that mining lease is granted shall be excised from the primary tenement (whether or not the primary tenement has in the meantime been converted into a retention licence or a mining lease).
- (8aa) Sections 74, 74A and 75 apply to an application for a mining lease under subsection (8).
- (8a) A mining lease granted pursuant to subsection (8) —
- (a) has effect in relation to gold and any minerals occurring in conjunction with that gold;
 - (b) does not authorise the lessee thereof, his agents or employees to excavate, extract or remove a total amount of earth, soil, rock, stone, fluid or mineral bearing substances in excess of 750 t in any year, except in so far as both the prior written consent of the holder of the primary tenement and the prior written approval of the Minister may otherwise permit;
 - [(c) *deleted*]
 - (d) ceases to have effect (and the land in respect to which it was granted reverts to the primary tenement holder as an integral part of the tenement held by him) on the surrender, forfeiture or expiry of that lease.

- (9) Subject to this section, the provisions of this Act relating to —
- (a) prospecting licences apply to a special prospecting licence; and
 - (b) mining leases apply to a mining lease,
granted under this section.
- (9a) Where, before the determination of an application for a special prospecting licence in respect of land, the primary tenement is surrendered or forfeited or expires, the application is, by virtue of this subsection, converted into an application for a prospecting licence in respect of that land and the provisions of this Act relating to such applications apply accordingly.
- (10) On the surrender, forfeiture or expiry of the primary tenement, a special prospecting licence in respect of any land the subject of the primary tenement immediately before the date of its surrender, forfeiture or expiry is, by virtue of this subsection, converted into a prospecting licence in respect of that land and, subject to subsection (11), the provisions of this Act relating to prospecting licences apply accordingly.
- (11) Where a special prospecting licence is converted into a prospecting licence, the prospecting licence remains in force, subject to this Act, for the remainder of the period for which the special prospecting licence was granted.
- (12) Subsections (9a) and (10) do not apply if —
- (a) the primary tenement is amalgamated with an exploration licence under section 67A(1); or
 - (b) prior to the surrender, forfeiture or expiry of the primary tenement the holder of the primary tenement applies for a retention licence, a mining lease or a general purpose lease and the licence or lease is subsequently granted in respect of any land the subject of the application for a special prospecting licence or the special prospecting licence, as the case requires; or
 - (c) prior to the surrender, forfeiture or expiry of the primary tenement the holder of the primary tenement makes an application under section 56B and a prospecting licence is granted as a result of that application in respect of any land the subject of the application for a special prospecting licence or the special prospecting licence, as the case requires; or

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

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

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

- (1) In this section —
relevant licence means a prospecting licence applied for before 10 February 2006.
- (2) Despite sections 18, 23 and 27 but subject to the other provisions of this Act, the holder of a relevant licence has, while the licence continues in force, the right to apply for a prospecting licence in respect of the whole or any part of the land the subject of the relevant licence.
- (3) Where the holder of a relevant licence exercises the right conferred by subsection (2) and the term of the relevant licence would but for this subsection expire, the relevant licence shall continue in force in respect of the land the subject of the application for a prospecting licence until the application is determined.
- (4) If the holder of a relevant licence transfers the licence after making an application for a prospecting licence in the exercise of the right conferred by subsection (2), the application continues in the name of the transferee of the licence as if the transferee had made it.

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

Division 2 — Exploration licence

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

56C. Graticular sections

- (1) For the purposes of this Division, the surface of the Earth shall be deemed to be divided —
 - (a) by the meridian of Greenwich and by meridians that are at a distance from that meridian of 1, or a multiple of 1, minute of longitude; and
 - (b) by the equator and by parallels of latitude that are at a distance from the equator of 1, or a multiple of 1, minute of latitude,

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

- (c) by portions of 2 of those meridians that are at a distance from each other of 1 minute of longitude; and
 - (d) by portions of 2 of those parallels of latitude that are at a distance from each other of 1 minute of latitude.
- (2) For the purposes of this Division —
 - (a) a graticular section that is wholly within the State constitutes a block; and
 - (b) if part of a graticular section is within the State that part of the graticular section constitutes a block.
- (3) In this Division —
 - (a) a reference to a graticular section that constitutes a block includes a reference to a graticular section part of which constitutes a block;
 - (b) a reference to a part of a block includes a reference to 2 or more parts of the block;
 - (c) a reference to a part of a graticular section includes a reference to 2 or more parts of the graticular section.
- (4) For the purposes of this Division each block shall be identified by reference to the number of the block on a plan held at the Department.

(5) In subsection (2) —

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

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

57. Grant of exploration licence

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

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

(2aa) If the area of land referred to in subsection (2) is in an area of the State designated under section 57A(1) it shall not be more than 200 blocks.

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

- (a) constitute a single area; and
- (b) each have a side in common with at least one other graticular section in that area.

(2b) Where —

- (a) an application is made for an exploration licence in respect of 3 or more blocks; and
- (b) before the exploration licence is granted one or more of the blocks applied for becomes the subject of another mining tenement; and
- (c) the exploration licence is granted in respect of 2 or more of the other blocks applied for,

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

- (d) a single graticular section; or

- (e) a number of graticular sections each having a side in common with at least one other graticular section in that area.
- (2c) Where an application for an exploration licence is made with respect to one block, the land in respect of which the licence is granted may comprise part of the block if the rest of the block consists of land that is unavailable for exploration.
- (2d) Where an application for an exploration licence is made with respect to 2 or more blocks, the land in respect of which the licence is granted may include part of a block if the rest of the block consists of land that is unavailable for exploration.
- (2e) For the purposes of subsections (2c) and (2d) land is unavailable for exploration if that land is, or was when the application for the exploration licence was made, the subject of a current mining tenement (other than a miscellaneous licence).
- (2ea) Where the application for the exploration licence is a reversion licence application, the reference in subsection (2e) to a current mining tenement does not include a continuing licence as defined in section 120AA(1).
- (2f) Where the land in respect of which an exploration licence is granted comprises or includes part of a block —
 - (a) the licence is deemed to be granted in respect of that block for the purposes of subsections (2), (2a) and (2b); and
 - (b) that block is deemed to be subject to the licence for the purposes of section 65; and
 - (c) the boundaries of the land the subject of the licence shall be deemed to be the same as the boundaries of the block for the purposes of section 67A.
- (2g) A person may be granted more than one exploration licence.
- (2h) Where the land in respect of which an exploration licence is granted comprises or includes part of a block, no other exploration licence shall be granted in respect of that block or any part of that block.
- (3) The mining registrar or the warden shall not recommend the grant of an exploration licence under this section unless he is satisfied that the applicant is able to effectively explore the land in respect of which the application has been made.

- (4) Where in any particular area extensive mining is being carried on, the Minister may, from time to time, by notice published in the *Government Gazette* declare that no application for an exploration licence shall be made or granted with respect to any land comprising the area or any land within such area as is specified in the notice.

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

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

- (1) The Minister may, by notice published in the *Gazette*, designate one or more areas of the State for the purposes of section 57(2aa).
- (2) The Minister may, by notice published in the *Gazette*, vary or cancel a designation under subsection (1).
- (3) A notice under this section comes into operation on the day on which the notice is published in the *Gazette* or such later day as is specified in the notice.
- (4) The variation or cancellation of a designation under subsection (2) does not affect the operation of any exploration licence granted before the variation or cancellation takes effect.
- (5) If —
- (a) an application for an exploration licence is made in respect of an area of land that is in an area of the State designated under subsection (1) (a **designated area**); and
 - (b) before the application is determined the designation is varied or cancelled under subsection (2) with the result that the area of land to which the application relates ceases to be in a designated area,

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

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

58. Application for exploration licence

- (1) An application for an exploration licence —
- (a) shall be in the prescribed form; and

- (b) shall be accompanied by a statement specifying —
 - (i) the proposed method of exploration of the area in respect of which the licence is sought; and
 - (ii) the details of the programme of work proposed to be carried out in such area; and
 - (iii) the estimated amount of money proposed to be expended on the exploration; and
 - (iv) the technical and, subject to subsection (1aa), financial resources available to the applicant;and
 - (c) shall be accompanied by the amount of the prescribed rent for the first year of the term of the licence or portion thereof as prescribed; and
 - (d) shall be lodged in the prescribed manner; and
 - (e) shall be accompanied by the prescribed application fee.
- (1aa) The statement under subsection (1)(b) does not have to specify the financial resources available to the applicant if —
- (a) the applicant is a natural person; and
 - (b) the application is in respect of not more than 4 blocks; and
 - (c) the statement specifies that the applicant intends to utilise his or her own labour to carry out the programme of work referred to in subsection (1)(b)(ii).

[(1a) deleted]

- (2) An application referred to in subsection (1) must identify the block or blocks applied for by number in accordance with section 56C(4).
- (2a) On an application for an exploration licence or on an exploration licence being granted the land affected is not thereby required to be surveyed, but where a dispute arises with respect to the position of such land or the boundaries or any boundary thereof the warden or Minister may require a survey to be made of the boundaries or the boundary in order to settle the dispute.
- (2b) A survey required under subsection (2a) shall be —
 - (a) arranged in accordance with the regulations; and
 - (b) paid for by such party or parties to the dispute as the warden or the Minister determines.

- (3) An applicant shall at the request of the mining registrar or warden furnish such further information in relation to his application, or such evidence in support thereof, as the mining registrar or warden may require but the mining registrar or warden shall not require information or evidence relating to assays or other results of any testing or sampling that the applicant may have carried out on the land the subject of his application.
- (4) Within the prescribed period the applicant shall serve such notice of the application as may be prescribed on the owner and occupier of the land to which the application relates and on such other persons as may be prescribed.

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

59. Determination of application for exploration licence

- (1) A person who wishes to object to the granting of an application for an exploration licence must lodge a notice of objection. ~~shall lodge a notice of objection within the prescribed time and in the prescribed manner.~~

(1A) A notice of objection must be —

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

(b) accompanied by the prescribed fee.

- (2) Where no notice of objection is lodged within the prescribed time, or any notice of objection is withdrawn, the mining registrar shall, unless subsection (4)(b) applies, forward to the Minister a report which recommends the grant or refusal of the exploration licence and sets out the reasons for that recommendation.
- (3) The mining registrar shall —
- (a) recommend the grant of the exploration licence if satisfied that the applicant has complied in all respects with the provisions of this Act; or
 - (b) recommend the refusal of the exploration licence if not so satisfied.
- (4) Where a notice of objection —
- (a) is lodged within the prescribed time; or

- (b) is not lodged within the prescribed time but is lodged before the mining registrar has forwarded a report to the Minister under subsection (2) and the warden is satisfied that there are reasonable grounds for late lodgment, and the notice of objection is not withdrawn, the warden shall hear the application for the exploration licence on a day appointed by the warden and may give any person who has lodged such a notice of objection an opportunity to be heard.
- (5) The warden shall as soon as practicable after the hearing of the application forward to the Minister for the Minister's consideration —
- (a) the notes of evidence; and
 - (b) any maps or other documents referred to in the notes of evidence; and
 - (c) a report which recommends the grant or refusal of the exploration licence and sets out the reasons for that recommendation.
- (6) On receipt of a report under subsection (2) or (5), the Minister may grant or refuse the exploration licence as the Minister thinks fit, and irrespective of whether —
- (a) the report recommends the grant or refusal of the exploration licence; and
 - (b) the applicant has or has not complied in all respects with the provisions of this Act.

[Section 59 inserted: No. 58 of 1994 s. 15(1); amended: No. 39 of 2004 s. 59; No. 12 of 2010 s. 22; [Mining Amendment Bill 2022](#).]

60. Security relating to exploration licence

- (1) The applicant for an exploration licence shall lodge, in the prescribed manner and within the prescribed period, a security for compliance with the conditions to which the exploration licence, if granted, will from time to time be subject and with the provisions of this Part and the regulations.
- (1a) The Minister may require the holder of an exploration licence to lodge, in the prescribed manner and within such period as the Minister specifies in writing, an additional security for compliance with conditions imposed in relation to the licence under section 63AA.
- (2) A security referred to in subsection (1) or (1a) shall be in accordance with and subject to the provisions of section 126.

- (3) An exploration licence shall not be granted unless a security has been lodged by the applicant for the exploration licence in accordance with subsection (1).
- (4) Notwithstanding section 154(1), an applicant for an exploration licence who fails to comply with subsection (1) does not commit an offence against this Act.

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

61. Term of exploration licence

- (1) An exploration licence shall, subject to this Act, remain in force for a period of 5 years from and including the date on which it was granted, and shall then expire.
- (2) Notwithstanding subsection (1) the Minister may, if satisfied that a prescribed ground for extension exists, extend the term of an exploration licence —
 - (a) by one period of 5 years; and
 - (b) by a further period or periods of 2 years,as to the whole or any part of the land the subject of that exploration licence on such terms and conditions as the Minister thinks fit.
- (3) An application for the extension of the term of an exploration licence under subsection (2) shall be made within the prescribed time and in the prescribed manner.
- (3a) If an application for the extension of the term of an exploration licence is made under this section and the term of the licence would but for this subsection expire, the licence shall continue in force in respect of the land the subject of the application until the application is determined.
- (4) If the holder of an exploration licence transfers the licence after making an application for the extension of the term of the licence under subsection (2), the application continues in the name of the transferee of the licence as if the transferee had made it.

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

62. Expenditure conditions

- (1) During the currency of an exploration licence the holder thereof shall comply with the prescribed expenditure conditions relating thereto, unless in accordance with this Act total or partial exemption therefrom is granted.
- (2) In the case of an exploration licence that has retention status, expenditure conditions prescribed for the purposes of subsection (1) —
 - (a) are to provide for a reduction calculated in the prescribed manner of the amount of expenditure required during the year of the term of the licence in which retention status is approved; and
 - (b) are not to require expenditure during any subsequent year of the term of the licence.

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

63. Condition attached to exploration licence

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

- (a) will promptly report in writing to the Minister all minerals of economic interest discovered in, on or under the land the subject of the exploration licence; and
 - (aa) will not use ground disturbing equipment when exploring for minerals on the land the subject of the exploration licence unless —
 - (i) the holder has lodged in the prescribed manner a programme of work in respect of that use; and
 - (iia) the holder has paid the prescribed assessment fee in respect of the programme of work; and
 - (ii) the programme of work has been approved in writing by the Minister or a prescribed official;
- and
- (b) will fill in or otherwise make safe to the satisfaction of a prescribed official all holes, pits, trenches and other disturbances to the surface of the land the subject of the exploration licence which are —
 - (i) made while exploring for minerals; and

(ii) in the opinion of the prescribed official, likely to endanger the safety of any person or animal;

and

(c) will take all necessary steps to prevent fire, damage to trees or other property and to prevent damage to any property or damage to livestock by the presence of dogs, the discharge of firearms, the use of vehicles or otherwise.

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

63AA. Conditions for prevention or reduction of injury to land

- (1) On the granting of an exploration licence, or at any subsequent time, the Minister may impose on the holder of the licence reasonable conditions for the purpose of preventing or reducing, or making good, injury to the land in respect of which the licence is sought or was granted, or injury to anything on or below the natural surface of that land or consequential damage to any other land.
- (2) A condition imposed under this section may be cancelled or varied by the Minister at any time.
- (3) A condition imposed in relation to a licence under this section —
 - (a) may, either in full or with sufficient particularity as to identify the recommendation or other source from which it derives, be endorsed on the licence, for which purpose the holder of the licence shall produce the licence on demand; and
 - (b) whether or not so endorsed, on notice of the imposition of the condition being given in writing to the holder of the licence shall for all purposes have effect as a condition to which the licence is subject.

[Section 63AA inserted: No. 22 of 1990 s. 18; amended: No. 12 of 2010 s. 6.]

63A. When exploration licence liable to forfeiture

An exploration licence is liable to forfeiture if —

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

- (aa) any requirement under section 60(1a), 65(4), 69E(2) or 115B(2) in relation to the exploration licence is not complied with; or
- (b) the terms and conditions, including the prescribed expenditure conditions referred to in section 62, and any conditions to which the licence is deemed to be subject pursuant to section 63, are not complied with; or
- (baa) any request under section 68(1) or (2) in relation to the exploration licence is not complied with; or
- (ba) a report required under section 68(3) or 115A in relation to the land the subject of the exploration licence is not filed in accordance with this Act; or
- (c) the holder of the exploration licence is convicted of an offence against this Act.

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

64. Consent to dealing in exploration licence

- (1) During the first year of the term for which an exploration licence is granted, a legal or equitable interest in or affecting the exploration licence shall not be transferred or otherwise dealt with, whether directly or indirectly, unless —
 - (a) the dealing or other transaction in or affecting the interest arises in the due administration of the estate or affairs of a holder —
 - (i) who is dead; or
 - (ii) who is a person who is an insolvent under administration within the meaning of the Corporations Act; or
 - (iii) who is otherwise incapacitated at law; or
 - (iv) which is in the course of being wound up (not being a voluntary winding up);

or

- (b) prior written consent to the dealing or other transaction in or affecting the interest is given by the Minister or an officer of the Department acting with the authority of the Minister.
- (2) Nothing in subsection (1) prevents, or affects the validity of, any agreement made in contemplation of a dealing or other transaction to which that subsection applies where the agreement expressly provides that the consent required by that subsection is to be obtained as a condition of the dealing or other transaction.

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

65. Surrender of certain areas subject to exploration licence

- (1) In this section —
 - end day**, in relation to an exploration licence, means —
 - (a) the day (the **anniversary day**) that is 6 years after the day on which the licence was granted; or
 - (b) if, on the anniversary day, an application for retention status under section 69A in respect of the whole or part of the land the subject of the licence has been made but not determined, the day on which that application is determined;
 - surrender day**, in relation to a surrender, means —
 - (a) if the surrender is lodged under subsection (3), the end day; or
 - [(b) deleted]*
 - (c) if the surrender is lodged in compliance with a requirement under subsection (4), the day on which the surrender is registered.
- (2) This section applies in relation to an exploration licence if —
 - (a) the term of the licence has been extended under section 61; or
 - (b) an application under section 61 for the extension of the term of the licence has been made but has not been determined.

- (3) On or before the end day the holder of an exploration licence granted in respect of more than 10 blocks must lodge a surrender for registration in respect of —
- (a) 40% of the number of the blocks that are subject to the licence; or
 - (b) if 40% of that number is not a whole number, the nearest whole number of the blocks.
- (3A) Subsection (3) does not apply to the holder of an exploration licence for which retention status has been approved under section 69B(1).
- (4) If the holder of an exploration licence fails to lodge a surrender in accordance with subsection (3), the Minister must, by notice in writing, require the holder to lodge the surrender for registration within a period specified in the notice.
- (4a) A surrender under this section takes effect on the surrender day.
- (4b) The blocks that remain subject to an exploration licence after a surrender under this section are to form not more than 6 discrete areas each consisting of —
- (a) a single graticular section; or
 - (b) a number of graticular sections each having a side in common with at least one other graticular section in that area.
- (4c) If, before the surrender day, the holder of an exploration licence —
- (a) is granted a mining lease or general purpose lease in respect of a part of the land the subject of the exploration licence (the *granted land*); or
 - (b) surrenders a part of the land the subject of the exploration licence (the *surrendered land*),
- then, in calculating the area of land that is required to be surrendered under this section, the area of granted land or surrendered land shall be taken into account as though it were an area of land surrendered in satisfaction of that requirement.
- (5) A surrender under this section shall be endorsed on the public plans of the Department —
- (a) at the office of the Department at Perth; and
 - (b) at the office of the mining registrar for the mineral field or district thereof in which the land is situate.

- (6) Notwithstanding that a surrender has taken effect under this section any land the subject of the surrender shall not be —
- (a) marked out in connection with a mining tenement unless and until notification has been given in the prescribed manner of the proposed endorsement of plans for the purposes of paragraph (b); or
 - (b) included in an application for a mining tenement unless and until the plans referred to in subsection (5) have been endorsed in the prescribed manner.

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

66. Rights conferred by exploration licence

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

- (a) to enter and re-enter the land the subject of the licence with such agents, employees, vehicles, machinery and equipment as may be necessary or expedient for the purpose of exploring for minerals in, on or under the land;
- (b) to explore, subject to any conditions imposed under section 24, 24A or 25, for minerals, and to carry on such operations and carry out such works as are necessary for that purpose on such land including digging pits, trenches and holes, and sinking bores and tunnels to the extent necessary for the purpose in, on or under the land;
- (c) to excavate, extract or remove, subject to any conditions imposed under section 24, 24A or 25, from such land, earth, soil, rock, stone, fluid or mineral bearing substances in such amount, in total during the period for which the licence remains in force, as does not exceed the prescribed limit, or in such greater amount as the Minister may, in any case, approve in writing;
- (d) to take and divert, subject to the *Rights in Water and Irrigation Act 1914*, or any Act amending or replacing the relevant provisions of that Act water from any natural spring, lake, pool or stream situate in or flowing through such land or from any excavation previously made and used for mining purposes and subject to that Act to sink a well or bore on such land and take water

therefrom and to use the water so taken for his domestic purposes and for any purpose in connection with exploring for minerals on the land.

[Section 66 amended: No. 100 of 1985 s. 46; No. 22 of 1990 s. 20; No. 5 of 1997 s. 41(2).]

67. Holder of exploration licence to have priority for grant of mining leases or general purpose leases

- (1) The holder of an exploration licence has —
- (a) subject to this Act and to any conditions to which the exploration licence is subject; and
 - (b) while the exploration licence continues in force,
- the right to apply for, and subject to section 75(9) to have granted pursuant to section 75(7), one or more mining leases or one or more general purpose leases or both in respect of any part or parts of the land the subject of the exploration licence.
- (2) Where an application for a mining lease or a general purpose lease is made by the holder of an exploration licence in respect of any land and the term of the exploration licence would but for this subsection expire, that licence shall continue in force in respect to the land the subject of that application until the application for a lease is determined.
- (3) If, after an application is made under subsection (1) in respect of land the subject of an exploration licence —
- (a) the holder of the licence transfers the licence; or
 - (b) where there are 2 or more holders of the licence, a holder transfers the holder's interest in the licence,
- the application continues in the name of the transferee of the licence or interest as if the transferee were the applicant or one of the applicants, as the case requires.
- (4) For the purposes of subsection (3), where there are 2 or more transferees of the exploration licence, each of the transferees is to be regarded as an applicant for an interest in the relevant mining lease or general purpose lease that corresponds to the interest held by that transferee in the licence.

[Section 67 inserted: No. 122 of 1982 s. 19; amended: No. 100 of 1985 s. 47; No. 105 of 1986 s. 10; No. 21 of 1993 s. 45; No. 58 of 1994 s. 29(2); No. 52 of 1995 s. 26; No. 17 of 1999 s. 9.]

67A. Holder of exploration licence may apply to amalgamate secondary tenement

- (1) Where a person is the holder of both an exploration licence and a secondary tenement the person or an agent of the person may, without marking out the land, apply in writing to the Minister in the prescribed manner for the secondary tenement to be amalgamated with the exploration licence.
- (2) The holder of an exploration licence or an agent of the holder may, without marking out the land, apply in writing to the Minister in the prescribed manner for a secondary tenement to be amalgamated with the exploration licence where the secondary tenement was surrendered or forfeited, or expired, after the application for the exploration licence was made but before the exploration licence was granted.
- (3) The holder of an exploration licence or an agent of the holder may, without marking out the land, apply in writing to the Minister in the prescribed manner for a secondary tenement to be amalgamated with the exploration licence where the secondary tenement is surrendered or forfeited, or expires.
- (4) On receiving an application under subsection (1), (2) or (3), the Minister may —
 - (a) grant the application and amend the exploration licence to include the land the subject of the secondary tenement, in such manner and on such conditions as the Minister thinks fit; or
 - (b) refuse the application.
- (5) Where an application is made under subsection (1) and the term of the secondary tenement would but for this subsection expire, the secondary tenement shall continue in force with respect to the land that is the subject of the application until the application is determined.
- (6) Notwithstanding anything in section 45(2), 69(1) or 85A(1), an application by the holder of an exploration licence who was also the holder of the secondary tenement immediately before the date of its surrender, forfeiture or expiry may be made —
 - (a) under subsection (2) at any time after the granting of the exploration licence; and
 - (b) under subsection (3) at any time after the surrender, forfeiture or expiry of the secondary tenement.

- (6a) Section 105A applies, with all necessary changes, in relation to a person who makes an application under subsection (2) or (3) as if a reference in that section —
- (a) to an applicant included a reference to such a person;
 - (b) to an application for a mining tenement included a reference to an application under subsection (2) or (3);
 - (c) to compliance with the initial requirement included, in relation to an application under subsection (2) or (3), a reference to lodging the application in the prescribed manner.
- (7) In this section —
- secondary tenement**, in relation to an exploration licence —
- (a) means a mining tenement (other than a retention licence) situated wholly within the boundaries (whether or not any of those boundaries are common boundaries) of the land the subject of the exploration licence; and
 - (b) where the exploration licence was granted in respect of an application made on or after the commencement of section 16 of the *Mining Amendment Act 1990*, includes any part of a mining tenement (other than a retention licence) situated within the boundaries (whether or not any of those boundaries are common boundaries) of the land the subject of the exploration licence.
- (8) This section does not affect the operation of section 40(1)(b) and (c) of the *Mining Amendment Act 1990*.

[Section 67A inserted: No. 37 of 1993 s. 8; amended: No. 58 of 1994 s. 19; No. 15 of 2002 s. 13; No. 39 of 2004 s. 60; No. 12 of 2010 s. 24.]

68. Holder of exploration licence to keep geological records

- (1) The holder of an exploration licence shall keep complete and detailed records of the surveys and other operations conducted pursuant to the licence and shall, at the written request of the Minister, produce the records for the inspection of the Minister and the Director, Geological Survey.
- (2) The holder of an exploration licence shall furnish the Minister with such information relating to the surveys and other operations conducted by the holder pursuant to the licence and such geological samples obtained in the course of those operations as the Minister may request.

- (3) The holder of an exploration licence shall at such times and in such manner as may be prescribed, file or cause to be filed a report of all work done on, and money expended in connection with, exploration in the area the subject of the licence during the period to which the report relates.
- (4) Notwithstanding section 154(1), a holder of an exploration licence who fails to comply with subsection (1), (2) or (3) does not commit an offence against this Act.

[Section 68 amended: No. 58 of 1994 s. 20; No. 39 of 2004 s. 17; No. 12 of 2010 s. 25.]

69. Land the subject of exploration licence not to be again marked out for a certain period

- (1) When an exploration licence is surrendered or forfeited, or expires, or any part of the land the subject of the licence is surrendered in accordance with section 65, the land the subject of the licence or the part so surrendered shall not be marked out or applied for as a prospecting licence or an exploration licence —
 - (a) by or on behalf of the person who was the holder of the exploration licence immediately prior to the date of the surrender, forfeiture or expiry; or
 - (b) by or on behalf of any person who had an interest in the exploration licence immediately prior to that date; or
 - (c) by or on behalf of any person who is related to a person referred to in paragraph (a) or (b),

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

- (2) For the purposes of subsection (1) the holding of shares in a listed public company which held the exploration licence in question does not of itself constitute an interest in the exploration licence.

[Section 69 amended: No. 100 of 1985 s. 48; No. 22 of 1990 s. 21; No. 15 of 2002 s. 14; No. 39 of 2004 s. 18.]

69A. Application for retention status

- (1) In this section —
exploration licence does not include an exploration licence that is a primary tenement for the purposes of Division 2A.

- (2) The holder of an exploration licence may apply to the Minister for approval of retention status under section 69B.
- (3) An application under subsection (2) —
 - (a) shall be in writing; and
 - (b) shall be made in the prescribed manner; and
 - (c) shall contain the prescribed information; and
 - (d) shall be accompanied by any map, statement or other information required by the regulations; and
 - (e) shall be accompanied by the prescribed application fee.
- (4) For the purposes of subsection (3)(d), but without limiting section 162(5), the regulations may require a statement or other information to be in the form of a statutory declaration.
- (5) If the holder of an exploration licence transfers the licence after making an application under subsection (2) in respect of the licence, the application continues in the name of the transferee of the licence as if the transferee had made it.

[Section 69A inserted: No. 39 of 2004 s. 24.]

69B. Approval of retention status

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

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

[Section 69B inserted: No. 39 of 2004 s. 24.]

69C. Consultation with other Ministers

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

[Section 69C inserted: No. 39 of 2004 s. 24; amended: No. 19 of 2010 s. 51.]

69D. Programme of work

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

[Section 69D inserted: No. 39 of 2004 s. 24.]

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

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

- (b) the Minister is of the opinion that the holder of an exploration licence has shown insufficient cause,

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

[Section 69E inserted: No. 39 of 2004 s. 24.]

70. Special prospecting licence on an exploration licence

- (1) Where any land is the subject of an exploration licence (in this section called the *primary tenement*) then, notwithstanding section 117, a person may at any time after the expiry of 12 months from —
- (a) in the case of land which was the subject of a mineral claim or dredging claim granted under the repealed Act that by the operation of the transitional provisions set forth in the Second Schedule Division 1 became subject to the primary tenement, the date of approval of the claim; and
- (b) in any other case, unless subsection (1aa) applies, the date on which the primary tenement was granted,
- mark out and, in accordance with section 41, apply for a prospecting licence for gold (in this section called a *special prospecting licence*) in respect of any part of the land the subject of the primary tenement.
- (1aa) If the primary tenement was granted as a result of a reversion licence application, a special prospecting licence may be marked out and applied for at any time after the date on which the primary tenement was granted.
- (1a) A special prospecting licence may only be applied for by, granted to or held by a natural person.
- (2) Unless subsection (5a) applies, an applicant for a special prospecting licence shall, within the prescribed period, give notice thereof to the holder of the primary tenement as if such holder were the occupier of the land to which the application relates, and subsections (3) to (5) apply in respect of the application.

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

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

(a) the notice of objection must be —

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

(ii) accompanied by the prescribed fee;

and

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

~~(4) Where such an objection is lodged by the holder of the primary tenement the warden shall obtain a report from the Director, Geological Survey in respect of the exploration carried on by the holder of the primary tenement on the land to which the application relates.~~

(4a) A report prepared by the Director, Geological Survey for the purposes of subsection (4)(b)~~subsection (4)~~ is to be based solely on information contained in reports filed by or on behalf of the holder of the primary tenement under section 68(3) or 115A.

(5) After hearing the objection of the holder of the primary tenement the warden may refuse the application for the special prospecting licence on the ground that prospecting for gold on the land to which the application relates would result in undue detriment to the exploration being carried on by the holder of the primary tenement or he may recommend the application to the Minister who may refuse the application or subject to this Act, grant it as provided in subsection (6), but where the warden refuses an application under this subsection, the applicant may within the time and in the manner prescribed appeal to the Minister against such refusal and the Minister may dismiss the appeal or uphold the appeal and grant the application as provided in subsection (6).

- (5a) If, at the time when an applicant for a special prospecting licence marked out the land to which his application relates, the grant of the application would have resulted in the number of special prospecting licences in respect of the primary tenement exceeding one for each 200 ha of the primary tenement, the applicant shall, within the prescribed period and in the prescribed manner, lodge the written consent of the holder of the primary tenement to the grant of the application.
- (5b) If written consent to the grant of an application is lodged in accordance with subsection (5a), the mining registrar may, subject to this Act, grant the application as provided for in subsection (6).
- (6) Subject to this section the mining registrar or Minister may grant the application on such terms and conditions as he thinks fit but a special prospecting licence granted pursuant to this section —
- (a) shall not exceed 10 ha in area; and
 - (b) shall authorise the holder to prospect only for gold; and
 - (c) shall not unless the Minister otherwise directs, prevent the holder of the primary tenement from exploring for minerals other than gold in or on the land the subject of the special prospecting licence and the primary tenement; and
 - (d) does not authorise the holder thereof to excavate, extract or remove during the period for which the tenement remains in force a total amount of earth, soil, rock, stone, fluid or mineral bearing substances in excess of 500 t, except in so far as the prior written approval of the Minister may otherwise permit; and
 - (e) does not authorise mining to be carried out in any portion of the land that is —
 - (i) below a depth specified in the terms and conditions of the special prospecting licence, and any depth so specified shall be less than 50 m below the lowest part of the natural surface of the land the subject of the special prospecting licence; or

- (ii) if a depth is not so specified, 50 m or more below the lowest part of the natural surface of the land the subject of the special prospecting licence, except in so far as both the prior written consent of the holder of the primary tenement and the prior written approval of the Minister may otherwise permit.
- (6aa) A special prospecting licence may be granted for a period of 3 months or for any period which is a multiple of 3 months but which does not exceed 4 years.
- (6a) A special prospecting licence —
- (a) continues in force notwithstanding that the holder of the primary tenement may apply for and be granted a retention licence, mining lease or general purpose lease in respect to the land; but
 - (b) ceases (and the land in respect to which it was granted reverts to the primary tenement holder as an integral part of the tenement held by him) on the surrender, forfeiture or expiry of that special prospecting licence.
- (7) No legal or equitable interest in or affecting —
- (a) a special prospecting licence; or
 - (b) a mining lease in respect of the land or any part thereof the subject of a special prospecting licence,
- is capable of being created, affected or dealt with, whether directly or indirectly, except with the prior written consent of the holder of the primary tenement, and no person shall hold or have any beneficial, legal or equitable interest in —
- (c) more than 10 such special prospecting licences; or
 - (d) more than one such mining lease.
- (7a) A reference in subsection (7) to a person includes a reference to any other person who would, for the purposes of the Corporations Act, be taken to be an associate of the first-mentioned person.
- (7b) A mining lease in respect of the land or any part thereof which is the subject of a special prospecting licence shall not be granted in respect of the primary tenement where the number of such leases granted in respect of that primary tenement exceeds one for each 200 ha of the primary tenement.

- (8) The holder of a special prospecting licence granted for a period of 4 years may make an application for a mining lease for gold in respect of the land or any part thereof which is the subject of the special prospecting licence, and on an application being made the Minister may, subject to subsection (7b), grant the application for a lease in respect to that portion of the land to which the special prospecting licence relates that is less than a depth of 50 m, or such greater depth as the Minister approves with the prior written consent of the holder of the primary tenement, below the lowest part of the natural surface of the land and on such terms and conditions as the Minister thinks fit, and thereupon the area of land in respect of which the mining lease is granted shall be excised from the primary tenement (whether or not the primary tenement has in the meantime been converted into a retention licence or a mining lease).
- (8aa) Sections 74, 74A and 75 apply to an application for a mining lease under subsection (8).
- (8a) A mining lease granted pursuant to subsection (8) —
- (a) has effect in relation to gold and any minerals occurring in conjunction with that gold; and
 - (b) does not authorise the lessee thereof, his agents or employees to excavate, extract or remove a total amount of earth, soil, rock, stone, fluid or mineral bearing substances in excess of 750 t in any year, except in so far as both the prior written consent of the holder of the primary tenement and the prior written approval of the Minister may otherwise permit; and
 - [(c) *deleted*]
 - (d) ceases to have effect (and the land in respect to which it was granted reverts to the primary tenement holder as an integral part of the tenement held by him) on the surrender, forfeiture or expiry of that lease.
- (9) Subject to this section, the provisions of this Act relating to a prospecting licence, or mining lease apply to a special prospecting licence or mining lease granted pursuant to this section.
- (9a) Where, before the determination of an application for a special prospecting licence in respect of land, the primary tenement is surrendered or forfeited or expires, the application is, by virtue of this subsection, converted into an application for a

prospecting licence in respect of that land and the provisions of this Act relating to such applications apply accordingly.

- (10) On the surrender, forfeiture or expiry of the primary tenement, a special prospecting licence in respect of any land the subject of the primary tenement immediately before the date of its surrender, forfeiture or expiry is, by virtue of this subsection, converted into a prospecting licence in respect of that land and, subject to subsection (11), the provisions of this Act relating to prospecting licences apply accordingly.
- (11) Where a special prospecting licence is converted into a prospecting licence, the prospecting licence remains in force, subject to this Act, for the remainder of the period for which the special prospecting licence was granted.
- (12) Subsections (9a) and (10) do not apply if —
- (a) the primary tenement is amalgamated with an exploration licence under section 67A(1); or
 - (b) prior to the surrender, forfeiture or expiry of the primary tenement the holder of the primary tenement applies for a retention licence, a mining lease or a general purpose lease and the licence or lease is subsequently granted in respect of any land the subject of the application for a special prospecting licence or the special prospecting licence, as the case requires; or
 - (c) prior to the surrender, forfeiture or expiry of the primary tenement the holder of the primary tenement makes a reversion licence application and a prospecting licence or an exploration licence is granted as a result of that application in respect of any land the subject of the application for a special prospecting licence or the special prospecting licence, as the case requires.

[Section 70 amended: No. 100 of 1985 s. 49; No. 22 of 1990 s. 22; No. 21 of 1993 s. 45; No. 37 of 1993 s. 9, 10(2) and 27; No. 73 of 1994 s. 4; No. 58 of 1994 s. 21; No. 52 of 1995 s. 27; No. 54 of 1996 s. 10 and 23; No. 10 of 2001 s. 133; No. 15 of 2002 s. 15; No. 39 of 2004 s. 9; No. 27 of 2005 s. 10; No. 12 of 2010 s. 26; No. 51 of 2012 s. 21; [Mining Amendment Bill 2022.](#)]

Division 2A — Retention licence

[Heading inserted: No. 37 of 1993 s. 10(1).]

70A. Term used: primary tenement

In this Division —

primary tenement means —

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

[Section 70A inserted: No. 39 of 2004 s. 25.]

70B. Grant of retention licence

- (1) Subject to this Act, the Minister may, on the application of the holder of a primary tenement, after receiving a recommendation of the mining registrar or the warden in accordance with section 70D, grant to that person a licence to be known as a retention licence in respect of the whole or any part of the land the subject of the primary tenement on such terms and conditions as the Minister considers reasonable.
- (2) The holder of a primary tenement may be granted more than one retention licence.
- (3) Where the applicant for a retention licence is the holder of 2 or more primary tenements, a retention licence may be granted in respect of the whole or any part of the land within the boundaries of those tenements.

- (4) The land in respect of which a retention licence is granted —
- (a) shall be of an area that, in the opinion of the Minister, is sufficient to include —
 - (i) the land in, on or under which an identified mineral resource is located; and
 - (ii) such other land as may be required for future mining operations in respect of that identified mineral resource;
- and
- (b) may be of an area that is less than the area of land in respect of which the retention licence is sought.

[Section 70B inserted: No. 37 of 1993 s. 10(1); amended: No. 58 of 1994 s. 24(2).]

70C. Application for retention licence

- (1) An application for a retention licence —
- (a) shall be in the prescribed form; and
 - (b) shall be accompanied by the amount of the prescribed rent for the first year of the term of the licence or portion thereof as prescribed; and
 - (c) shall be accompanied by the prescribed application fee; and
 - (d) shall be lodged in the prescribed manner; and
 - (e) shall be accompanied by a statement specifying —
 - (i) the details of the programme of work (if any) proposed to be carried out in the area in respect of which the licence is sought; and
 - (ii) the estimated amount of money (if any) proposed to be expended on such work.
- (2A) An applicant is to lodge within the prescribed time and in the prescribed manner a statutory declaration made by the applicant to the effect that —
- (a) there is an identified mineral resource in the area in respect of which the licence is sought; and
 - (b) mining of that identified mineral resource is for the time being impracticable for one or more of the reasons referred to in subsection (2) (that reason or those reasons being set out in the statutory declaration).

- (2) For the purposes of subsection (2A)(b) mining of an identified mineral resource may be impracticable because —
 - (a) the identified mineral resource is uneconomic or subject to marketing problems although that resource may reasonably be expected to become economic or marketable in the future; or
 - (b) the identified mineral resource is required to sustain the future operations of an existing or proposed mining operation; or
 - (c) there are existing political, environmental or other difficulties in obtaining requisite approvals.
- (3) An applicant shall at the request of the mining registrar or warden furnish such further information in relation to the application, or such evidence in support of the application, as the mining registrar or warden may require but the mining registrar or warden shall not require information or evidence relating to assays or other results of any testing or sampling that the applicant may have carried out on the land the subject of the application.
- (4) Within the prescribed period the applicant shall serve such notice of the application as may be prescribed on the owner and occupier of the land to which the application relates and on such other persons as may be prescribed.
- (5) The application shall be made by reference to a written description of the area of the land in respect of which the licence is sought, and be accompanied by a map on which are clearly delineated the boundaries of that area.
- (6) Where an application is made by the holder of a primary tenement and the term of the primary tenement would but for this subsection expire, the primary tenement shall continue in force in respect of the land the subject of the application until —
 - (a) the retention licence is granted; or
 - (b) if the retention licence is refused, the expiry of a period of 30 days after that refusal.
- (7) If, after an application is made under subsection (1) in respect of land the subject of a primary tenement —
 - (a) the holder of the tenement transfers the tenement; or

- (b) where there are 2 or more holders of the tenement, a holder transfers the holder's interest in the tenement, the application continues in the name of the transferee of the tenement or interest as if the transferee were the applicant or one of the applicants, as the case requires.
- (8) For the purposes of subsection (7), where there are 2 or more transferees of the primary tenement, each of the transferees is to be regarded as an applicant for an interest in the relevant retention licence that corresponds to the interest held by that transferee in the primary tenement.

[Section 70C inserted: No. 37 of 1993 s. 10(1); amended: No. 58 of 1994 s. 23; No. 17 of 1999 s. 10; No. 12 of 2010 s. 27.]

70D. Determination of application for retention licence

- (1) A person who wishes to object to the granting of an application for a retention licence must lodge a notice of objection.~~shall lodge a notice of objection within the prescribed time and in the prescribed manner.~~

(1A) A notice of objection must be —

- (a) lodged within the prescribed time and in the prescribed manner; and
- (b) accompanied by the prescribed fee.

- (2) Where no notice of objection is lodged within the prescribed time, or any notice of objection is withdrawn, the mining registrar shall, unless subsection (4)(b) applies, forward to the Minister a report which recommends the grant or refusal of the retention licence and sets out the reasons for that recommendation.
- (3) The mining registrar shall —
- (a) recommend the grant of the retention licence if satisfied that the applicant has complied in all respects with the provisions of this Act; or
- (b) recommend the refusal of the retention licence if not so satisfied.

- (4) Where a notice of objection —
- (a) is lodged within the prescribed time; or
 - (b) is not lodged within the prescribed time but is lodged before the mining registrar has forwarded a report to the Minister under subsection (2) and the warden is satisfied that there are reasonable grounds for late lodgment,
- and the notice of objection is not withdrawn, the warden shall hear the application for the retention licence on a day appointed by the warden and may give any person who has lodged such a notice of objection an opportunity to be heard.
- (5) The warden shall as soon as practicable after the hearing of the application forward to the Minister for the Minister's consideration —
- (a) the notes of evidence; and
 - (b) any maps or other documents referred to in the notes of evidence; and
 - (c) a report which recommends the grant or refusal of the retention licence and sets out the reasons for that recommendation.
- (6) On receipt of a report under subsection (2) or (5), the Minister may, subject to subsection (7), grant or refuse the retention licence as the Minister thinks fit, and irrespective of whether —
- (a) the report recommends the grant or refusal of the retention licence; and
 - (b) the applicant has or has not complied in all respects with the provisions of this Act.
- (7) The Minister shall not grant a retention licence unless the Minister is satisfied that mining of an identified mineral resource on the land in respect of which the retention licence is sought is for the time being impracticable for one or more of the reasons referred to in section 70C(2).
- (8) Before granting or refusing a retention licence the Minister may require the applicant to furnish such further information in relation to the application, or such evidence in support of the application, as the Minister thinks fit.

- (9) Before granting a retention licence the Minister may require the applicant to mark out in the prescribed manner the land in respect of which the retention licence is sought.

[Section 70D inserted: No. 58 of 1994 s. 24(1); amended: No. 39 of 2004 s. 61; No. 12 of 2010 s. 28; [Mining Amendment Bill 2022.](#)]

70E. Term of retention licence and renewal

- (1) Subject to this Act, a retention licence remains in force for such period not exceeding 5 years as is specified in the licence and then expires.
- (2) The Minister may, on receipt of an application made within the prescribed time and in the prescribed manner, renew or further renew a retention licence for a period not exceeding 5 years.
- (3) If an application for renewal is made under this section and the term of the licence would but for this subsection expire, the licence shall continue in force in respect of the land the subject of the application until the application is determined.
- (4) If the holder of a retention licence transfers the licence after making an application for renewal under this section, the application continues in the name of the transferee of the licence as if the transferee had made it.

[Section 70E inserted: No. 37 of 1993 s. 10(1); amended: No. 17 of 1999 s. 11.]

70F. Security relating to retention licence

- (1) The applicant for a retention licence shall lodge, in the prescribed manner and within the prescribed period, a security for compliance with —
- (a) the conditions to which the retention licence, if granted, will from time to time be subject; and
 - (b) the provisions of this Part and the regulations.
- (2) The Minister may require the holder of a retention licence to lodge, in the prescribed manner and within such period as the Minister specifies in writing, an additional security for compliance with conditions imposed in relation to the licence under section 70I.

- (3) A security referred to in subsection (1) or (2) shall be in accordance with and subject to section 126.
- (4) A retention licence shall not be granted unless a security has been lodged by the applicant for the retention licence in accordance with subsection (1).
- (5) Notwithstanding section 154(1), an applicant for a retention licence who fails to comply with subsection (1) does not commit an offence against this Act.

[Section 70F inserted: No. 39 of 2004 s. 36(1); amended: No. 12 of 2010 s. 29.]

70G. Survey of area of retention licence not required in first instance

- (1) On an application for a retention licence or on a retention licence being granted the land affected is not thereby required to be surveyed, but where a dispute arises with respect to the position of that land or the boundaries or any boundary of that land the warden or the Minister may require a survey to be made of the boundaries or the boundary in order to settle the dispute.
- (2) A survey required under subsection (1) shall be —
 - (a) arranged in accordance with the regulations; and
 - (b) paid for by such party or parties to the dispute as the warden or the Minister determines.

[Section 70G inserted: No. 37 of 1993 s. 10(1); amended: No. 39 of 2004 s. 62.]

70H. Conditions attached to retention licence

- (1) Every retention licence shall be deemed to be granted subject to the conditions that the holder of the licence shall —
 - (aa) not use ground disturbing equipment when exploring for minerals on the land the subject of the licence unless —
 - (i) the holder has lodged in the prescribed manner a programme of work in respect of that use; and
 - (iia) the holder has paid the prescribed assessment fee in respect of the programme of work; and
 - (ii) the programme of work has been approved in writing by the Minister or a prescribed official;
- and

- (a) fill in or otherwise make safe to the satisfaction of a prescribed official all holes, pits, trenches and other disturbances to the surface of the land the subject of the licence which are —
 - (i) made while exploring for minerals; and
 - (ii) in the opinion of the prescribed official, likely to endanger the safety of any person or animal;and
- (b) take all necessary steps to prevent fire, damage to trees or other property and to prevent damage to any property or damage to livestock by the presence of dogs, the discharge of firearms, the use of vehicles or otherwise; and
- [(c) *deleted*]
- (d) comply with the expenditure conditions (if any) applicable to such land; and
- (e) not transfer or mortgage a legal interest in such land or any part thereof without the prior written consent of the Minister, or of an officer of the Department acting with the authority of the Minister; and
- (f) lodge, in the prescribed manner, such periodical reports and returns as may be prescribed; and
- (g) furnish to the Minister such geological samples obtained in the course of operations conducted by the holder under the licence as the Minister may request.

(2) The Minister may at any time cancel or vary —

[(a) *deleted*]

(b) expenditure conditions referred to in subsection (1)(d).

[Section 70H inserted: No. 37 of 1993 s. 10(1); amended: No. 54 of 1996 s. 11; No. 17 of 1999 s. 12(2) and (3); No. 39 of 2004 s. 44 and 90(1); No. 12 of 2010 s. 30; No. 51 of 2012 s. 22.]

70I. Conditions for prevention or reduction of injury to land

- (1) On the granting of a retention licence, or at any subsequent time, the Minister may impose on the holder of the licence reasonable conditions for the purpose of preventing or reducing, or making good, injury to the land in respect of which the licence is sought or was granted, or injury to anything on or

below the natural surface of that land or consequential damage to any other land.

- (2) A condition imposed under this section may be cancelled or varied by the Minister at any time.
- (3) A condition imposed under this section —
 - (a) may, either in full or with sufficient particularity as to identify the recommendation or other source from which it derives, be endorsed on the licence, for which purpose the holder of the licence shall produce the licence on demand; and
 - (b) whether or not so endorsed, on notice of the imposition of the condition being given in writing to the holder of the licence shall for all purposes have effect as a condition to which the licence is subject.

[Section 70I inserted: No. 37 of 1993 s. 10(1); amended: No. 12 of 2010 s. 7.]

70IA. Programme of work

- (1) On the granting of a retention licence, or at any subsequent time, the Minister may impose on the holder of the licence a condition requiring the holder to comply with a specified programme of work in respect of the land the subject of the licence within a specified period.
- (2) Before imposing a condition under subsection (1), the Minister may require the applicant for the licence or the holder of the licence, as the case requires, to submit to the Minister a draft programme of work in a form approved by the Minister and the applicant or the holder, as the case requires, shall comply with that requirement.
- (3) Subsections (2) and (3) of section 70I apply to a condition imposed under subsection (1) as if it were a condition imposed under that section.
- (4) In subsection (1) —
specified means specified in writing by the Minister.

[Section 70IA inserted: No. 17 of 1999 s. 12(1).]

70J. Rights conferred by retention licence

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

- (a) to enter and re-enter the land the subject of the licence with such agents, employees, vehicles, machinery and equipment as may be necessary or expedient for the purpose of further exploring for minerals in, on or under the land;
- (b) to further explore, subject to any conditions imposed under section 24, 24A or 25, for minerals, and to carry on such operations and carry out such works as are necessary for that purpose on such land including digging pits, trenches and holes, and sinking bores and tunnels to the extent necessary for the purpose in, on or under the land;
- (c) to excavate, extract or remove, subject to any conditions imposed under section 24, 24A or 25, from such land, earth, soil, rock, stone, fluid or mineral bearing substances in such amount, in total during the period for which the licence remains in force, as does not exceed the prescribed limit, or in such greater amount as the Minister may, in any case, approve in writing;
- (d) to take and divert, subject to the *Rights in Water and Irrigation Act 1914*, or any Act amending or replacing the relevant provisions of that Act, water from any natural spring, lake, pool or stream situate in or flowing through such land or from any excavation previously made and used for mining purposes, and, subject to that Act, to sink a well or bore on such land and take water therefrom and to use the water so taken for the holder's domestic purposes and for any purpose in connection with exploring for minerals on the land.

[Section 70J inserted: No. 37 of 1993 s. 10(1); amended: No. 5 of 1997 s. 41(2).]

70K. When retention licence liable to forfeiture

A retention licence is liable to forfeiture if —

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

- (b) the terms and conditions of the licence, including —
 - (i) any conditions to which the licence is deemed to be subject under section 70H; and
 - (ii) any conditions imposed under section 70I or 70IA,are not complied with; or
- (ba) a report required under section 70H(1)(f) or 115A in relation to the land the subject of the retention licence is not filed in accordance with this Act; or
- (bb) the holder of the licence fails to comply with a requirement under section 70F(2) to lodge a security; or
- (c) the holder of the licence is convicted of an offence against this Act; or
- (d) the holder of the licence fails to comply with a notice under section 70M(2) requiring that person to apply for a mining lease in respect of the whole or any part of the land the subject of the licence; or
- (e) the holder of the licence fails to comply with a notice under section 115B(2) requiring that person to file an audit statement or cause an audit statement to be filed.

[Section 70K inserted: No. 37 of 1993 s. 10(1); amended: No. 58 of 1994 s. 26; No. 17 of 1999 s. 12(4); No. 39 of 2004 s. 37 and 97(2).]

70L. Holder of retention licence to have priority for grant of mining lease or general purpose lease

- (1) The holder of a retention licence has —
 - (a) subject to this Act and to any conditions to which the retention licence is subject; and
 - (b) subject to satisfactory compliance with any conditions imposed under section 70I or 70IA; and
 - (c) while the retention licence remains in force,the right to apply for, and subject to section 75(9) to have granted pursuant to section 75(7), one or more mining leases or one or more general purpose leases or both in respect of any part or parts of the land the subject of the retention licence.
- (2) Where an application for a mining lease or a general purpose lease is made by the holder of a retention licence in respect of any land and the term of the retention licence would but for this

subsection expire, that licence shall continue in force in respect of the land the subject of the application until the application for a lease is determined.

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

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

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

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

[Section 70L inserted: No. 37 of 1993 s. 10(1); amended: No. 58 of 1994 s. 29(3); No. 17 of 1999 s. 12(5) and 13.]

70M. Holder of retention licence to show cause why mining lease should not be applied for

- (1) The Minister may at any time by notice in writing require the holder of a retention licence to show cause why a mining lease should not be applied for in respect of the whole or any part of the land the subject of the retention licence.

- (2) Where —

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

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

[Section 70M inserted: No. 37 of 1993 s. 10(1).]

70N. Land subject of retention licence not to be again marked out for certain period

- (1) Where a retention licence is surrendered or forfeited, or expires, the land the subject of the retention licence or any part of that land shall not be marked out or applied for as a prospecting licence or an exploration licence by or on behalf of —
- (a) the person who was the holder of the retention licence immediately prior to the date of the surrender, forfeiture or expiry; or
 - (b) any person who had an interest in the retention licence immediately prior to that date,
- within a period of 3 months from and including that date.
- (2) For the purposes of subsection (1) the holding of shares in a listed public company which held the retention licence in question does not of itself constitute an interest in the retention licence.

[Section 70N inserted: No. 37 of 1993 s. 10(1).]

Division 3 — Mining lease

70O. Terms used

- (1) In this Division —

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

mine closure plan means a document that —

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

mining proposal means a document that —

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

relevant mining proposal, in relation to a mining lease, means —

- (a) a mining proposal that accompanied the application for the mining lease under section 74(1)(ca); or
- (b) a mining proposal for which there is approval as described in section 82A(2)(b);

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

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

[Section 70O inserted: No. 39 of 2004 s. 27; amended: No. 12 of 2010 s. 8.]

70P. Guidelines to be publicly available

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

[Section 70P inserted: No. 39 of 2004 s. 27.]

71. Grant of mining lease

Subject to this Act, the Minister may, on the application of any person, after receiving a recommendation of the mining registrar or the warden in accordance with section 75, grant to the person a lease to be known as a mining lease on such terms and conditions as the Minister considers reasonable.

[Section 71 amended: No. 122 of 1982 s. 20; No. 58 of 1994 s. 29(4).]

72. Person may be granted more than one mining lease

Any person may be granted more than one mining lease.

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

- (1) The area of land in respect of which a mining lease is granted may be less than the area of land in respect of which the mining lease is sought.

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

[Section 73 inserted: No. 39 of 2004 s. 28.]

74. Application for mining lease

- (1) An application for a mining lease —
- (a) shall be in the prescribed form; and
 - (b) shall be accompanied by the amount of the prescribed rent for the first year of the term of the lease or portion thereof as prescribed; and
 - (c) shall be accompanied by the prescribed application fee; and
 - (ca) shall be accompanied by —
 - (i) a mining proposal; or
 - (ii) a statement in accordance with subsection (1a) and a mineralisation report prepared by a qualified person; or
 - (iii) a statement in accordance with subsection (1a) and a resource report;
- and
- (d) shall be lodged in the prescribed manner.

(1AA) Instead of accompanying an application for a mining lease under subsection (1)(ca), a mining proposal may be lodged within the prescribed time and in the prescribed manner and, if so lodged, is to be treated for the purposes of this Division as a mining proposal that accompanied the application for the mining lease under section 74(1)(ca).

- (1a) The statement referred to in subsection (1)(ca)(ii) and (iii) shall set out information about the mining operations that are likely to be carried out in, on or under the land to which the application relates including information as to —
- (a) when mining is likely to commence; and
 - (b) the most likely method of mining; and
 - (c) the location, and the area, of land that is likely to be required for the operation of plant, machinery and equipment and for other activities associated with those mining operations.

- (2) The applicant shall at the request of the mining registrar or warden furnish such further information in relation to the application, or such evidence in support thereof, as the mining registrar or warden may require but the mining registrar or warden shall not require any information or evidence relating to assays or other results of any testing or sampling that the applicant may have carried out on the land the subject of his application.
- (3) Within the prescribed period the applicant shall serve such notice of the application as may be prescribed on the owner and occupier of the land to which the application relates and on such other persons as may be prescribed.
- (4) The application shall be made by reference to a written description of the area of the land in respect of which the lease is sought, and be accompanied by a map on which are clearly delineated the boundaries of that area.
- (5) The Director General of Mines shall ensure that —
- (a) any document referred to in subsection (1)(ca) that accompanies the application; and
 - (b) any document furnished by the applicant in response to a request under subsection (2),
- are made available for public inspection at reasonable times.
- (6) The regulations may require a person to pay a fee specified in the regulations —
- (a) for inspecting a document referred to in subsection (5); or
 - (b) for obtaining a copy of the document or any part of it.
- (7) In this section —
- JORC Code** means the *Australasian Code for Reporting of Exploration Results, Mineral Resources and Ore Reserves* prepared by the Joint Ore Reserves Committee of the Australasian Institute of Mining and Metallurgy, the Australian Institute of Geoscientists and the Minerals Council of Australia as in force from time to time;
- likely** means reasonably likely having regard to the information available to the applicant when the application is made;

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

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

qualified person means a person who —

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

resource report means a report —

- (a) that sets out details of the mineral resources located in, on or under the land to which the application relates; and
- (b) that complies with the JORC Code; and
- (c) that has been made to the Australian Securities Exchange Limited.

[Section 74 amended: No. 100 of 1985 s. 50; No. 37 of 1993 s. 26 and 28(1); No. 58 of 1994 s. 28; No. 39 of 2004 s. 29; No. 12 of 2010 s. 31; No. 51 of 2012 s. 23.]

74A. Report on significant mineralisation required for certain applications

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

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

mineralisation report means the mineralisation report that accompanied the application.

[Section 74A inserted: No. 39 of 2004 s. 30.]

75. Determination of application for mining lease

- (1) A person who wishes to object to the granting of an application for a mining lease must lodge a notice of objection. ~~shall lodge a notice of objection within the prescribed time and in the prescribed manner.~~

(1AA) A notice of objection must be —

- (a) lodged within the prescribed time and in the prescribed manner; and
- (b) accompanied by the prescribed fee.

- (1a) A person is not entitled to lodge a notice of objection if the basis for the objection is that there is no significant mineralisation in, on or under the land to which the application relates.
- (2) Subject to subsection (2a), if no notice of objection is lodged within the prescribed time, or any notice of objection is withdrawn, the mining registrar shall, unless subsection (4)(b) applies, forward to the Minister a report which recommends the grant or refusal of the mining lease and sets out the reasons for that recommendation.
- (2a) If the application for the mining lease is accompanied by the documentation referred to in section 74(1)(ca)(ii), the mining registrar shall not forward a report under subsection (2) unless —
 - (a) the mining registrar has received a copy of the section 74A report in relation to the application; and

- (b) the section 74A report states that there is significant mineralisation in, on or under the land to which the application relates.
- (3) The mining registrar shall —
- (a) recommend the grant of the mining lease if satisfied that the applicant has complied in all respects with the provisions of this Act; or
- (b) recommend the refusal of the mining lease if not so satisfied.
- (4) Subject to subsection (4a), if a notice of objection —
- (a) is lodged within the prescribed time; or
- (b) is not lodged within the prescribed time but is lodged before the mining registrar has forwarded a report to the Minister under subsection (2) and the warden is satisfied that there are reasonable grounds for late lodgment, and the notice of objection is not withdrawn, the warden shall hear the application for the mining lease on a day appointed by the warden and may give any person who has lodged such a notice of objection an opportunity to be heard.
- (4a) If the application for the mining lease is accompanied by the documentation referred to in section 74(1)(ca)(ii), the warden shall not hear the application unless —
- (a) the warden has received a copy of the section 74A report in relation to the application; and
- (b) the section 74A report states that there is significant mineralisation in, on or under the land to which the application relates.
- (5) The warden shall as soon as practicable after the hearing of the application forward to the Minister for the Minister's consideration —
- (a) the notes of evidence; and
- (b) any maps or other documents referred to in the notes of evidence; and
- (c) a report which recommends the grant or refusal of the mining lease and sets out the reasons for that recommendation.

- (6) On receipt of a report under subsection (2) or (5), the Minister may, subject to subsection (7), grant or refuse the mining lease as the Minister thinks fit, and irrespective of whether —
- (a) the report recommends the grant or refusal of the mining lease; and
 - (b) the applicant has or has not complied in all respects with the provisions of this Act.
- (7) In the case of an application for a mining lease made by the holder of —
- (a) a prospecting licence under section 49; or
 - (b) an exploration licence under section 67; or
 - (c) a retention licence under section 70L,
- the Minister shall, subject to subsection (8) and the other provisions of this Act, grant to that holder one or more mining leases —
- (d) in respect of any part or parts of the land the subject of the prospecting licence, exploration licence or retention licence, as the case requires; and
 - (e) on such terms and conditions as the Minister considers reasonable.
- (8) In the case of an application for a mining lease that is accompanied by the documentation referred to in section 74(1)(ca)(ii), the Minister shall refuse to grant the mining lease if the section 74A report states that there is no significant mineralisation in, on or under the land to which the application relates.
- (9) Subsection (7) does not apply to an application for a mining lease if all or part of the land to which that application relates falls within one or more of the classes of land referred to in section 24(1) or is in a marine nature reserve, marine park or marine management area.
- (10) In this section —
- section 74A report** means the report given to the Minister under section 74A.

[Section 75 inserted: No. 58 of 1994 s. 29(1); amended: No. 52 of 1995 s. 29; No. 5 of 1997 s. 41(2); No. 39 of 2004 s. 31 and 63; No. 12 of 2010 s. 32; [Mining Amendment Bill 2022](#).]

76. Priorities as to mining tenements

Subject to the provisions of sections 56A, 70 and 85B as regards the special prospecting licences and mining leases therein referred to and section 94A as regards miscellaneous licences, where an application for a mining lease includes any portion of land included in a current mining tenement held by a person other than the applicant, any mining lease granted on the application shall not include any such portion of land.

[Section 76 amended: No. 100 of 1985 s. 52; No. 22 of 1990 s. 23; No. 37 of 1993 s. 12(2).]

[77. Deleted: No. 122 of 1982 s. 22.]

78. Term of leases, options and renewals

- (1) Subject to this Act, a mining lease shall remain in force —
 - (a) for an initial term of 21 years; and
 - (b) where application for renewal is made in the prescribed manner during the final year of the term of that lease or if section 111A(1)(d) applies, as from the expiry of the preceding term for a further term of 21 years, as of right but subject in respect of that further term to the provisions of this Act and the regulations thereunder as in force on and after the date of renewal.
- (2) Subject to subsection (1), the Minister may, from time to time upon receipt of an application made in the prescribed manner, renew or further renew a mining lease for successive terms but so that no such term exceeds a period of 21 years.
- (3) If an application for renewal is made under this section and the term of the lease would but for this subsection expire, that lease shall continue in force in respect of the land the subject of that application until the application is determined.
- (4) If, after an application for renewal is made under this section —
 - (a) the holder of the mining lease transfers the lease; or
 - (b) where there are 2 or more holders of the mining lease, a holder transfers the holder's interest in the lease,the application continues in the name of the transferee of the lease or interest as if the transferee were an applicant or one of the applicants, as the case requires.

[Section 78 inserted: No. 100 of 1985 s. 53; amended: No. 1 of 1986 s. 5; No. 57 of 1997 s. 89(3); No. 17 of 1999 s. 14.]

79. Approval of application

- (1) Where a person has applied for a mining lease and has been notified in writing by or on behalf of the Minister that the Minister has granted the mining lease to which the application relates, the applicant shall be deemed to be the holder of the lease comprising the land in respect of which the lease is granted as from the date of the written notification.
- (2) Where a written notification is given under subsection (1) the term of the lease shall commence from the date of the written notification.

80. Surveys of mining leases

- (1) Land the subject of a mining lease shall be surveyed, but it shall not be necessary for the survey to be carried out prior to the granting of the lease.

[(2) deleted]

[Section 80 inserted: No. 100 of 1985 s. 54; amended: No. 37 of 1993 s. 28(1).]

[81. Deleted: No. 100 of 1985 s. 55.]

82. Covenants and conditions of lease

- (1) Every mining lease shall contain and be subject to the prescribed covenants by the lessee and in particular shall be deemed to be granted subject to the conditions that the lessee shall —
 - (a) pay the rents and royalties due under the lease at the prescribed time and in the prescribed manner;
 - (b) use the land in respect of which the lease is granted only for mining purposes in accordance with this Act;
 - (ba) arrange and pay for a survey of such land within the prescribed time and in the prescribed manner;
 - (bb) where the lease is surrendered in part, arrange and pay for a re-survey of such land within the prescribed time and in the prescribed manner;
 - (c) comply with the prescribed expenditure conditions applicable to such land unless partial or total exemption therefrom is granted in such manner as is prescribed;

- (ca) not use ground disturbing equipment when mining on such land unless —
 - (i) the lessee has lodged in the prescribed manner a programme of work in respect of that use and has paid the prescribed assessment fee in respect of the programme and the programme has been approved in writing by the Minister or a prescribed official; or
 - (ii) that use is dealt with in a relevant mining proposal;
- (d) not transfer or mortgage a legal interest in such land or any part thereof without the prior written consent of the Minister, or of an officer of the Department acting with the authority of the Minister;
- (e) lodge, in the prescribed manner, such periodical reports and returns as may be prescribed;
- (ea) furnish to the Minister such geological samples obtained in the course of operations conducted by the lessee under the lease as the Minister may request;
- (f) promptly report in writing to the Minister details of all minerals of economic significance discovered in, on or under the land the subject of the mining lease;
- (ga) in accordance with section 84AA —
 - (i) review the mine closure plan contained in a relevant mining proposal; and
 - (ii) obtain the written approval for the reviewed mine closure plan from a prescribed official;
- (g) be liable to have the lease forfeited if he is in breach of any of the covenants or conditions of the lease, if he fails to comply with any requirement under section 84A(2) or 115B(2) in relation to the lease or if a report required under paragraph (e) or section 115A in relation to the land the subject of the lease is not filed in accordance with this Act.

[(1a) deleted]

- (1b) Without limiting or otherwise affecting the application of the other provisions of subsection (1), paragraph (ca) of that subsection does not apply to a mining lease granted pursuant to a Government agreement, as defined in section 2 of the *Government Agreements Act 1979*, in accordance with

proposals approved, deemed to be approved or determined under the agreement.

- (2) Every mining lease shall contain a provision that after receiving the warden's recommendation for forfeiture of a lease for breach of any covenant or condition of the lease by the lessee, the Minister may, as he thinks fit, impose a penalty not exceeding \$50 000 as an alternative to the forfeiture of the lease.
- (3) Where any penalty imposed as an alternative to forfeiture of the lease pursuant to subsection (2) is not paid within the time specified by the Minister, or within 30 days of written notice of the penalty being given by the Minister to the lessee if no other time is specified by the Minister, the lease shall thereupon be forfeited.

[Section 82 amended: No. 100 of 1985 s. 56; No. 22 of 1990 s. 38; No. 37 of 1993 s. 28(1); No. 58 of 1994 s. 30; No. 54 of 1996 s. 12; No. 17 of 1999 s. 15(2); No. 15 of 2002 s. 28; No. 39 of 2004 s. 32(1), (2), 38, 45 and 97(3); No. 12 of 2010 s. 9 and 33; No. 51 of 2012 s. 24.]

82A. Condition to be included in certain mining leases

- (1) This section applies to a mining lease if —
 - (a) the application for the mining lease was made under this Act, but was not determined, before the commencement of section 33 of the *Mining Amendment Act 2004*; or
 - (b) the application for the mining lease was accompanied by the documentation referred to in section 74(1)(ca)(ii).
- (2) Every mining lease to which this section applies shall be deemed to be granted subject to a condition requiring the lessee, before the lessee carries out mining operations of a prescribed kind on any part of the land the subject of the mining lease —
 - (a) to lodge in the prescribed manner a mining proposal in respect of those operations; and
 - (ba) to pay the prescribed assessment fee in respect of the mining proposal; and
 - (b) to obtain written approval for the mining proposal from a prescribed official.

[Section 82A inserted: No. 39 of 2004 s. 33; amended: No. 51 of 2012 s. 25.]

83. Issue of mining leases

- (1) Every mining lease —
 - (a) shall be dated as of the day of the notification by the Minister under section 79; and
 - (b) shall be executed by the Minister.
- (2) Where a mining lease has been executed under subsection (1) —
 - (a) the mining lease shall be endorsed with the word “original” on its front page; and
 - (b) a copy of the mining lease shall be —
 - (i) endorsed with the word “duplicate” on its front page; and
 - (ii) issued to the lessee on payment of the prescribed fee.

[Section 83 amended: No. 37 of 1993 s. 11.]

84AA. Review of mine closure plans

- (1) The lessee of a mining lease must ensure that the mine closure plan contained in a relevant mining proposal is reviewed —
 - (a) in the case of a mining proposal that accompanied the application for the mining lease under section 74(1)(ca), no later than 3 years after the lease is granted; or
 - (b) in the case of a mining proposal for which there is approval as described in section 82A(2)(b), no later than 3 years after the approval; or
 - (c) no later than such other time as is approved in writing by a prescribed official.
- (2) The lessee of a mining lease must ensure that a mine closure plan is reviewed no later than —
 - (a) 3 years after its most recent review; or
 - (b) such other time as is approved in writing by a prescribed official.
- (3) The lessee of a mining lease must ensure that a reviewed mine closure plan is lodged, for the approval of a prescribed official, in the prescribed manner and within the prescribed time.

[Section 84AA inserted: No. 12 of 2010 s. 10.]

84. Conditions for prevention or reduction of injury to land

- (1) On the granting of a mining lease, or at any subsequent time, the Minister may impose on the lessee reasonable conditions for the purpose of preventing or reducing, or making good, injury to the land in respect of which the lease is sought or was granted, or injury to anything on or below the natural surface of that land or consequential damage to any other land.
- (2) Without limiting the generality of subsection (1), the Minister may, on the granting of the mining lease or at any subsequent time, if it is reasonable in all the circumstances so to do, impose on the lessee a condition that mining operations shall not be carried out within such distance of the natural surface of the land in respect of which the lease is sought or was granted, as the Minister may specify.
- (3) Any condition imposed under this section may at any time be cancelled by the Minister or from time to time varied by him.
- (4) A condition imposed in relation to a lease under this section —
 - (a) may, either in full or with sufficient particularity as to identify the recommendation or other source from which it derives, be endorsed on the original and the duplicate of the lease, for which purpose the lessee shall produce the duplicate of the lease on demand; and
 - (b) whether or not so endorsed, on notice of the imposition of the condition being given in writing to the lessee shall for all purposes have effect as a condition to which the lease is subject; and
 - (c) where it is set out or otherwise sufficiently identified in the notification of the grant of the lease, shall have effect as though the lease had been issued duly endorsed as to the terms of that condition.

[Section 84 amended: No. 100 of 1985 s. 57; No. 12 of 2010 s. 11.]

84A. Security relating to mining lease

- (1) The applicant for a mining lease shall lodge, in the prescribed manner and within the prescribed period, a security for compliance with —
 - (a) the conditions to which the mining lease, if granted, will from time to time be subject; and

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

[Section 84A inserted: No. 39 of 2004 s. 39(1); amended: No. 12 of 2010 s. 34.]

85. Rights of holder of mining lease

- (1) Subject to this Act and to any conditions to which the mining lease is subject, a mining lease authorises the lessee thereof and his agents and employees on his behalf to —
 - (a) work and mine the land in respect of which the lease was granted for any minerals; and
 - (b) take and remove from the land any minerals and dispose of them; and
 - (c) take and divert subject to the *Rights in Water and Irrigation Act 1914*, or any Act amending or replacing the relevant provisions of that Act, water from any natural spring, lake, pool or stream situate in or flowing through such land or from any excavation previously made and used for mining purposes, and subject to that Act to sink a well or bore on such land and take water therefrom and to use the water so taken for his domestic purposes and for any purpose in connection with mining for minerals on the land; and
 - (d) do all acts and things that are necessary to effectually carry out mining operations in, on or under the land.

Mining Act 1978

Part IV

Mining tenements

Division 3

Mining lease

s. 85A

- (2) Subject to this Act and to any conditions to which the mining lease is subject, the lessee of a mining lease —
- (a) is entitled to use, occupy, and enjoy the land in respect of which the mining lease was granted for mining purposes; and
 - (b) owns all minerals lawfully mined from the land under the mining lease.
- (3) The rights conferred by this section are exclusive rights for mining purposes in relation to the land in respect of which the mining lease was granted.

[Section 85 amended: No. 100 of 1985 s. 58; No. 39 of 2004 s. 34.]

85A. Land the subject of mining lease not to be again marked out for a certain period

- (1) Where a mining lease is surrendered or forfeited, or expires, the land the subject of the lease or any part of that land shall not be marked out or applied for as a prospecting licence or an exploration licence by or on behalf of —
- (a) the person who was the holder of the mining lease immediately prior to the date of the surrender, forfeiture or expiry; or
 - (b) any person who had an interest in the mining lease immediately prior to that date; or
 - (c) any person who is related to a person referred to in paragraph (a) or (b),

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

- (2) For the purposes of subsection (1) the holding of shares in a listed public company which held the mining lease in question does not of itself constitute an interest in the mining lease.

[Section 85A inserted: No. 37 of 1993 s. 12(1); amended: No. 15 of 2002 s. 16.]

85B. Special prospecting licence on a mining lease

- (1) Where any land is the subject of a mining lease (in this section called the **primary tenement**) then, notwithstanding section 117, a person may at any time mark out and, in accordance with section 41, apply for a prospecting licence for gold (in this section called a **special prospecting licence**) in

respect of any part of the land the subject of the primary tenement.

- (1a) A special prospecting licence may only be applied for by, granted to or held by a natural person.
- (2) An application for a special prospecting licence shall be accompanied by the written consent of the holder of the primary tenement to the granting of the special prospecting licence.
- (3) Subject to this section, the mining registrar may, if the mining registrar is satisfied that the holder of the primary tenement has consented in writing to the granting of the special prospecting licence, grant a special prospecting licence on such terms or conditions as the mining registrar thinks fit, but a special prospecting licence so granted —
 - (a) shall not exceed 10 ha in area; and
 - (b) authorises the holder of the special prospecting licence to prospect only for gold; and
 - (c) does not, unless the Minister otherwise directs, prevent the holder of the primary tenement from prospecting for minerals other than gold in or on the land the subject of the special prospecting licence; and
 - (d) does not authorise the holder of the special prospecting licence to excavate, extract or remove during the period for which the mining tenement remains in force a total amount of earth, soil, rock, stone, fluid or mineral bearing substances in excess of 500 t, except in so far as the prior written approval of the Minister may otherwise permit; and
 - (e) does not authorise mining to be carried out in any portion of the land that is —
 - (i) below a depth specified in the terms and conditions of the special prospecting licence, and any depth so specified shall be less than 50 m below the lowest part of the natural surface of the land the subject of the special prospecting licence; or
 - (ii) if a depth is not so specified, 50 m or more below the lowest part of the natural surface of the land the subject of the special prospecting licence, except in so far as both the prior written consent of the holder of the primary tenement and the

prior written approval of the Minister may otherwise permit.

- (3a) A special prospecting licence may be granted for a period of 3 months or for any period which is a multiple of 3 months but which does not exceed 4 years.
- (4) A special prospecting licence —
- (a) continues in force notwithstanding that the holder of the primary tenement may apply for and be granted a retention licence, mining lease or general purpose lease in respect of the land; but
 - (b) ceases (and the land in respect of which it was granted reverts to the holder of the primary tenement as an integral part of the mining tenement held by that person) on the surrender, forfeiture or expiry of that special prospecting licence.
- (5) No legal or equitable interest in or affecting —
- (a) a special prospecting licence; or
 - (b) a mining lease in respect of the land or any part of the land the subject of a special prospecting licence, is capable of being created, affected or dealt with, whether directly or indirectly, except with the prior written consent of the holder of the primary tenement, and no person shall hold or have any beneficial, legal or equitable interest in —
 - (c) more than 10 such special prospecting licences; or
 - (d) more than one such mining lease.
- (6) A reference in subsection (5) to a person includes a reference to any other person who would, for the purposes of the Corporations Act, be taken to be an associate of the first-mentioned person.
- (7) The holder of a special prospecting licence granted for a period of 4 years may make an application for a mining lease for gold in respect of the land or any part of the land which is the subject of the special prospecting licence, and on an application being made the Minister may grant the application for a lease in respect of that portion of the land to which the special prospecting licence relates that is less than a depth of 50 m, or such greater depth as the Minister approves with the prior written consent of the holder of the primary tenement, below the lowest part of the natural surface of the land and on such terms

- and conditions as the Minister thinks fit, and thereupon the area of land in respect of which that mining lease is granted shall be excised from the primary tenement.
- (7a) Sections 74, 74A and 75 apply to an application for a mining lease under subsection (7).
- (8) A mining lease granted pursuant to subsection (7) —
- (a) has effect in relation to gold and any minerals occurring in conjunction with that gold; and
 - (b) does not authorise the holder of the mining lease or any agents or employees of the holder to excavate, extract or remove a total amount of earth, soil, rock, stone, fluid or mineral bearing substances in excess of 750 t in any year, except in so far as both the prior written consent of the holder of the primary tenement and the prior written approval of the Minister may otherwise permit; and
 - (c) ceases to have effect (and the land in respect of which it was granted reverts to the holder of the primary tenement as an integral part of the tenement held by that person) on the surrender, forfeiture or expiry of that lease.
- (9) Subject to this section, the provisions of this Act relating to —
- (a) prospecting licences apply to a special prospecting licence; and
 - (b) mining leases apply to a mining lease, granted under this section.
- (9a) Where, before the determination of an application for a special prospecting licence in respect of land, the primary tenement is surrendered or forfeited or expires, the application is, by virtue of this subsection, converted into an application for a prospecting licence in respect of that land and the provisions of this Act relating to such applications apply accordingly.
- (10) On the surrender, forfeiture or expiry of the primary tenement, a special prospecting licence in respect of any land the subject of the primary tenement immediately before the date of its surrender, forfeiture or expiry is, by virtue of this subsection, converted into a prospecting licence in respect of that land and, subject to subsection (11), the provisions of this Act relating to prospecting licences apply accordingly.

- (11) Where a special prospecting licence is converted into a prospecting licence, the prospecting licence remains in force, subject to this Act, for the remainder of the period for which the special prospecting licence was granted.
- (12) Subsections (9a) and (10) do not apply if —
- (a) the primary tenement is amalgamated with an exploration licence under section 67A(1); or
 - (b) prior to the surrender, forfeiture or expiry of the primary tenement the holder of the primary tenement applies for a retention licence, a mining lease or a general purpose lease and the licence or lease is subsequently granted in respect of any land the subject of the special prospecting licence.

[Section 85B inserted: No. 37 of 1993 s. 12(1); amended: No. 58 of 1994 s. 31; No. 54 of 1996 s. 13 and 23; No. 10 of 2001 s. 134; No. 15 of 2002 s. 17; No. 39 of 2004 s. 10.]

[\[Divisions 4 and 5 omitted as they are not amended by the Mining Amendment Bill 2022.\]](#)

[Division 5A (s. 94C-94P) deleted: No. 52 of 1995 s. 33.]

Division 6 — Surrender and forfeiture of mining tenements

95. Surrender of mining tenement

- (1) Subject to this Act, the holder of a mining tenement may surrender the tenement in whole or in part by lodging a surrender for registration.

[(2), (3) deleted]

- (4) Where a mining tenement is being surrendered as to part only, the form of surrender shall be prepared by reference to a written description of the area of the part to be surrendered, and be accompanied by a map on which are clearly delineated the respective boundaries of that mining tenement and of the part of that mining tenement which is being surrendered.
- (5) Where part of a mining tenement is surrendered, notification thereof shall be endorsed as prescribed on the mining tenement, for which purpose the holder shall produce his copy of the document on demand, and thereafter the rent payable in respect thereof shall be reduced as provided for in the regulations.

- (6) Notwithstanding anything to the contrary in this Act other than section 26A(3) and (4), where a mining tenement is surrendered, whether under this section or under section 26A or 65, in whole or in part, every right, title and interest held under the mining tenement in respect of —
- (a) the whole of the land the subject of that tenement; or
 - (b) that part of that land which is being surrendered,
- as the case requires, absolutely ceases and determines in the case of —
- (c) a conditional surrender, on the date on which the surrender becomes absolute;
 - (d) a surrender other than a conditional surrender or a surrender under section 26A(2) or 65, on the date the surrender is registered;
 - (e) a surrender under section 26A(2), on the expiry of the period referred to in section 26A(1);
 - (f) a surrender under section 65, on the date on which the surrender becomes effective under that section.

[Section 95 amended: No. 52 of 1983 s. 5; No. 100 of 1985 s. 67; No. 105 of 1986 s. 12; No. 22 of 1990 s. 27; No. 54 of 1996 s. 14; No. 39 of 2004 s. 92.]

95A. Exploration licence — surrender of part of block

- (1) In this section —
block has the same meaning as it has in Part IV Division 2.
- (2) The holder of an exploration licence shall not, under section 95(1), surrender part of a block that is subject to the licence without the prior approval of the Minister or an officer of the Department authorised by the Minister to give such approval.
- (3) Where part of a block that is subject to an exploration licence is surrendered under section 95(1), the rest of the block that remains subject to the licence is deemed to be a block for the purposes of this Act.

[Section 95A inserted: No. 15 of 2002 s. 20.]

96. Forfeiture of certain mining tenements

- (1) The warden may upon the application of —
- (a) the Minister or any mining registrar or other officer of the Department authorised by the Minister in writing in that behalf; or
 - (b) any person,

made in the prescribed form and in the prescribed manner, make an order for the forfeiture of any prospecting licence or a miscellaneous licence granted or acquired under this Act or by virtue of the repealed Act.

- (1a) An authorisation under subsection (1)(a) may be given to a specified officer or to officers of a specified class, or may be given to the holder or holders for the time being of a specified office or class of office.
- (2) An order for forfeiture may be made in relation to a mining tenement to which subsection (1) applies if —
- (a) the prescribed rent or royalty in respect thereof is not paid in accordance with this Act; or
 - (b) any term or condition to which the mining tenement is subject, including any condition referred to in section 46 or section 50, is not complied with; or
 - (ba) a report required under section 51 or 115A in relation to the mining tenement is not filed in accordance with this Act; or
 - (baa) any request under section 51A is not complied with; or
 - (bb) any requirement under section 52(1a), 55B(2) or 115B(2) is not complied with; or
 - (c) the holder of the mining tenement is convicted of an offence against this Act,

but an order shall not be made under subsection (1) unless the warden is satisfied that the requirements of this Act in relation to such mining tenement have not been complied with in a material respect and that the matter is of sufficient gravity to justify the forfeiture of the mining tenement.

- (2a) An application for forfeiture under subsection (1)(b) and made in respect of the expenditure conditions applicable to the mining tenement shall be made during the expenditure year in relation to which the requirement is not complied with or within 8 months thereafter, and not otherwise.
- (3) A warden, as he thinks fit in the circumstances of the case, as an alternative to making an order under this section for forfeiture of such mining tenement may —
- (a) impose on the holder of the mining tenement —
 - (i) in a case where expenditure conditions have not been complied with, a penalty not exceeding \$10 000;
 - (ii) in any other case, a penalty not exceeding \$75 000 if the holder is an individual or \$150 000 if the holder is a body corporate;
 - or
 - (b) award the whole or any part of the amount of any such penalty to the applicant if the applicant is not the Minister, a mining registrar or an officer of the Department authorised in writing by him; or
 - (c) impose no penalty on the holder.
- (3a) Where —
- (a) a mining tenement that is the subject of an application for forfeiture under this section is surrendered (other than by way of a conditional surrender or a surrender under section 26A or 65) before that application is dealt with by the warden; and
 - (b) the applicant for forfeiture is not the Minister, a mining registrar or an officer of the Department authorised in writing by the Minister,

the applicant for forfeiture has, from the date on which the surrender is registered until the expiry of a period of 14 days after the date of being served with written notice of the surrender by an officer of the Department, a right in priority to any other person to mark out or apply for, or both, a mining tenement upon the whole or any part of the land that was the subject of the surrendered mining tenement.

(3b) Where —

- (a) a prospecting licence that is the subject of an application for forfeiture under this section has continued in force under section 49(2) or 70C(6) pending the determination of an application referred to in that section (the *tenement application*); and
- (b) the applicant for forfeiture is not the Minister, a mining registrar or an officer of the Department authorised in writing by the Minister; and
- (c) the tenement application is withdrawn in accordance with the regulations before the application for forfeiture is dealt with by the warden,

the applicant for forfeiture has, from the date on which the tenement application is withdrawn until the expiry of a period of 14 days after the date of being served with written notice of the withdrawal by an officer of the Department, a right in priority to any other person to mark out or apply for, or both, a mining tenement upon the whole or any part of the land that was the subject of the prospecting licence.

- (4) Where an order for the forfeiture of a mining tenement is made under this section, if the applicant therefor was not the Minister, a mining registrar or an officer authorised in writing by the Minister, such applicant shall have, for a period of 14 days after the date of the order, a right in priority to any other person to mark out or apply for, or both, a mining tenement upon the whole or part of the land that was the subject thereof.
- (5) If the applicant fails to proceed with his forfeiture application the warden may award the holder of the mining tenement such sum for costs and expenses as the warden thinks fit.
- (6) Where any penalty imposed as an alternative to forfeiture under subsection (3)(a) is not paid within the time specified by the warden or within 30 days of the hearing of the application for forfeiture if no such time is specified by the warden, the mining tenement shall thereupon be forfeited and the rights conferred on the applicant for forfeiture under subsection (4) shall apply as if the warden had made an order for forfeiture on the day on which the mining tenement is forfeited pursuant to this subsection.

- (7) No prospecting licence shall be forfeited for non-compliance by the holder thereof with the expenditure conditions, if the holder satisfies the warden that the non-compliance therewith has been occasioned by a strike.
- (8) Subject to section 97A, the warden may, for any cause that he deems sufficient and subject to subsection (9), cancel —
- (a) an order for the forfeiture of any mining tenement made under subsection (1); or
 - (b) the forfeiture arising under subsection (6) of any mining tenement referred to in subsection (1),
- and restore the mining tenement so forfeited to the holder thereof.
- (9) The warden may, in effecting a cancellation and restoration under subsection (8), impose on the holder of the mining tenement restored under that subsection such conditions as he thinks fit.

[Section 96 amended: No. 69 of 1981 s. 21; No. 100 of 1985 s. 68; No. 105 of 1986 s. 13; No. 22 of 1990 s. 28 and 38; No. 37 of 1993 s. 13; No. 58 of 1994 s. 41; No. 54 of 1996 s. 23; No. 17 of 1999 s. 6(4); No. 15 of 2002 s. 21 and 28; No. 39 of 2004 s. 46 and 93; No. 51 of 2012 s. 28.]

96A. Forfeiture of exploration licence or retention licence

- (1) When —
- (a) an exploration licence is liable to forfeiture by virtue of section 63A; or
 - (b) a retention licence is liable to forfeiture by virtue of section 70K,
- the Minister may cause the licence to be forfeited by declaring by notice published in the *Government Gazette* that the licence is forfeited.
- (2) Subject to section 97A, the Minister may, for any cause that he deems sufficient and subject to subsection (3), by notice under his hand published in the *Government Gazette* —
- (a) cancel a declaration made under subsection (1); and
 - (b) restore the licence to which the declaration referred to in paragraph (a) relates to the holder thereof.

- (3) The Minister may, in effecting the cancellation and restoration referred to in subsection (2), impose on the holder of the licence restored under that subsection such conditions as he thinks fit.
- (4) The production of a copy of the *Government Gazette* containing a notice published therein under subsection (1) or (2) is evidence that the licence concerned has been forfeited or restored, as the case requires.
- (5) The Minister, as he thinks fit in the circumstances of the case, as an alternative to causing the licence to be forfeited, may —
 - (a) impose on the holder of the licence a penalty not exceeding \$75 000 if the holder is an individual or \$150 000 if the holder is a body corporate; or
 - (b) award the whole or any part of the amount of any such penalty to any person, other than an officer of the Department; or
 - (c) impose no penalty on the holder.
- (6) Where any penalty imposed as an alternative to forfeiture under subsection (5) is not paid within the time specified by the Minister, or within 30 days of written notice of the penalty being given by the Minister to the holder of the licence if no other time is specified by the Minister, the licence is thereby forfeited.
- (7) In this section *licence* means the exploration licence or the retention licence, as the case requires.

[Section 96A inserted: No. 69 of 1981 s. 22; amended: No. 100 of 1985 s. 69; No. 22 of 1990 s. 38; No. 37 of 1993 s. 10(2); No. 15 of 2002 s. 28; No. 51 of 2012 s. 29.]

97. Forfeiture of mining lease or general purpose lease

- (1) Where a mining lease or general purpose lease is liable to forfeiture for a breach of the lessee's covenant to pay rent or royalty or for breach of a covenant included in the lease under section 82(1) or section 89 or a condition to which the lease is subject, the Minister may declare, by notice under his hand published in the *Government Gazette*, such lease forfeited.
- (2) The production of a copy of the *Government Gazette* containing a notice published therein pursuant to subsection (1), is evidence that a breach of such a covenant has been committed by the lessee, and that the estate and interest of the lessee in such lease has been lawfully determined.

- (3) Subject to section 97A, the Minister, for any cause that he deems sufficient, may cancel the forfeiture of any such lease and by subsequent notice under his hand published in the *Government Gazette*, restore the lessee as of his former estate in respect of the forfeited lease.
- (4) The Minister, upon such cancellation and restoration as is referred to in subsection (3), may impose upon the lessee such conditions as he thinks fit.
- (5) The Minister, as he thinks fit in the circumstances of the case, as an alternative to declaring the lease forfeited, may —
 - (a) impose on the lessee a penalty not exceeding \$75 000 if the lessee is an individual or \$150 000 if the lessee is a body corporate; or
 - (b) award the whole or any part of the amount of any such penalty to any person, other than an officer of the Department; or
 - (c) impose no penalty on the lessee.
- (6) Where any penalty imposed as an alternative to forfeiture under subsection (5) is not paid within the time specified by the Minister, or within 30 days of written notice of the penalty being given by the Minister to the lessee if no other time is specified by the Minister, the lease is thereby forfeited.

[Section 97 amended: No. 100 of 1985 s. 70; No. 22 of 1990 s. 29 and 38; No. 15 of 2002 s. 28; No. 51 of 2012 s. 30.]

97A. Application for restoration of mining tenement after forfeiture

- (1) Subject to subsection (2), where a mining tenement is forfeited under or by virtue of section 96, 96A or 97 a person who was, immediately prior to the forfeiture, the holder of the tenement concerned may apply for the mining tenement to be restored to him and the forfeiture cancelled.
- (2) Where the forfeiture was occasioned by non-compliance by the holder with an expenditure condition applicable to the tenement and results from an application made by a person, not being a person acting on behalf of the Department, subsection (1) does not apply.

- (3) An application under subsection (1) —
- (a) shall be in the prescribed form and made within the prescribed time; and
 - (b) shall be lodged in the prescribed manner; and
 - (c) shall be accompanied by the prescribed application fee,
- and the applicant shall at the request of the warden furnish such other information, or such evidence in support thereof, as the warden may require but the warden shall not require information or evidence relating to assays or other results of any testing, sampling or other mining operations that the applicant may have carried out on the land the subject of the application.
- (4) Within 14 days after the lodging of such an application under subsection (1), the applicant shall serve such notice of the application as may be prescribed on any person who has since the forfeiture made application for a mining tenement in respect of the land or any part of the land to which the application relates and on such other persons as may be prescribed.
- (5) An application under subsection (1) shall be heard by the warden on a day appointed by him.
- (6) A person who wishes to object to the granting of an application made under subsection (1) must lodge a notice of objection.
- (6A) A notice of objection must be —
- (a) lodged within the prescribed time and in the prescribed manner; and
 - (b) accompanied by the prescribed fee.
- ~~(6) A person who desires to object to the granting of an application made under subsection (1) shall lodge within the prescribed time and in the prescribed manner a notice of objection and he may be heard by the warden in opposition to the granting of the application.~~
- (7) On the hearing of an application made under subsection (1) the warden —
- (a) in a case to which section 96 applies, shall determine the application and make such order as he thinks fit and may —
 - (i) grant the application and restore the mining tenement to the former holder; or

- (ii) grant the application and restore the mining tenement to the former holder subject to such further or other conditions as the warden may specify; or
 - (iii) refuse the application;
- and
- (b) in any other case, shall as soon as practicable thereafter transmit to the Minister for his consideration the notes of evidence and any maps or other documents referred to therein, and his report recommending the granting or refusal of the application together with his reasons for the recommendation.
- (8) On receipt of notes of evidence and any maps or documents transmitted to him pursuant to subsection (7), the Minister may grant or refuse the application for restoration of the mining tenement, as he determines and whether the warden recommends the granting of the application or the refusal thereof, and may impose on a mining tenement so restored such further or other conditions as the Minister may specify.

[Section 97A inserted: No. 100 of 1985 s. 71; amended: No. 37 of 1993 s. 26; No. 39 of 2004 s. 64; No. 12 of 2010 s. 35; [Mining Amendment Bill 2022.](#)]

98. Application for forfeiture on other grounds

- (1) Where the requirements of this Act are not being complied with in respect of the expenditure conditions applicable to an exploration licence or a mining lease, any person may apply for the forfeiture of such licence or lease as provided in this section.
- (2) An application for forfeiture under this section shall be made, during the expenditure year in relation to which the requirement is not complied with or within 8 months thereafter, in such form and manner as may be prescribed and shall be accompanied by the prescribed fee.
- (3) The application for forfeiture shall be heard by the warden.
- (4A) When the warden finds that the holder of an exploration licence or lessee of the mining lease has failed to comply with such requirements as are mentioned in subsection (1), the warden may recommend the forfeiture of such licence or lease, or impose a penalty not exceeding \$10 000 as an alternative to the forfeiture or dismiss the application.

- (4B) Where a penalty is imposed under this section the warden may award the whole amount of the penalty or any part thereof to the applicant.
- (5) A recommendation shall not be made under subsection (4A) unless the warden is satisfied that the non-compliance with such requirements is, in the circumstances of the case, of sufficient gravity to justify the forfeiture.
- (6) As soon as practicable after the hearing of the application the warden shall forward to the Minister the notes of evidence, with a report and the warden's recommendation, if any, on the application and the Minister may, before acting on the recommendation, require the warden to take such further evidence or rehear the application as the Minister directs.
- (7) No exploration licence or mining lease shall be forfeited for non-compliance by the holder or lessee thereof with the expenditure conditions, if the holder or lessee satisfies the Minister that the non-compliance therewith has been occasioned by a strike.
- (8) If the applicant fails to proceed with his forfeiture application, the warden may award the holder or lessee such sum for costs and expenses as he thinks fit.
- (9) Where any penalty imposed by a warden as an alternative to forfeiture under subsection (4A) is not paid within the time specified by the warden, or within 30 days after the penalty is imposed where no other time is specified, the warden shall make a recommendation to the Minister as to whether or not the licence or lease should be forfeited.

[Section 98 amended: No. 100 of 1985 s. 72; No. 22 of 1990 s. 30 and 38; No. 15 of 2002 s. 28; No. 39 of 2004 s. 65; No. 19 of 2010 s. 51.]

99. Proceedings by Minister on recommendation

- (1) The Minister, after receiving the recommendation of the warden as provided in section 98, may, as the Minister thinks fit —
- (a) declare the exploration licence or the lease to which the recommendation relates, forfeited; or
 - (b) impose a penalty not exceeding \$10 000 as an alternative to forfeiture; or

- (c) award the whole amount of the penalty or any part thereof to the applicant who applied for forfeiture; or
 - (d) determine not to forfeit such licence or lease or impose any penalty.
- (2) Where the Minister declares an exploration licence or lease forfeited under subsection (1) he shall forthwith give written notice thereof to the applicant and shall publish notice of the declaration in the *Government Gazette* and on the publication of the notice the licence or lease shall become forfeited.
- (3) Where any penalty imposed as an alternative to forfeiture under subsection (1)(b) is not paid within the time specified by the Minister or within 30 days of the Minister imposing the penalty as an alternative to forfeiture if no time is specified by the Minister, the exploration licence or lease shall thereupon be forfeited and notice thereof shall be published in the *Government Gazette*, and the rights conferred on the applicant for forfeiture under section 100(2) shall apply as if the Minister had declared the licence or lease forfeited.

[Section 99 amended: No. 100 of 1985 s. 73; No. 22 of 1990 s. 38; No. 37 of 1993 s. 14(2); No. 15 of 2002 s. 28.]

100. Applicant to have priority for marking out and applying for surrendered or forfeited licence or lease

- (1) Where an exploration licence or a mining lease that is the subject of an application for forfeiture under section 98 is surrendered (other than by way of a conditional surrender or a surrender under section 26A or 65) before the application is finally dealt with under section 98(4A) or 99(1), the applicant for forfeiture has, from the date on which the surrender is registered until the expiry of a period of 14 days after the date of being served with written notice of the surrender by an officer of the Department, a right in priority to any other person to mark out or apply for, or both, a mining tenement upon the whole or any part of the land that was the subject of the surrendered licence or lease.
- (1a) Where —
- (a) an exploration licence or a mining lease that is the subject of an application for forfeiture under section 98 has continued in force under section 67(2) or 70C(6) pending the determination of an application referred to

in section 67(2) or 70C(6), as the case requires (the *tenement application*); and

- (b) the tenement application is withdrawn in accordance with the regulations before the application for forfeiture is dealt with by the warden,

the applicant for forfeiture has, from the date on which the tenement application is withdrawn until the expiry of a period of 14 days after the date of being served with written notice of the withdrawal by an officer of the Department, a right in priority to any other person to mark out or apply for, or both, a mining tenement upon the whole or any part of the land that was the subject of the licence or lease.

- (2) Where an exploration licence or a mining lease is forfeited pursuant to section 99, the applicant for forfeiture has, for a period of 14 days after the date of the publication of the notice of forfeiture of the licence or lease in the *Government Gazette*, a right in priority to any other person to mark out or apply for, or both, a mining tenement upon the whole or any part of the land that was the subject of the forfeited licence or lease.

[Section 100 inserted: No. 37 of 1993 s. 14(1); amended: No. 15 of 2002 s. 22; No. 19 of 2010 s. 51.]

101. Application for forfeiture of mining tenement while holder is a company in process of winding up

- (1) An application under section 96 or 98 for the forfeiture of a mining tenement for breach of the prescribed expenditure conditions applicable thereto while the holder thereof is a company in respect of which a winding up order has been made or a provisional liquidator has been appointed under the Corporations Law shall not be an action or proceeding for the purposes of subsection (2) of section 471 of that Law (or any provision of that Law which replaces or is substituted for that subsection), and notwithstanding anything therein contained to the contrary, the application may be commenced and proceeded with without the leave of the Supreme Court, and the mining tenement is liable to forfeiture accordingly.
- (2) The following matter is declared to be an excluded matter for the purposes of section 5F of the Corporations Act in relation to section 471B of that Act — an application under section 96 or 98 for the forfeiture of a mining tenement for breach of the prescribed expenditure conditions applicable to the tenement while the holder of the tenement is a company in respect of

which a winding up order has been made, or a provisional liquidator appointed, under the Corporations Act.

[Section 101 amended: No. 10 of 1982 s. 28; No. 100 of 1985 s. 75; No. 37 of 1993 s. 27; No. 10 of 2001 s. 135; No. 15 of 2002 s. 23; No. 8 of 2009 s. 8.]

Division 7 — Exemption from expenditure conditions

102. Exemption from expenditure conditions

- (1) Subject to this Act, on an application (an ***application for exemption***) made, as prescribed, by the holder of a mining tenement (other than a retention licence) or his authorised agent prior to the end of the year to which the proposed exemption relates, or within the prescribed period after the end of that year, the holder may be granted a certificate of exemption in the prescribed form totally or partially exempting the mining tenement to which the application relates from the prescribed expenditure conditions relating thereto, in an amount not exceeding the amount required to be expended —
 - (a) in respect to any mining tenement other than a mining lease, in any one year; and
 - (b) in respect to a mining lease, subject to subsection (7), in a period of 5 years.
- (1a) An application for exemption may relate to more than one mining tenement.
- (2) A certificate of exemption may be granted for any of the following reasons —
 - (a) that the title to the mining tenement is in dispute; or
 - (b) that time is required to evaluate work done on the mining tenement, to plan future exploration or mining or raise capital therefor; or
 - (c) that time is required to purchase and erect plant and machinery; or
 - (d) that the ground the subject of the mining tenement is for any sufficient reason unworkable; or
 - (e) that the ground the subject of the mining tenement contains a mineral deposit which is uneconomic but which may reasonably be expected to become economic in the future or that at the relevant time economic or

marketing problems are such as not to make the mining operations viable; or

- (f) that the ground the subject of the mining tenement contains mineral ore which is required to sustain the future operations of an existing or proposed mining operation; or
- (g) that political, environmental or other difficulties in obtaining requisite approvals prevent mining or restrict it in a manner that is, or subject to conditions that are, for the time being impracticable; or
- (h) that —
 - (i) the mining tenement is one of 2 or more mining tenements (***combined reporting tenements***) the subject of arrangements approved under section 115A(4) for the filing of combined mineral exploration reports; and
 - (ii) the aggregate exploration expenditure for the combined reporting tenements would have been such as to satisfy the expenditure requirements for the mining tenement concerned had that aggregate exploration expenditure been apportioned between the combined reporting tenements.

(2a) In subsection (2)(h) —

aggregate exploration expenditure means expenditure —

- (a) on, or in connection with, exploration for minerals on the combined reporting tenements; and
 - (b) worked out in a manner specified in the regulations.
- (3) Notwithstanding that the reasons given for the application for exemption are not amongst those set out in subsection (2), a certificate of exemption may also be granted for any other reason which may be prescribed or which in the opinion of the Minister is sufficient to justify such exemption.
- (4) When consideration is given to an application for exemption regard shall be had to the current grounds upon which exemptions have been granted and to the work done and the money spent on the mining tenement by the holder thereof.

(4A) A person who wishes to object to the granting of an application for exemption must lodge a notice of objection.

(4B) A notice of objection must be —

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

(b) accompanied by the prescribed fee.

(5) An application for exemption —

(a) where an objection to the application is lodged, shall be heard by the warden; but

(b) otherwise, shall be forwarded to the Minister for determination by the Minister.

(6) The warden shall as soon as practicable after the hearing of the application transmit to the Minister for his consideration the notes of evidence and any maps or other documents referred to therein and his report recommending the granting or refusal of the application and setting out his reasons for that recommendation.

(7) Where the warden finds that the reasons given by the holder of the mining lease are sufficient to justify the granting of a certificate of exemption and so recommends, or if the Minister is satisfied whether or not a recommendation is made by the warden, the Minister may grant a certificate of exemption in an amount not exceeding the amount required to be expended in respect of the mining lease in the period of 5 years from the commencement of the year to which the application relates.

[Section 102 amended: No. 69 of 1981 s. 23; No. 100 of 1985 s. 76; No. 105 of 1986 s. 14; No. 22 of 1990 s. 32; No. 37 of 1993 s. 10(2); No. 15 of 2002 s. 24; No. 39 of 2004 s. 66 and 94; [Mining Amendment Bill 2022](#).]

102A. Exemption from expenditure conditions in respect of certain holders of exploration licences

(1) Notwithstanding anything in section 102, the Minister may, on payment of the prescribed fee and on the application in writing of the holder of an exploration licence who has been authorised by the Minister under section 111 to explore for iron on the land the subject of the exploration licence, grant that holder a certificate in the prescribed form totally or partially exempting the holder of that licence from the prescribed expenditure

conditions relating to the exploration licence in an amount not exceeding the amount required to be expended in any one year.

- (1a) An application referred to in subsection (1) may relate to more than one exploration licence.
- (2) The refusal by the Minister of an application referred to in subsection (1) does not prevent the holder of the exploration licence concerned from making an application referred to in section 102(1) in respect of that exploration licence.

[Section 102A inserted: No. 122 of 1982 s. 25; amended: No. 100 of 1985 s. 77; No. 15 of 2002 s. 25.]

103. Effect of exemption

Upon the granting of a certificate of exemption pursuant to section 102 or section 102A the holder of a mining tenement to whom it is granted shall be deemed to be relieved, to the extent, and subject to the conditions specified in the certificate, from his obligations under the prescribed expenditure conditions relating to the mining tenement.

[Section 103 amended: No. 100 of 1985 s. 78.]

[Division 8 deleted: No. 54 of 1996 s. 15.]

[Parts IVA-VIII omitted as they are not amended by the Mining Amendment Bill 2022, or not amended by the amendments that are incorporated into this consultation draft.]

Part IX — Miscellaneous and regulations

152. Police to assist warden

All members of the Police Force of the State shall, when required by the warden so to do, act in aid of the warden in the exercise and discharge by him of his powers, functions and duties under this Act.

153. Minor capable of being sued and of suing

Any person who has not attained the age of 18 years may sue and be sued in a warden's court in respect of any matter within the jurisdiction of that court as if he were of full age and any mining tenement held by him may be taken in execution and sold under legal process.

154. General penalty

- (1) A person who acts in contravention of or fails to comply in any respect with any provision of this Act commits an offence against this Act.
- (2) A person who commits an offence against this Act for which no penalty is provided elsewhere than in this section is liable to a fine of \$20 000 and if the offence is a continuing one, to a fine not exceeding \$2 000 for every day or part of a day during which the offence has continued.
- (3) Where a body corporate is convicted of an offence against this Act, every director and every other officer of the body corporate concerned in the management thereof is guilty of the offence if it is proved that the act or omission that constituted the offence took place with his authority, permission or consent.

[Section 154 amended: No. 100 of 1985 s. 106; No. 22 of 1990 s. 38; No. 78 of 1995 s. 147; No. 15 of 2002 s. 28; No. 51 of 2012 s. 35.]

155. Offence of mining without authority

- (1) Subject to subsection (2) a person shall not carry on mining on any land unless he is duly authorised under this or any other Act to do so.

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Penalty:

- (a) for an individual — a fine of \$150 000 and, if the offence is a continuing one, a further fine of \$15 000 for each day or part of a day during which the offence has continued;
 - (b) for a body corporate — a fine of \$300 000 and, if the offence is a continuing one, a further fine of \$30 000 for each day or part of a day during which the offence has continued.
- (2) Subsection (1) does not apply in respect of mining operations carried on on any private land with the consent of the owner of the land if he is the owner of the mineral being mined on the land.
 - (3) A person who is convicted of an offence under this section is not thereby relieved from any other obligation or liability that he may have incurred by reason of having carried on unauthorised mining.
 - (4) A person who owns minerals in their natural state may take proceedings in any court of competent jurisdiction for the recovery of those minerals or their value from any person who unlawfully takes, removes or mines the minerals.
 - (5) Where a person is convicted of an offence against subsection (1) the court may, in addition to imposing the penalty under this Act in relation to the offence, order the offender to rehabilitate the land to the satisfaction of the Minister within the time specified in the order.
 - (6) A person who fails to carry out an order made under subsection (5) commits an offence and is liable to a penalty of \$500 and in addition the court may require the offender to pay the costs of rehabilitating the land to the satisfaction of the Minister.
 - (7) Any sum specified in an order under subsection (6) constitutes a debt due to the crown and may be recovered in any court of competent jurisdiction.

[Section 155 amended: No. 100 of 1985 s. 107; No. 105 of 1986 s. 23; No. 22 of 1990 s. 38; No. 78 of 1995 s. 147; No. 15 of 2002 s. 28; No. 51 of 2012 s. 36.]

155A. Aerial survey work

Nothing in this Act has the effect of restricting or preventing the obtaining of data in respect of any land by means of aerial surveys.

[Section 155A inserted: No. 58 of 1994 s. 50.]

156. Offences

- (1) A person who —
- (a) takes or removes from the mining tenement of any other person any mineral or other mining product without the authority of that other person; or
 - (b) assaults, obstructs, resists or insults —
 - (i) any warden or any officer of the Department; or
 - (ii) any other person duly authorised under this Act to perform any act or duty, in the course of performance of that act or duty,or who when required to do so by him fails to give to any such warden, officer or person information as to his name, address, or authorisation for being on any land or who gives false or misleading information; or
 - (c) when lawfully evicted or removed under this Act from any mining tenement, re-enters the mining tenement or retakes possession thereof; or
 - (d) prevents, resists or obstructs the taking or diverting of any water or the doing of any other act by any person acting in pursuance of an order of the warden's court,

commits an offence against this Act.

- (2) Subsection (1)(a) does not apply to a person who removes a mineral in the exercise of the authorisation conferred by section 40D(1)(c).

[Section 156 amended: No. 122 of 1982 s. 28; No. 100 of 1985 s. 108; No. 63 of 2000 s. 6; No. 39 of 2004 s. 81; No. 51 of 2012 s. 37.]

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157. Obstruction of persons authorised to mine under this Act

A person shall not, without lawful excuse, obstruct or hinder the holder of a mining tenement in the reasonable execution of any right conferred on him thereby.

Penalty: \$10 000.

[Section 157 amended: No. 22 of 1990 s. 38; No. 15 of 2002 s. 28.]

158. Power to require information as to right to mine

(1) Where there is reason to suspect that a person is mining on land without authority under this Act a member of the Police Force or a person authorised in that behalf by the Director General of Mines may —

- (a) require the person to produce any document or other evidence relating to the entitlement of that person to mine on that land; and
- (b) require the person to give an explanation concerning the mining on that land.

(2) A person who —

- (a) upon request made under subsection (1) refuses or fails to comply with the request; or
- (b) obstructs or hinders the person making the request; or
- (c) knowingly misleads or deceives the person making the request,

commits an offence.

Penalty: \$10 000.

(3) Where a person who is authorised to make a request under subsection (1) is not satisfied with any evidence or explanation given to him in pursuance of a request made under that subsection he may orally or by notice in writing direct the person to whom the request is made to cease mining on the land referred to in the direction.

(4) A person who refuses or neglects to comply with a request under subsection (3) commits an offence.

Penalty: \$10 000.

(5) Where the person to whom a request is made under subsection (3) refuses or neglects to comply with the direction given under that subsection, the person giving the direction may use such force as is necessary to remove the person from the land and stop and remove any machinery being used for the purpose of mining on the land using such assistance as is necessary for that purpose.

(6) A person who commits an offence under subsection (2) or (4) may be arrested without a warrant.

[Section 158 inserted: No. 105 of 1986 s. 24; amended: No. 22 of 1990 s. 38.]

159. Disputes between licensees and other persons

(1) Where a dispute arises between a licensee or permittee under the *Petroleum and Geothermal Energy Resources Act 1967* and any person duly authorised to mine or search for minerals by virtue of a mining tenement or other authority under this Act or the repealed Act concerning any operations carried out or proposed to be carried out by the licensee or permittee or such person on any land within the boundaries of the area in respect of which the licence or permit was granted to the licensee or permittee, the licensee or the permittee or such person or both of them may refer the matter to the warden for inquiry and report, and the warden shall, as soon as practicable after such reference, inquire into the dispute and report thereon to the Minister.

(2) Upon receipt of the warden's report the Minister may make such order and give such directions to the licensee or the permittee or such person or to both of them as in the public interest and in the circumstances of the case may seem to him to be just and equitable and by such order may direct the payment by the licensee or the permittee or such person or both of them of any costs and expenses incidental to the conduct of the inquiry.

(3) If the licensee or the permittee or such person fails or neglects to comply with any such order or directions, the Minister may cancel the licence, the permit or the mining tenement or other authority (if any) held by such person.

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- (4) In this section —
- (a) a reference to a licence or permit includes a reference to a drilling reservation or lease; and
 - (b) a reference to a licensee or permittee includes a reference to the registered holder of a drilling reservation or lease.

[Section 159 amended: No. 35 of 2007 s. 100(5) and (6).]

160. Saving of civil remedies

- (1) Subject to section 40G, nothing in this Act shall prejudice, abridge or take away any right of action that any person may have in respect of any act or omission of another unless that act or omission occurs in pursuance of any authority lawfully given under this Act.
- (2) The recovery of any penalty under this Act does not affect any such right of action as is referred to in subsection (1).

[Section 160 amended: No. 63 of 2000 s. 7; No. 51 of 2012 s. 38.]

160AA. Authority to perform certain functions of LAA Minister under this Act

- (1) A function that the LAA Minister has under a provision of this Act listed in the Table may be performed by a public service officer of the Department, as defined in the *Land Administration Act 1997* section 3(1), who is authorised in writing by the LAA Minister to do so.
- (2) Nothing in this section limits the ability of the LAA Minister to otherwise perform a function through an officer or agent.

Table

s. 24(3)(b), (5)(b), as the <i>responsible Minister</i> under s. 24(8)	s. 25(2)(b), (3)(b)
s. 26(2)(a)	s. 55(1), (3), (4)
s. 69C(1), (3), (4)	

[Section 160AA inserted: No. 8 of 2010 s. 19; amended: No. 17 of 2014 s. 29.]

160A. Immunity of Minister, wardens and officials

No liability shall attach to the Minister, a warden or any official of the Department, any authorised person under this Act or any person acting with the authority or on the direction of the Minister, a warden or the Director General of Mines, or the LAA Minister in good faith and in the exercise or purported exercise of a power or in the discharge or purported discharge of a duty under this Act.

[Section 160A inserted: No. 105 of 1986 s. 25; amended: No. 42 of 1999 s. 8; No. 8 of 2010 s. 20.]

160B. Time limit for prosecution action

A prosecution for an offence against this Act must be commenced within 3 years after the day on which the offence is alleged to have been committed.

[Section 160B inserted: No. 51 of 2012 s. 39.]

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

No appeal lies under this Act —

- (a) except as provided in Part IV, in respect of a decision, order or recommendation of a warden or mining registrar on —
 - (i) an application for a mining tenement; or
 - (ii) an application for forfeiture of a mining tenement; or
 - (iii) an application for exemption from expenditure or other conditions;

or

- (b) in respect of a decision or order of the Minister on —
 - (i) an application for a mining tenement; or
 - (ii) an application for forfeiture of a mining tenement; or
 - (iii) an application for exemption from expenditure or other conditions;

or

s. 160D

- (c) in respect of a determination of a warden or mining registrar if a provision of this Act provides that the determination is final and conclusive and not subject to appeal.

[Section 160C inserted: No. 39 of 2004 s. 82.]

160D. Persons before whom affidavit may be sworn

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

- (a) any person who, under the *Oaths, Affidavits and Statutory Declarations Act 2005*, is an authorised witness for an affidavit; or
- (b) a warden; or

[(c)-(e) deleted]

- (f) a prescribed official.

[Section 160D inserted: No. 39 of 2004 s. 82; amended: No. 24 of 2005 s. 62.]

161. Evidentiary provisions

- (1) In any proceedings for an offence against this Act, an averment in the charge that any land referred to therein is land —
 - (a) open for mining under this Act;
 - (b) exempt from mining operations in pursuance of this Act;
 - (c) to which section 23, 24, 24A, 25, or 26 applies,

shall be deemed to be proved in the absence of evidence to the contrary.

- (2) In any proceedings a document purporting to be a mining tenement shall be accepted as such in the absence of evidence to the contrary.
- (3) In any proceedings a document purporting to be certified by a person authorised for that purpose by the Director General of Mines as a correct copy of an extract from a register kept under this Act is, without proof of that person's signature, evidence of the matter contained in the document.

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

[Section 161 amended: No. 122 of 1982 s. 29; No. 37 of 1993 s. 23; No. 54 of 1996 s. 21; No. 5 of 1997 s. 41(2); No. 39 of 2004 s. 83; No. 84 of 2004 s. 80.]

162A. Certain things are not personal property for purposes of *Personal Property Securities Act 2009* (Cwlth)

In accordance with the *Personal Property Securities Act 2009* (Commonwealth) section 10 the definition of *licence* paragraph (d), the following rights, entitlements or authorities are declared not to be personal property for the purposes of that Act —

- (a) a prospecting licence granted under section 40(1), 56A(6) or 70(6);
- (b) an exploration licence granted under section 57(1);
- (c) a retention licence granted under section 70B(1);
- (d) a mining lease granted under section 71;
- (e) a general purpose lease granted under section 86(1);
- (f) a miscellaneous licence granted under section 91(1).

[Section 162A inserted: No. 42 of 2011 s. 83.]

162B. Extension of prescribed period or time

- (1) If this Act provides for something to be done within a prescribed period or a prescribed time, the Minister or a warden may, in a particular case, extend the period or the time for doing the thing.

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- (2) The power in subsection (1) may be exercised whether or not the prescribed period has ended or the prescribed time has passed.

[Section 162B inserted: No. 51 of 2012 s. 40.]

162. Regulations

- (1) The Governor may make such regulations as are contemplated by this Act, or as he deems necessary or expedient for the purposes of this Act and any such regulations may confer upon a prescribed person or body specified in the regulations a discretionary authority.
- (2) Without limiting the generality of the powers conferred by subsection (1) those regulations may —
- (a) prescribe and regulate the powers, functions and duties of wardens, mining registrars and of any officer or other person appointed under this Act or employed or acting in the administration of this Act;
 - (aa) authorise an inspector appointed under section 11 —
 - (i) to enter upon land where mining operations are carried out for the purpose of inspecting those mining operations;
 - (ii) to require any person to provide the inspector with prescribed information relating to mining operations;
 - (iii) to give directions to the holder of a mining tenement requiring the holder to modify or cease mining operations in prescribed circumstances;
 - (ab) provide for an appeal to the Minister by the holder of a mining tenement against a direction referred to in paragraph (aa)(iii) requiring the holder to cease mining operations;
 - (b) prescribe and provide for the payment of fees under this Act and the purposes for which they are to be paid;
 - (ba) prescribe exemptions from the payment of fees for certain classes of applications under this Act;
 - (c) prescribe any forms for the purposes of this Act and prescribe the manner in which any of those forms are to be executed;

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- (ca) prescribe the manner in which fossicking may be carried out, or prohibit the carrying out of fossicking in prescribed areas or by prescribed means;
- (cb) provide for any matter relating to permits under section 40E, including without limitation —
- (i) the persons or class of persons to whom notice of the issue of permits is to be given; and
 - (ii) the operation, duration and surrender of permits; and
 - (iii) the maximum number of permits that may be in force at any time in respect of an exploration licence; and
 - (iv) the conditions that may be imposed on permits and the variation or cancellation of such conditions; and
 - (v) the powers of the Minister, in cases of breach of conditions referred to in section 40E(5) or (6) or in other prescribed circumstances —
 - (I) to impose on holders of permits monetary penalties not exceeding the prescribed amount; or
 - (II) to cancel permits; or
 - (III) to disqualify holders of permits from again holding or applying for permits for such period not exceeding the prescribed period as the Minister thinks fit;
- and
- (vi) the procedure to be followed before the exercise of a power referred to in subparagraph (v); and
 - (vii) the recovery of penalties referred to in subparagraph (v)(I); and
 - (viii) the prohibition of the use of hand tools of a prescribed kind; and
 - (ix) the reporting of minerals recovered by the holders of permits; and
 - (x) the issuing of guidelines in relation to the operation of the permit system;

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- (d) prescribe the manner in which land is to be marked out for the purposes of making applications for mining tenements;
- (ea) provide for matters relating to the lodgment, in electronic form, of mining tenement documents;
- (eb) provide for the time at which a mining tenement document is to be taken to have been lodged;
- (ec) regulate matters in connection with designated tenement contacts for mining tenements and applications for mining tenements, including without limitation —
 - (i) to require a person who holds, or has applied for, a mining tenement to have a designated tenement contact for the mining tenement or application;
 - (ii) to provide the manner in which designated tenement contacts are to be nominated for mining tenements, or applications for mining tenements, by persons who hold, or have applied for, mining tenements;
 - (iii) to provide for matters relating to the provision, updating and accurate recording of particulars relating to designated tenement contacts;
- (e) prescribe the rent payable in respect of any mining tenement or class of mining tenement, and make provision for the exercise of a discretion by the Minister as to the basis upon which a rent shall be calculated;
- (f) prescribe the times at which rent and royalties shall be paid under this Act and the manner in which they are to be paid;
- (g) prescribe the manner in which, and the terms and conditions subject to which, mining tenements may be surrendered;
- (ga) prescribe grounds for extension for the purposes of section 45(1a) and 61(2);
- [(gb) *deleted*]
- (h) prescribe the expenditure conditions subject to which a mining tenement or any class of mining tenement shall be held, and the conditions on which exemption therefrom may be applied for, and granted;

- (i) prescribe the persons or class of persons on whom copies of applications for mining tenements or any other documents relating thereto are to be served;
- (j) provide for the compilation of mining statistics and for that purpose require holders of mining tenements to supply the Director General of Mines with such particulars as may be prescribed;
- (k) provide for the furnishing of returns, and the keeping and furnishing of records, for the purposes and by the persons specified in the regulations;
- (ka) provide for any matter relating to the surveying of mining tenements, including —
 - (i) requiring that surveying to be carried out by a surveyor (in this paragraph referred to as the **approved surveyor**) approved by the Minister or an officer of the Department in accordance with any specified written law, any instructions given by an officer of the Department, a warden or the Minister or any direction published by the Department, or any 2 or all 3 of the foregoing;
 - (ii) the course to be adopted by the approved surveyor if he finds that a mining tenement or application therefor is not marked out in the prescribed shape referred to in section 105;
 - (iii) the hearing by the warden of disputes arising during the course of that surveying concerning the positions of pegs or otherwise, or of objections to the survey of a mining tenement or of land the subject of an application for a mining [tenement, prescribing fees for the lodgement of notices relating to those disputes or objections,](#) ~~tenement,~~ and the determination by the Minister of those disputes or objections;
 - (iv) the correction of errors or omissions in that surveying and the completion of surveying that is uncompleted;
 - (v) the lodging of reports relating to surveys;
 - (vi) the entry on land by officers of the Department for the purpose of inspecting surveys;

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- (l) provide for any matter relating to any register to be kept by a warden, a mining registrar or other prescribed persons;
- (m) provide for such information to be supplied to the Director General of Mines by holders of mining tenements in respect of boring operations for water or water obtained while boring for other purposes as may be prescribed;
- (n) provide for the protection of land upon which mining operations are conducted and require the rehabilitation to the satisfaction of the Minister of land disturbed by the mining operations;
- (o) prescribe the covenants and conditions that may be included in mining tenements and the exemption from the performance of those covenants or the operation of those conditions;
- [(p) *deleted*]
- (q) prescribe the mode of assigning, transferring, sub-letting, encumbrancing or otherwise dealing with mining tenements, the enforcement or discharge of any encumbrance thereon, the rights and obligations of an encumbrancer and an encumbrancee thereof or of an assignee, transferee or sub-lessee thereof; and the order of priority of 2 or more encumbrances;
- (qa) prescribe the mode of dealing with a mining tenement upon the death of the holder of the mining tenement or in other prescribed circumstances and provide for any related matter;
- (r) regulate the practice and procedure in warden's courts, the sittings of those courts, the duties of the officers thereof; the fees and costs of the proceedings therein fixed by a costs determination (as defined in the *Legal Profession Act 2008* section 252) and of appeals therefrom and the allowances to witnesses in those courts;
- (ra) without limiting paragraph (a), prescribe and regulate the powers, functions and duties of the warden in proceedings in respect of an application or objection under Part IV (***Part IV proceedings***), including powers to order costs and require security for costs;

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- (rb) prescribe and regulate the practice and procedure to be followed in Part IV proceedings;
 - (rca) provide for documents for use in Part IV proceedings to be lodged with or issued by the warden, or served, in electronic form;
 - (rc) prescribe a scale of costs for Part IV proceedings and provide for the taxation and recovery of costs in those proceedings;
 - (s) regulate matters in connection with partnerships in mining;
 - (t) provide for a refund of fees paid under this Act;
 - (u) regulate the way in which drill cores obtained from mining tenements are to be stored and dealt with and impose restrictions on the disposal or destruction of them;
 - (v) provide for the reporting of prescribed information as to aerial photography for mineral exploration and provide for the keeping of a register of such information;
 - (w) provide for the publication of guidelines in relation to mineral exploration reports referred to in section 115A;
 - (x) authorise and regulate the copying, storage, release, publication and dissemination of information contained in any application or report under this Act or any other information supplied to the Minister, a warden or any official of the Department under this Act;
 - (y) prescribe and regulate the responsibilities of the holders of mining tenements as to authorising, or obtaining authorisation for, the release of information contained in applications or reports under this Act.
- (2a) Subsection (2)(x) applies to information irrespective of when —
- (a) any application or report containing the information was made or given; or
 - (b) the information was supplied to the Minister, a warden or an official,
- as the case may be.
- (3A) In subsection (2) —
- mining tenement document*** means —
- (a) an application for a mining tenement; or

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- (b) an agreement, claim, notice of objection, security, or any other document, in respect of a mining tenement.
- (3) The regulations may prescribe a fine not exceeding \$10 000 for an offence against any regulation and if the offence is a continuing one, a fine not exceeding \$1 000 for each day or part thereof during which the offence has continued.
- (4) Regulations made under subsection (2)(ra) may apply the provisions of sections 142 and 146 with such modifications as are prescribed.
- (5) A regulation may require any matter or thing to be verified by statutory declaration.

[Section 162 amended: No. 52 of 1983 s. 6; No. 100 of 1985 s. 109; No. 105 of 1986 s. 26; No. 65 of 1987 s. 40; No. 22 of 1990 s. 38; No. 37 of 1993 s. 24 and 28(1); No. 58 of 1994 s. 51; No. 54 of 1996 s. 22; No. 49 of 2000 s. 86; No. 63 of 2000 s. 8; No. 15 of 2002 s. 28; No. 65 of 2003 s. 52; No. 39 of 2004 s. 84 and 100; No. 21 of 2008 s. 681; No. 12 of 2010 s. 42; No. 51 of 2012 s. 41; No. 44 of 2016 s. 24; [Mining Amendment Bill 2022.](#)]

163. Review of Act

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

[Section 163 inserted: No. 39 of 2004 s. 101.]

[\[First to Third Schedules omitted as they are not amended by the Mining Amendment Bill 2022.\]](#)

Notes

This is a compilation of the *Mining Act 1978* and includes amendments made by other written laws ⁵. For provisions that have come into operation, and for information about any reprints, see the compilation table. For provisions that have not yet come into operation see the uncommenced provisions table.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Mining Act 1978</i>	107 of 1978	8 Dec 1978	Long title, heading to Pt. I, s. 1 and 2, heading to, and cl. 3 of, the Second Sch: 8 Dec 1978 (see s. 2(1)); Act other than long title, heading to Pt. I, s. 1 and 2, heading to, and cl. 3 of, the Second Sch.: 1 Jan 1982 (see s. 2(2) and <i>Gazette</i> 11 Dec 1981 p. 5085)
<i>Acts Amendment (Mining) Act 1981 Pt. II</i>	69 of 1981	30 Oct 1981	30 Oct 1981
Reprint of the <i>Mining Act 1978</i> approved 11 Dec 1981 (includes amendments listed above except those in the <i>Mining Act 1978</i> other than the Long title, heading to Pt. I, s. 1 and 2, heading to, and cl. 3 of, the Second Sch.)			
<i>Mining (Anomalies Prevention) Order 1981</i>	published in <i>Gazette</i> 18 Dec 1981 p. 5274		1 Jan 1982 (see cl. 3)
<i>Companies (Consequential Amendments) Act 1982</i> s. 28	10 of 1982	14 May 1982	1 Jul 1982 (see s. 2(1) and <i>Gazette</i> 25 Jun 1982 p. 2079)
<i>Mining (Anomalies Prevention) Order 1982</i>	published in <i>Gazette</i> 16 Jul 1982 p. 2829		16 Jul 1982 (see cl. 3)
<i>Acts Amendment (Mining) Act 1982 Pt. II</i>	122 of 1982	10 Dec 1982	s. 30(d): 1 Jan 1982 (see s. 2(2)); Pt. II other than s. 30(d): 10 Dec 1982 (see s. 2(1))
<i>Mining Amendment Act 1983</i>	52 of 1983	13 Dec 1983	1 Jan 1984 (see s. 2 and <i>Gazette</i> 23 Dec 1983 p. 4934)
<i>Mining Amendment Act 1985</i> ⁶	100 of 1985 (as amended by No. 105 of 1986 Pt. II and No. 22 of 1990 s. 39)	4 Dec 1985	s. 1 and 2: 4 Dec 1985; Act other than s. 1, 2, 31, 34, 38, 59, 63, 68-71, 77-80, 88, 90 and 96: 31 Jan 1986 (see s. 2 and <i>Gazette</i> 31 Jan 1986 p. 320); s. 31, 34, 38, 59, 63, 68-71, 77-80 and 96: 16 Oct 1987 (see s. 2 and <i>Gazette</i> 16 Oct 1987 p. 3884)

Mining Act 1978**Notes** Compilation table

Short title	Number and year	Assent	Commencement
<i>Mining (Validation and Amendment) Act 1986</i> Pt. III	1 of 1986	26 Jun 1986	26 Jun 1986 (see s. 2)
<i>Acts Amendment and Repeal (Environmental Protection) Act 1986</i> Pt. IV	77 of 1986	4 Dec 1986	20 Feb 1987 (see s. 2 and <i>Gazette</i> 20 Feb 1987 p. 440)
<i>Mining Amendment Act 1986</i>	105 of 1986	12 Dec 1986	s. 1 and 2: 12 Dec 1986; Act other than s. 1 and 2: 9 Jan 1987 (see s. 2 and <i>Gazette</i> 9 Jan 1987 p. 18)
<i>Mining (Transitional Provisions) (Anomalies Prevention) Order 1987</i> published in <i>Gazette</i> 15 May 1987 p. 2161-2			15 May 1987
<i>Mining Amendment Act 1987</i>	12 of 1987	16 Jun 1987	s. 1 and 3: 16 Jun 1987; Act other than s. 1 and 3: 26 Jun 1987 (see s. 3 and <i>Gazette</i> 26 Jun 1987 p. 2447)
<i>Mining (Transitional Provisions) (Anomalies Prevention) (No. 2) Order 1987</i> published in <i>Gazette</i> 20 Nov 1987 p. 4239			20 Nov 1987
<i>Acts Amendment (Legal Practitioners, Costs and Taxation) Act 1987</i> Pt. XIII	65 of 1987	1 Dec 1987	12 Feb 1988 (see s. 2(2) and <i>Gazette</i> 12 Feb 1988 p. 397)
<i>Acts Amendment (Public Service) Act 1987</i> s. 32	113 of 1987	31 Dec 1987	16 Mar 1988 (see s. 2 and <i>Gazette</i> 16 Mar 1988 p. 813)
<i>Acts Amendment (Land Administration) Act 1987</i> Pt. XVIII	126 of 1987	31 Dec 1987	16 Sep 1988 (see s. 2 and <i>Gazette</i> 16 Sep 1988 p. 3637)
Reprint of the Mining Act 1978 as at 1 Aug 1988 (includes amendments listed above except those in the <i>Acts Amendment (Land Administration) Act 1987</i>) (corrigenda to reprint in <i>Gazette</i> 23 Sep 1988 p. 3922 and <i>Gazette</i> 21 Jul 1989 p. 2213)			
<i>Mining Amendment Act 1990</i> ⁷	22 of 1990 (as amended by No. 37 of 1993 s. 30(1) and (2) and No. 58 of 1994 s. 52)	28 Aug 1990	s. 1 and 2: 28 Aug 1990; Act other than s. 1 and 2: 28 Jun 1991 (see s. 2 and <i>Gazette</i> 28 Jun 1991 p. 3101)
<i>Conservation and Land Management Amendment Act 1991</i> s. 57	20 of 1991	25 Jun 1991	23 Aug 1991 (see s. 2 and <i>Gazette</i> 23 Aug 1991 p. 4353)
<i>Western Australian Land Authority Act 1992</i> s. 49	35 of 1992	23 Jun 1992	1 Jul 1992 (see s. 2(2) and <i>Gazette</i> 30 Jun 1992 p. 2869)
<i>Land (Titles and Traditional Usage) Act 1993</i> s. 45	21 of 1993	2 Dec 1993	2 Dec 1993 (see s. 2)

Short title	Number and year	Assent	Commencement
<i>Mining Amendment Act 1993</i> ⁸	37 of 1993	16 Dec 1993	Pt. 3: 28 Jun 1991 (see s. 2(2); s. 1 and 2: 16 Dec 1993; Act other than s. 1 and 2 and Pt. 3: 1 Jul 1994 (see s. 2(1) and <i>Gazette</i> 24 Jun 1994 p. 2819)
<i>Acts Amendment (Public Sector Management) Act 1994</i> s. 19	32 of 1994	29 Jun 1994	1 Oct 1994 (see s. 2 and <i>Gazette</i> 30 Sep 1994 p. 4948)
<i>Mining Amendment Act 1994</i> ⁹	58 of 1994 (as amended by No. 52 of 1995 Pt. 6 and No. 74 of 2003 s. 85)	2 Nov 1994	Act other than Pt. 2 and s. 52: 2 Nov 1994 (see s. 2(1)); Pt. 2 (except s. 5) and s. 52: 14 Oct 1995 (see s. 2(2) and <i>Gazette</i> 13 Oct 1995 p. 4797 and Printer's correction to proclamation in <i>Gazette</i> 24 Oct 1995 p. 4917); s. 5 repealed by No. 74 of 2003 s. 85
<i>Statutes (Repeals and Minor Amendments) Act 1994</i> s. 4	73 of 1994	9 Dec 1994	9 Dec 1994 (see s. 2)
<i>Acts Amendment and Repeal (Native Title) Act 1995</i> Pt. 5	52 of 1995	24 Nov 1995	9 Dec 1995 (see s. 2 and <i>Gazette</i> 8 Dec 1995 p. 5935)
<i>Water Agencies Restructure (Transitional and Consequential Provisions) Act 1995</i> s. 188	73 of 1995	27 Dec 1995	1 Jan 1996 (see s. 2(2) and <i>Gazette</i> 29 Dec 1995 p. 6291)
<i>Sentencing (Consequential Provisions) Act 1995</i> Pt. 88	78 of 1995	16 Jan 1996	4 Nov 1996 (see s. 2 and <i>Gazette</i> 25 Oct 1996 p. 5632)
Reprint of the Mining Act 1978 as at 27 Feb 1996 (includes amendments listed above except those in the <i>Sentencing (Consequential Provisions) Act 1995</i>) (correction to reprint in <i>Gazette</i> 19 Apr 1996 p. 1739)			
<i>Local Government (Consequential Amendments) Act 1996</i> s. 4	14 of 1996	28 Jun 1996	1 Jul 1996 (see s. 2)
<i>Mining Amendment Act 1996</i> ¹⁰	54 of 1996 (as amended by No. 39 of 2004 Pt. 11 and No. 8 of 2009 s. 93)	11 Nov 1996	s. 1 and 2: 11 Nov 1996; s. 5, 7, 10, 13 and 23: 7 Dec 1996 (see s. 2 and <i>Gazette</i> 6 Dec 1996 p. 6699); s. 3, 4, 6, 8, 11, 12 and 14-22: 11 Feb 2006 (see s. 2 and <i>Gazette</i> 3 Feb 2006 p. 515) ¹¹
<i>Acts Amendment (Marine Reserves) Act 1997</i> Pt. 3	5 of 1997	10 Jun 1997	29 Aug 1997 (see s. 2 and <i>Gazette</i> 29 Aug 1997 p. 4867)

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Compilation table

Short title	Number and year	Assent	Commencement
<i>Acts Amendment (Land Administration) Act 1997</i> Pt. 44 and s. 141	31 of 1997	3 Oct 1997	30 Mar 1998 (see s. 2 and <i>Gazette</i> 27 Mar 1998 p. 1765)
<i>Statutes (Repeals and Minor Amendments) Act 1997</i> s. 89	57 of 1997	15 Dec 1997	15 Dec 1997 (see s. 2(1))
<i>Statutes (Repeals and Minor Amendments) Act (No. 2) 1998</i> s. 52	10 of 1998	30 Apr 1998	30 Apr 1998 (see s. 2(1))
<i>Mining Amendment Act 1998</i> ¹²	35 of 1998	6 Jul 1998	6 Jul 1998 (see s. 2)
<i>Acts Amendment (Land Administration, Mining and Petroleum) Act 1998</i> Pt. 3	61 of 1998	11 Jan 1999	11 Jan 1999 (see s. 2(1))
<i>Acts Amendment (Mining and Petroleum) Act 1999</i> Pt. 2	17 of 1999	15 Jun 1999	24 Jul 1999 (see s. 2 and <i>Gazette</i> 23 Jul 1999 p. 3385)
Reprint of the <i>Mining Act 1978</i> as at 26 Jul 1999 (includes amendments listed above except those in the <i>Mining Amendment Act 1996</i> s. 3, 4, 6, 8, 11, 12 and 14-22)			
<i>Acts Amendment (Police Immunity) Act 1999</i> s. 8	42 of 1999	25 Nov 1999	25 Nov 1999 (see s. 2)
<i>Statutes (Repeals and Minor Amendments) Act 2000</i> s. 26	24 of 2000	4 Jul 2000	4 Jul 2000 (see s. 2)
<i>Rights in Water and Irrigation Amendment Act 2000</i> s. 86	49 of 2000	28 Nov 2000	10 Jan 2001 (see s. 2 and <i>Gazette</i> 10 Jan 2001 p. 163)
<i>Acts Amendment (Australian Datum) Act 2000</i> s. 5	54 of 2000	28 Nov 2000	16 Dec 2000 (see s. 2 and <i>Gazette</i> 15 Dec 2000 p. 7201)
<i>Mining Amendment Act 2000</i>	63 of 2000	4 Dec 2000	s. 1 and 2: 4 Dec 2000; Act other than s. 1 and 2: 3 Feb 2001 (see s. 2 and <i>Gazette</i> 2 Feb 2001 p. 697)
<i>Corporations (Consequential Amendments) Act 2001</i> Pt. 39	10 of 2001	28 Jun 2001	15 Jul 2001 (see s. 2 and <i>Gazette</i> 29 Jun 2001 p. 3257 and <i>Cwlth Gazette</i> 13 Jul 2001 No. S285)
Reprint of the <i>Mining Act 1978</i> as at 7 Sep 2001 (includes amendments listed above except those in the <i>Mining Amendment Act 1996</i> s. 3, 4, 6, 8, 11, 12 and 14-22)			

Short title	Number and year	Assent	Commencement
<i>Mining Amendment Act 2002</i>	15 of 2002	8 Jul 2002	s. 1 and 2: 8 Jul 2002; s. 23: 15 Jul 2001 (see s. 2(3) and Cwlth. <i>Gazette</i> 13 Jul 2001 No. S285); Act other than s. 1, 2, 12 and 23: 18 Jan 2003 (see s. 2(1) and (2) and <i>Gazette</i> 17 Jan 2003 p. 105); s. 12: 10 Feb 2006 (see s. 2(2) and <i>Gazette</i> 3 Feb 2006 p. 516) ¹³
<i>Offshore Minerals (Consequential Amendments) Act 2003 Pt. 2</i>	12 of 2003	17 Apr 2003	1 Jan 2011 (see s. 2 and <i>Gazette</i> 17 Dec 2010 p. 6350)
<i>Acts Amendment (Equality of Status) Act 2003 Pt. 46</i>	28 of 2003	22 May 2003	1 Jul 2003 (see s. 2 and <i>Gazette</i> 30 Jun 2003 p. 2579)
<i>Acts Amendment and Repeal (Courts and Legal Practice) Act 2003 s. 52</i>	65 of 2003	4 Dec 2003	1 Jan 2004 (see s. 2 and <i>Gazette</i> 30 Dec 2003 p. 5722)
<i>Mining Amendment Act 2004</i> ¹⁴	39 of 2004 (as amended by No. 19 of 2008 Pt. 2 and No. 51 of 2012 Pt. 3)	3 Nov 2004	s. 1 and 2: 3 Nov 2004; Act other than s. 1 and 2 and Pt. 9: 10 Feb 2006 (see s. 2 and <i>Gazette</i> 3 Feb 2006 p. 516); Pt. 9: 31 Mar 2007 (see s. 2 and <i>Gazette</i> 9 Mar 2007 p. 847) ¹⁵
<i>Acts Amendment (Court of Appeal) Act 2004 s. 37</i>	45 of 2004	9 Nov 2004	1 Feb 2005 (see s. 2 and <i>Gazette</i> 14 Jan 2005 p. 163)
<i>Courts Legislation Amendment and Repeal Act 2004 Pt. 15</i>	59 of 2004	23 Nov 2004	1 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7128)
<i>State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004 s. 570</i> ¹⁶	55 of 2004	24 Nov 2004	1 Jan 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7130)
<i>Criminal Law Amendment (Simple Offences) Act 2004 s. 82</i>	70 of 2004	8 Dec 2004	31 May 2005 (see s. 2 and <i>Gazette</i> 14 Jan 2005 p. 163)
<i>Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004 s. 80</i>	84 of 2004	16 Dec 2004	2 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7129 (correction in <i>Gazette</i> 7 Jan 2005 p. 53))
<i>Oaths, Affidavits and Statutory Declarations (Consequential Provisions) Act 2005 Pt. 15 (s. 61-62)</i>	24 of 2005	2 Dec 2005	s. 61: 1 Jan 2006 (see s. 2 and <i>Gazette</i> 23 Dec 2005 p. 6244); s. 62: 31 Mar 2007 (see s. 2(3) and <i>Gazette</i> 9 Mar 2007 p. 847)

Mining Act 1978**Notes** Compilation table

Short title	Number and year	Assent	Commencement
<i>Mining Amendment Act 2005</i>	27 of 2005	12 Dec 2005	s. 1 and 2: 12 Dec 2005; Act other than s. 1 and 2: 10 Feb 2006 (see s. 2 and <i>Gazette</i> 3 Feb 2006 p. 516)
<i>Planning and Development (Consequential and Transitional Provisions) Act 2005 s. 15</i>	38 of 2005	12 Dec 2005	9 Apr 2006 (see s. 2 and <i>Gazette</i> 21 Mar 2006 p. 1078)
Reprint 6: The Mining Act 1978 as at 10 Apr 2006 (includes amendments listed above except those in the <i>Offshore Minerals (Consequential Amendments) Act 2003</i> , the <i>Mining Amendment Act 2004 Pt. 9</i> and the <i>Oaths, Affidavits and Statutory Declarations (Consequential Provisions) Act 2005 s. 62</i>)			
<i>Petroleum Amendment Act 2007 s. 100</i>	35 of 2007	21 Dec 2007	19 Jan 2008 (see s. 2(b) and <i>Gazette</i> 18 Jan 2008 p. 147)
<i>Legal Profession Act 2008 s. 681</i>	21 of 2008	27 May 2008	1 Mar 2009 (see s. 2(b) and <i>Gazette</i> 27 Feb 2009 p. 511)
<i>Revenue Laws Amendment Act (No. 2) 2008 Pt. 2 Div. 2</i>	31 of 2008	27 Jun 2008	28 Jun 2008 (see s. 2(b))
<i>Statutes (Repeals and Miscellaneous Amendments) Act 2009 s. 8</i>	8 of 2009	21 May 2009	22 May 2009 (see s. 2(b))
Reprint 7: The Mining Act 1978 as at 3 Jul 2009 (includes amendments listed above except those in the <i>Offshore Minerals (Consequential Amendments) Act 2003</i>)			
<i>Approvals and Related Reforms (No. 3) (Crown Land) Act 2010 Pt. 6</i>	8 of 2010	3 Jun 2010	18 Sep 2010 (see s. 2(b) and <i>Gazette</i> 17 Sep 2010 p. 4757)
<i>Approvals and Related Reforms (No. 2) (Mining) Act 2010 Pt. 2 and 3</i>	12 of 2010	3 Jun 2010	Pt. 3: 21 Mar 2011 (see s. 2(b) and <i>Gazette</i> 18 Mar 2011 p. 909); Pt. 2: 1 Jul 2011 (see s. 2(b) and <i>Gazette</i> 18 Mar 2011 p. 909)
<i>Standardisation of Formatting Act 2010 s. 4 and 51</i>	19 of 2010	28 Jun 2010	11 Sep 2010 (see s. 2(b) and <i>Gazette</i> 10 Sep 2010 p. 4341)
<i>Public Sector Reform Act 2010 s. 89</i>	39 of 2010	1 Oct 2010	1 Dec 2010 (see s. 2(b) and <i>Gazette</i> 5 Nov 2010 p. 5563)
<i>Personal Property Securities (Consequential Repeals and Amendments) Act 2011 Pt. 9 Div. 1</i>	42 of 2011	4 Oct 2011	30 Jan 2012 (see s. 2(c) and Cwlth Legislative Instrument No. F2011L02397 cl. 5 registered 21 Nov 2011)
Reprint 8: The Mining Act 1978 as at 7 Oct 2011 (includes amendments listed above except those in the <i>Personal Property Securities (Consequential Repeals and Amendments) Act 2011</i>) (correction to reprint in <i>Gazette</i> 1 Jun 2012 p. 2282)			
<i>Mining Amendment Act 2012</i>	51 of 2012	29 Nov 2012	2 Feb 2013 (see s. 2(b) and <i>Gazette</i> 1 Feb 2013 p. 447)

Short title	Number and year	Assent	Commencement
<i>Statutes (Repeals and Minor Amendments) Act 2014</i> s. 29	17 of 2014	2 Jul 2014	6 Sep 2014 (see s. 2(b) and <i>Gazette</i> 5 Sep 2014 p. 3213)
<i>Conservation and Land Management Amendment Act 2015</i> s. 77	28 of 2015	19 Oct 2015	7 May 2016 (see s. 2(b) and <i>Gazette</i> 6 May 2016 p. 1379-80)
<i>Alumina Refinery (Mitchell Plateau) Agreement (Termination) Act 2015</i> Pt. 3	31 of 2015	2 Nov 2015	3 Nov 2015 (see s. 2(b))
<i>Mining (Transitional Provisions) (Anomalies Prevention) Order 2016</i> published in <i>Gazette</i> 22 Jul 2016 p. 3134			22 Jul 2016 (see cl. 2)
<i>Licensing Provisions Amendment Act 2016</i> Pt. 5	44 of 2016	1 Dec 2016	8 Feb 2017 (see s. 2(b) and <i>Gazette</i> 7 Feb 2017 p. 1158)
Reprint 9: The Mining Act 1978 as at 10 Feb 2017 (includes amendments listed above)			
<i>Environmental Protection Amendment Act 2020</i> s. 116	40 of 2020	19 Nov 2020	23 Oct 2021 (see s. 2(1)(e) and SL 2021/176 cl. 2)
Mining Amendment Bill 2022	Current Draft Bill		

Uncommenced provisions table

To view the text of the uncommenced provisions see *Acts as passed* on the WA Legislation website.

Short title	Number and year	Assent	Commencement
<i>Native Title (State Provisions) Act 1999</i> s. 7.3	60 of 1999	10 Jan 2000	Operative on earliest of commencement of Pt. 2 (except s. 2.2), Pt. 3 (except s. 3.1) and Pt. 4
<i>Mining Legislation Amendment Act 2014</i> Pt. 2	4 of 2014	22 Apr 2014	To be proclaimed (see s. 2(b))
<i>Aquatic Resources Management Act 2016</i> s. 369	53 of 2016	29 Nov 2016	To be proclaimed (see s. 2(b))

Other notes

- ¹ Repealed by the *Interpretation Act 1984* s. 77(1).
- ² Repealed by the *Mining Act 1978* s. 3(1).
- ³ The *Mining Amendment Act 1981* s. 3 reads as follows:

3. Continuation of miners' rights issued under *Mining Act 1904*

- (1) A miner's right issued under section 22 of the *Mining Act 1904* and in force immediately before the repeal of that Act by the *Mining Act 1978* shall, notwithstanding such repeal, continue in

force and have effect in all respects as if it were issued under section 20 of the *Mining Act 1978*.

- (2) Subsection (1) of this section shall not be construed so as to derogate in any way from sections 15 and 16 of the *Interpretation Act 1918*.
- (3) A miner's right issued under the *Mining Act 1904* before 8 December 1978 shall be deemed to have been valid and in force until the date of expiry expressed thereon.
- (4) Subsection (3) of this section shall not be construed so as to derogate in any way from the effect of the *Mining Act Amendment Clause 1978* as set out in Clause 3 of the Second Schedule to the *Mining Act 1978*.

⁴ Under the *Alteration of Statutory Designations Order (No. 3) 2001* a reference in a written law to the Department of Mines is, unless the contrary is intended, to be read and construed as a reference to the Department of Industry and Resources. At the time of this reprint, the department is called the Department of Mines and Petroleum.

⁵ The *Mining Legislation Amendment and Validation Act 2008* Pt. 2 Div. 2 and Pt. 3 read as follows:

Division 2 — Validation and pending applications

6. Validation of extension of term of certain exploration licences

If, before the day on which this section comes into operation, the term of a relevant licence was extended as a result of an application lodged at an office of the Department —

- (a) the extension of the term of the licence; and
- (b) anything done or purportedly done under the licence, or in relation to the licence, after the extension,

are taken to be, and always to have been, as valid and effective as they would have been if the application had been lodged at the office of the mining registrar.

7. Pending applications for extension of term

If —

- (a) an application for the extension of the term of a relevant licence has been lodged at an office of the Department; and
- (b) the application has not been determined before the day on which this section comes into operation,

the application is to be dealt with and determined as if it had been lodged at the office of the mining registrar.

Part 3 — Provisions relating to miscellaneous licences

8. Validation of grant of certain miscellaneous licences

If, before the day on which this section comes into operation, a miscellaneous licence was granted for a purpose approved or specified by the Director General of Mines —

- (a) the grant of the licence; and

- (b) anything done or purportedly done under the licence or in relation to the licence,

are taken to be, and always to have been, as valid and effective as they would have been if the purpose so approved or specified had been prescribed for the purposes of the *Mining Act 1978* section 91(1) at the time of the grant.

9. Pending applications for miscellaneous licence

If —

- (a) an application has been made for a miscellaneous licence for a purpose approved or specified by the Director General of Mines; and
- (b) the application has not been determined before the day on which this section comes into operation,

the application is to be dealt with and determined as if, on and from the time the application was made, the purpose so approved or specified were prescribed for the purposes of the *Mining Act 1978* section 91(1).

⁶ The *Mining Amendment Act 1986* Pt. II amended the *Mining Amendment Act 1985* s. 34 and 88. The *Mining Amendment Act 1990* s. 39 repealed the *Mining Amendment Act 1985* s. 88 and 90 before they came into operation.

⁷ The *Mining Amendment Act 1990* s. 40 (as amended by the *Mining Amendment Act 1993* s. 30(1) and (2) and the *Mining Amendment Act 1994* s. 53) reads as follows:

40. Savings and transitional

- (1) Notwithstanding sections 15, 16, 17, 19 and 34 but subject to this section —
 - (a) the amendments to the principal Act effected by those sections do not have effect in relation to —
 - (i) any exploration licence in force before the commencement day;
 - (ii) any application for an exploration licence lodged with the Department before the commencement day; or
 - (iii) any exploration licence granted in respect of an application referred to in subparagraph (ii);
 - (b) where, after the commencement day —
 - (i) land becomes available from an existing licence; and
 - (ii) other land in the same block is the subject of an exploration licence granted in respect of an application lodged with the Department on or after the commencement day,

the exploration licence referred to in subparagraph (ii) shall, by virtue, be amended to include the land that has become available from the existing licence;

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- (c) where, after section 52 of the *Mining Amendment Act 1994* commences —
- (i) land becomes available from an existing licence; and
 - (ii) other land in the same block is the subject of an application for an exploration licence lodged with the Department on or after the commencement day,
- the application referred to in subparagraph (ii) is deemed to extend, and to have always extended, to the land that has become available from the existing licence, and, if an exploration licence is granted as a result of the application, that land shall be included in the exploration licence.
- (1a) Subsection (1)(b) or (c) does not apply if the land that has become available from an existing licence has been included in an application under section 67 or 70B and a mining lease, general purpose lease or retention licence is granted in respect of that application.
- (2) Without affecting anything in subsection (1) the Governor may make regulations providing for such savings and transitional matters as are convenient or necessary for the purposes of giving effect to the amendments effected by this Act to the principal Act.
- (3) In this section —
block means a block as described in section 56C of the principal Act as in force after the commencement of section 15 of this Act;
commencement day means the day on which sections 15, 16, 17, 19 and 34 of this Act come into operation;
existing licence means an exploration licence referred to in subsection (1)(a)(i) or (iii).
- (4) A reference in this section to land becoming available from an existing licence is a reference to the land being surrendered or forfeited (otherwise than under section 98 of the principal Act) or to the expiry of the existing licence.

⁸ The *Mining Amendment Act 1993* s. 5(2), 19(2) and 28(2), and s. 29 and 30(3) (which are in Pt. 3 of the Act) read as follows:

5. Section 45 amended and savings

- (2) Notwithstanding subsection (1), section 45 of the principal Act as in force immediately before the commencement of this section continues to have effect in relation to —
- (a) any prospecting licence in force before that commencement; and
 - (b) any application for an extension of the term of a prospecting licence lodged before that commencement.

19. Section 114A inserted and validation

- (2) Any act or thing done before the commencement of the section by the holder of a mining tenement as defined in the principal Act is, and is to be regarded as having always been, as valid, lawful and effective as it would have been if —
- (a) section 114A of the principal Act as inserted by subsection (1);
 - (b) section 114(7) of the principal Act as amended by this Act; and
 - (c) clause 7(5) of the Second Schedule to the principal Act as inserted by this Act,

had been in operation when the act or thing was done.

28. Amendments relating to surveys and savings provision

- (2) Notwithstanding subsection (1), section 80(3) of the principal Act as in force immediately before the commencement of this section continues to have effect in relation to survey fees paid under the principal Act before that commencement.

29. Principal Act

In this Part the *Mining Amendment Act 1990* is referred to as the principal Act.

30. Mining Amendment Act 1990 amended and transitional

- (3) Notwithstanding section 40 of the principal Act as amended by this section —
- (a) the amendment effected by section 19(b) of the principal Act;
 - (b) section 65(1c)(b) and (c) of the *Mining Act 1978* as inserted by section 19(c) of the principal Act; and
 - (c) the repeal effected by section 19(d) of the principal Act,

have effect in relation to an exploration licence referred to in section 40(1)(a)(i) or (iii) of the principal Act.

⁹ The *Mining Amendment Act 1994* s. 21(5), 31(4) and 53 read as follows:

21. Section 70 amended and saving

- (5) The amendments made to section 70 of the principal Act by subsections (3) and (4) do not affect the term of any special prospecting licence in force under that section immediately before the commencement of this section.

31. Section 85B amended and saving

- (4) The amendments made to section 85B of the principal Act by subsections (2) and (3) do not affect the term of any special prospecting licence in force under section 85B immediately before the commencement of this section.

53. Operation of section 30(3)(b) of the *Mining Amendment Act 1993* modified

- (1) Despite sections 2(2) and 30(3)(b) of the *Mining Amendment Act 1993*, section 65(1c)(b) and (c) of the *Mining Act 1978* as inserted by section 19(c) of the *Mining Amendment Act 1990* do not have any effect, and are deemed to have never had any effect, in relation to the surrender of an existing licence under section 65 of the *Mining Act 1978* where that surrender took place before 1 July 1994.
- (2) In subsection (1) **existing licence** means an exploration licence referred to in section 40(1)(a)(i) or (iii) of the *Mining Amendment Act 1990*.

¹⁰ The *Mining Amendment Act 1996* s. 9 had not come into operation when it was deleted by the *Statutes (Repeals and Miscellaneous Amendments) Act 2009* s. 93.

¹¹ The proclamation for the commencement of s. 3, 4, 6, 8, 11, 12 and 14-22 (*Gazette* 14 Jan 2005 p. 164) was revoked in *Gazette* 24 Mar 2005 p. 1001.

¹² The *Mining Amendment Act 1998* s. 4(3) reads as follows:

- (3) An application for renewal under section 91(4) of the principal Act that has not been determined on the commencement of this Act is to be treated as an application for renewal under section 91A(3)(a) as inserted into the principal Act by section 5.

¹³ The proclamation for the commencement of s. 12 (*Gazette* 14 Jan 2005 p. 164) was revoked in *Gazette* 24 Mar 2005 p. 1001.

¹⁴ The *Mining Amendment Act 2004* s. 5(2), 6(2), 11, 15(2) and 19 (as amended by the *Mining Legislation Amendment and Validation Act 2008* s. 5 and the *Mining Amendment Act 2012* Pt. 3), 32(3), 35, 36(2), 39(2), 86, 90(2), s. 98(2)-(4) and Pt. 12 read as follows:

5. Section 45 amended and savings provision

- (2) Despite the amendment made by subsection (1), section 45 of the *Mining Act 1978* as in force immediately before the commencement of this section continues to apply to and in relation to —
 - (a) any prospecting licence in force under that Act immediately before the commencement; and
 - (b) any prospecting licence granted under that Act after the commencement in respect of an application made before the commencement.

6. Section 46 amended and transitional provision

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

11. Transitional provision

- (1) In this section —
commencement means the commencement of this Part;
old provisions means sections 56A, 70 and 85B of the *Mining Act 1978* as in force immediately before the commencement.
- (2) Despite the amendments made by this Part, the old provisions continue to apply to and in relation to an application for a special prospecting licence or a mining lease for gold under the *Mining Act 1978* that is pending immediately before the commencement.

15. Section 63 amended and transitional provision

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

19. Transitional and savings provisions

- (1) In this section —
commencement means the commencement of this Part;
old provisions means the *Mining Act 1978* as in force immediately before the commencement;
relevant licence means —
 - (a) an exploration licence granted under the *Mining Act 1978* that is in force immediately before the commencement;
or
 - (b) an exploration licence granted under the *Mining Act 1978* after the commencement in respect of an application made before the commencement.
- (2) Despite the amendments made by this Part, the old provisions (other than sections 61(3), 63A, 65(1a), 65(1c) and 65(4)) continue to apply to and in relation to a relevant licence.
- (2a) Section 61(3) and (3a) of the *Mining Act 1978* apply to and in relation to an application for the extension of the term of a relevant licence.
- (3) If the holder of a relevant licence fails to comply with the requirements for surrender in section 65(1) or (1b) of the old provisions, the Minister must, by notice in writing, require the holder to lodge the surrender for registration within a period specified in the notice.
- (4) Section 63A of the *Mining Act 1978* applies to and in relation to a relevant licence as if it contained a provision to the effect that the licence is liable to forfeiture if the holder of the licence fails to comply with a requirement under subsection (3).
- (5) Despite the amendments made by section 16, section 65(1a) of the old provisions continues to apply to and in relation to a relevant licence as if —
 - (a) “licence — ” were replaced by —
“ licence ”;

-
- (b) paragraphs (a) and (b), and “or” after paragraph (a), were deleted; and
- (c) “the Minister may exempt” were replaced by —
- “
- the Minister may, if satisfied that a ground for exemption exists, exempt
- ”.

- (6) For the purposes of the application of section 65(1a) of the old provisions as modified by subsection (5) each of the following is a ground for exemption —

- (a) by reason of difficulties or delays —
- (i) occasioned by law; or
 - (ii) arising from administrative, political, environmental or other requirements of governmental or other authorities, in the State or elsewhere; or
 - (iii) arising from a requirement to conduct an Aboriginal heritage survey on the land to which the application for exemption relates (the *relevant land*); or
 - (iv) in obtaining requisite consents or approvals for exploration or for the marking out of a mining lease or general purpose lease in relation to any part of the relevant land; or
 - (v) in gaining access to the relevant land because of unfavourable climatic conditions, the exploration programme, or the marking out and application appropriate to a mining lease or general purpose lease in relation to the relevant land, could not be undertaken or completed or is restricted in a manner that is, or subject to conditions that are, for the time being impracticable;
- (b) work already carried out under the licence justifies further exploration.

- (7) Despite the amendments made by section 16, section 65(1c) of the old provisions continues to apply to and in relation to a relevant licence as if section 65(1c)(b) were replaced by the following paragraph —

- “
- (b) shall be lodged at an office of the Department on or before the last day of the third or fourth year, as the case requires, of the term for which it is lodged;
- ”.

[Section 19 amended: No. 19 of 2008 s. 5; No. 51 of 2012 s. 45.]

32. Section 82 amended and transitional provisions

- (3) Section 82(1)(ca) of the *Mining Act 1978* as inserted by subsection (1) does not apply to a mining lease granted under that Act before the day on which this section comes into operation.

35. Transitional provision

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

36. Section 70F replaced and transitional provision

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

39. Section 84A replaced and transitional provision

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

86. Transitional provision

If, on the commencement of this Part, an application or objection in respect of a mining tenement has been made, but has not been determined, under Part IV of the *Mining Act 1978*, the application or objection is to be dealt with and determined under that Act as if this Part had not come into operation.

90. Section 70H amended and transitional provision

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

98. Section 118A inserted and validation and transitional provisions

- (2) A mining authorisation given before the commencement is, and is to be taken to have always been, as valid and effective as it would have been if the amendment made by subsection (1) had been in effect at the time it was given.
- (3) On and after the commencement an existing mining authorisation is to be treated as an authorisation under section 118A(2) of the *Mining Act 1978* as inserted by subsection (1).

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

Part 12 — Transitional regulations

105. Further transitional provisions may be made

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

- ¹⁵ The proclamation for the commencement of Pt. 9 (*Gazette* 14 Jan 2005 p. 164) was revoked in *Gazette* 24 Mar 2005 p. 1002.
- ¹⁶ The *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004* Pt. 5, the *State Administrative Tribunal Act 2004* s. 167 and 169, and the *State Administrative Tribunal Regulations 2004* r. 28 and 42 deal with certain transitional issues some of which may be relevant for this Act.