

## Streamlining (Mining Amendment) Bill 2021

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Western Australia

LEGISLATIVE ASSEMBLY/COUNCIL

**Streamlining (Mining Amendment) Bill 2021**

**A Bill for**

**An Act to amend the *Mining Act 1978*.**

The Parliament of Western Australia enacts as follows:

**s. 1**

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1   **1.     Short title**

2           This is the *Streamlining (Mining Amendment) Act 2021*.

3   **2.     Commencement**

4           This Act comes into operation as follows —

- 5           (a) sections 1 and 2 — on the day on which this Act  
6                receives the Royal Assent;
- 7           (b) the rest of the Act — on a day fixed by proclamation,  
8                and different days may be fixed for different provisions.

9   **3.     Act amended**

10          This Act amends the *Mining Act 1978*.

11   **4.     Act binds Crown**

12          This Act binds the Crown in right of Western Australia and, so  
13          far as the legislative power of the Parliament permits, the Crown  
14          in all its other capacities.

15          [*The following text is the Mining Act 1978 showing proposed amendments*  
16          *in track changes. A formal amending instrument will be drafted at a later*  
17          *stage.*]

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## Part I — Preliminary

### 1. Short title

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

### 2. Commencement

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

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

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

### 4. Transitional provisions

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

(a) in so far as that Act applies, the *Interpretation Act 1918*<sup>1</sup> and in particular sections 15 and 16 thereof; and

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

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

### 5. Saving

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

**s. 6**

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

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

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

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

15 as though the repealed Act had not been repealed.

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

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

21 **6. Operation of this Act**

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

27 (1a) Notwithstanding subsection (1) and section 5 of the  
28 *Environmental Protection Act 1986*, in the case of an  
29 application for a mining lease accompanied by the  
30 documentation referred to in section 74(1)(ca)(ii) —

31 (a) only the applicant can refer a proposal to which the  
32 application relates under section 38(1) of that Act; and



- 1 (b) section 38(5) of that Act does not apply to such a  
2 proposal.
- 3 (1b) In subsection (1a) —  
4 **proposal** has the meaning given to that term in section 3(1) of  
5 the *Environmental Protection Act 1986*.
- 6 (1c) Subsection (1a) does not apply to an application for a mining  
7 lease made pursuant to a Government agreement as defined in  
8 section 2 of the *Government Agreements Act 1979*.
- 9 (1d) If a mining lease is granted on an application referred to in  
10 subsection (1a), nothing in that subsection affects the  
11 application of section 38 of the *Environmental Protection*  
12 *Act 1986* to —
- 13 (a) a programme of work lodged by the holder of the  
14 mining lease in compliance with the condition referred  
15 to in ~~section 82(1)(ea)~~ [section 103AG\(2\)\(b\)](#); or
- 16 (b) a ~~mining proposal~~ [mining development and closure](#)  
17 [proposal](#) lodged by the holder of the mining lease in  
18 compliance with the condition referred to in  
19 ~~section 82A~~ [section 103AK\(2\)\(b\)](#).
- 20 (2) Notwithstanding anything in this Act —
- 21 (a) a local government is not required to hold a mining  
22 tenement to —
- 23 (i) exercise the power given to it by section 3.27 of,  
24 and clause 3 of Schedule 3.2 to, the *Local*  
25 *Government Act 1995*; or
- 26 (ii) remove from local government property (as  
27 defined in that Act), rock, stone, clay, sand or  
28 gravel for use in the construction of local  
29 government facilities;
- 30 and
- 31 (b) if a local government leases local government property  
32 to another person, that person is not required to hold a

s. 8

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1 mining tenement to remove from that land, rock, stone,  
2 clay, sand or gravel for use in the construction of local  
3 government facilities, unless the Minister requires that  
4 person to hold a tenement.

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

8 (4) The operation of this Act is subject to the *Alumina Refinery*  
9 *(Mitchell Plateau) Agreement Act 1971* sections 5B and 5C.  
10 *[Section 6 amended: No. 100 of 1985 s. 4; No. 77 of 1986 s. 8;*  
11 *No. 14 of 1996 s. 4; No. 39 of 2004 s. 26; No. 12 of 2010 s. 4;*  
12 *No. 31 of 2015 s. 9.]*

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

14 **8. Terms used**

- 15 (1) In this Act, unless the contrary intention appears —  
16 ***agricultural*** used in relation to the purposes for which land is  
17 occupied, includes cropping or pasturing purposes;  
18 ***approved form*** means a form approved by the Minister;  
19 ***burial ground*** means an area of land reserved or demarcated  
20 exclusively for the purpose of burials;  
21 ***commencing date*** means the date of the coming into operation  
22 of the provisions of this Act referred to in section 2(2);  
23 ***Commonwealth land*** means —  
24 (a) land in respect of which the Commonwealth holds a  
25 freehold or leasehold interest; or  
26 (b) land that is otherwise vested in or held by the  
27 Commonwealth or vested in or held by an officer or  
28 person on behalf of the Commonwealth;  
29 ***Corporations Act*** means the *Corporations Act 2001* of the  
30 Commonwealth;

1 **Crown land** means all land except —

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

4 (i) land reserved for mining or commons;

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

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

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

12 (i) a pastoral lease within the meaning of the *Land*  
13 *Administration Act 1997*, or a lease otherwise  
14 granted for grazing purposes only; or

15 (ii) a lease for timber purposes; or

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

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

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

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

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

27 **Department** means the department of the Public Service of the  
28 State principally assisting the Minister in the administration of  
29 this Act;

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

s. 8

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- 1 regulations, the designated tenement contact for the mining  
2 tenement or application;
- 3 **Director General of Mines** means the person for the time being  
4 holding or acting in the office of chief executive officer of the  
5 Department;
- 6 **Director, Geological Survey** means the person for the time  
7 being holding or acting in the office of Director, Geological  
8 Survey in the Department;
- 9 **expenditure conditions** in relation to a mining tenement means  
10 the prescribed conditions applicable to a mining tenement that  
11 require the expenditure of money on or in connection with the  
12 mining tenement or the mining operations carried out thereon or  
13 proposed to be so carried out;
- 14 **fossick** means to search for, extract and remove rock, ore or  
15 minerals, other than gold or diamonds, in quantities not  
16 exceeding the prescribed amount and by means not prohibited  
17 under the regulations, as samples or specimens for the purpose  
18 of a mineral collection, lapidary work or a hobby interest;
- 19 **geological sample** includes a drill core;
- 20 ~~**ground disturbing equipment** means —~~
- 21 ~~(a) mechanical drilling equipment; or~~
- 22 ~~(b) a backhoe, bulldozer, grader or scraper; or~~
- 23 ~~(c) any other machinery of a kind prescribed for the~~  
24 ~~purposes of this definition;~~
- 25 **identified mineral resource** means a deposit of minerals  
26 identified in the prescribed manner;
- 27 **LAA Minister** means the Minister to whom the administration  
28 of the *Land Administration Act 1997* is for the time being  
29 committed by the Governor;
- 30 **land** includes water; and also includes —
- 31 (a) the foreshore as defined in section 25(1)(a); and  
32 (b) the sea bed and subsoil between the mean low water  
33 springs level and the inner limits of the coastal waters of

- 1 the State as defined in section 16(1) and (2) of the  
2 *Offshore Minerals Act 2003*;
- 3 **land under cultivation** means land being used for agricultural  
4 purposes and includes any land, whether cleared or uncleared,  
5 used by a person for the grazing of stock in the ordinary course  
6 of management of the land of that person where the land so used  
7 for grazing forms the whole or a part of the land owned or  
8 occupied by that person;
- 9 **lapidary work** includes the selection, cutting, polishing,  
10 engraving and setting of rock or other minerals;
- 11 **listed public company** means a corporation that is a listed  
12 corporation within the meaning of that expression in the  
13 Corporations Act;
- 14 **local government** means the local government of the district in  
15 which the matter in relation to which the term is used, arose or  
16 is situated;
- 17 **machinery** includes all mechanical appliances of whatever kind  
18 used or intended to be used for any mining purpose;
- 19 **marine management area, marine nature reserve and marine**  
20 **park** have the meanings given to them by the *Conservation and*  
21 *Land Management Act 1984*;
- 22 **mine**, as a noun, means any place in, on or under which mining  
23 operations are carried on;
- 24 **mine**, as a verb, includes any manner or method of mining  
25 operations;
- 26 **mineral field** means a mineral field constituted under this Act or  
27 deemed so to be;
- 28 **minerals** means naturally occurring substances obtained or  
29 obtainable from any land by mining operations carried out on or  
30 under the surface of the land, but does not include —
- 31 (a) soil; or

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- 1 (b) a substance the recovery of which is governed by the  
2 *Petroleum and Geothermal Energy Resources Act 1967*  
3 or the *Petroleum (Submerged Lands) Act 1982*; or  
4 (ba) without limiting paragraph (b), geothermal energy  
5 resources as defined in the *Petroleum and Geothermal*  
6 *Energy Resources Act 1967* section 5(1); or  
7 (c) a meteorite as defined in the *Museum Act 1969*; or  
8 (d) any of the following substances if it occurs on private  
9 land —  
10 (i) limestone, rock or gravel; or  
11 (ii) shale, other than oil shale; or  
12 (iii) sand, other than mineral sand, silica sand or  
13 garnet sand; or  
14 (iv) clay, other than kaolin, bentonite, attapulgite or  
15 montmorillonite;

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

17 ***mining*** includes fossicking, prospecting and exploring for  
18 minerals, and mining operations;

19 ***mining development and closure proposal*** means a mining  
20 development and closure proposal —

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

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

25 (i) section 103AK(2)(b) or (4); or

26 (ii) section 103AL(2)(b) or (4);

27 ***mining operations*** means any mode or method of working  
28 whereby the earth or any rock structure stone fluid or mineral  
29 bearing substance may be disturbed removed washed sifted  
30 crushed leached roasted distilled evaporated smelted combusted  
31 or refined or dealt with for the purpose of obtaining any mineral

- 1 or processed mineral resource therefrom whether it has been  
2 previously disturbed or not and includes —
- 3 (a) the removal of overburden by mechanical or other  
4 means and the stacking, deposit, storage and treatment  
5 of any substance considered to contain any mineral; and
- 6 (b) operations by means of which salt or other evaporites  
7 may be harvested; and
- 8 (c) operations by means of which mineral is recovered from  
9 the sea or a natural water supply; and
- 10 (da) operations by means of which a processed mineral  
11 resource is produced and recovered; and
- 12 (d) the doing of all acts incident or conducive to any such  
13 operation or purposes;
- 14 **mining product** means any material won from land by mining;
- 15 **mining registrar** means a mining registrar appointed in  
16 accordance with this Act or deemed so to be and includes a  
17 reference to the person holding, acting in, or performing the  
18 functions of a prescribed office or position in the Department;
- 19 **mining tenement** means a prospecting licence, exploration  
20 licence, retention licence, mining lease, general purpose lease or  
21 a miscellaneous licence granted or acquired under this Act or by  
22 virtue of the repealed Act; and includes the specified piece of  
23 land in respect of which the mining tenement is so granted or  
24 acquired;
- 25 **occupier** in relation to any land includes any person in actual  
26 occupation of the land under any lawful title granted by or  
27 derived from the owner of the land;
- 28 **oil shale** includes naturally occurring hydrocarbons that are or  
29 may be contained in rocks from which they cannot be recovered  
30 otherwise than by mining those rocks as oil shale;
- 31 **owner** in relation to any land means —
- 32 (a) the registered proprietor thereof or in relation to land not  
33 being land under the *Transfer of Land Act 1893* the

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- 1 owner in fee simple or the person entitled to the equity  
2 of redemption thereof; or
- 3 (b) the lessee or licensee from the Crown in respect thereof;  
4 or
- 5 (c) the person who for the time being, has the lawful control  
6 and management thereof whether on trust or otherwise;  
7 or
- 8 (d) the person who is entitled to receive the rent thereof;

9 [prescribed means prescribed by regulations made under this](#)  
10 [Act;](#)

11 ***prescribed official*** means the holder of an office in the  
12 Department that is prescribed, or is of a class prescribed, for the  
13 purposes of the provision in which the term is used;

14 ***private land*** means any land, other than Commonwealth land,  
15 that has been or may hereafter be alienated from the Crown for  
16 any estate of freehold, or is or may hereafter be the subject of  
17 any conditional purchase agreement, or of any lease or  
18 concession with or without a right of acquiring the fee simple  
19 thereof (not being a pastoral lease within the meaning of the  
20 *Land Administration Act 1997* or a lease or concession  
21 otherwise granted by or on behalf of the Crown for grazing  
22 purposes only or for timber purposes or a lease of Crown land  
23 for the use and benefit of the Aboriginal inhabitants) but —

- 24 (a) in relation to mining for minerals other than gold, silver  
25 and precious metals, for the purposes of Division 3 of  
26 Part III, does not include land alienated before  
27 1 January 1899, except as provided in that Division; and
- 28 (b) other than in so far as the primary tenement may be  
29 treated as private land in relation to mining for gold  
30 pursuant to a special prospecting licence or mining lease  
31 under section 56A, 70 or 85B, does not include land that  
32 is the subject of a mining tenement; and
- 33 (c) no land that has been reserved for or dedicated to any  
34 public purpose shall be taken to be private land by



- 1 reason only that any lease or concession is granted in  
2 relation thereto for any purpose;
- 3 ***processed mineral resource*** means a substance produced from a  
4 mineral that is under the surface of land without the mineral  
5 being removed from the land;
- 6 ***public purpose*** means any of the purposes for which land may  
7 be reserved under Part 4 of the *Land Administration Act 1997*,  
8 and any purpose declared by the Governor pursuant to that Act,  
9 by notification in the *Government Gazette* to be a public  
10 purpose within the meaning of that Act;
- 11 ***register*** means the register kept under section 103F;
- 12 ***registration*** means registration under section 103C;
- 13 ***related*** has a meaning affected by subsection (4);
- 14 ***repealed Act*** means the *Mining Act 1904*<sup>2</sup>;
- 15 ***retention status*** has a meaning affected by subsection (5);
- 16 ***reversion licence application*** means a reversion licence  
17 application authorised by an order under section 120AA(2);
- 18 ***the warden or the mining registrar*** means the warden or the  
19 mining registrar of the mineral field or district thereof in which  
20 the subject matter in relation to which the term is used arose or  
21 is;
- 22 ***vehicle*** includes an aircraft, helicopter or air cushion vehicle;
- 23 ***warden*** means a warden of mines appointed in accordance with  
24 this Act;
- 25 ***warden's court*** means the warden's court constituted under this  
26 Act or deemed so to be for the mineral field or district thereof in  
27 which the subject matter in relation to which the term is used  
28 arose or is.
- 29 (2) Notwithstanding anything in subsection (1), the Minister may,  
30 in the event of a dispute whether a particular substance is or is  
31 not oil shale, decide whether that substance is or is not oil shale  
32 for the purposes of this Act and the *Petroleum and Geothermal*

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- 1            *Energy Resources Act 1967* and his decision in the matter shall  
2            be final.
- 3            (3) A reference in this Act to the owner and occupier of private land  
4            includes a reference to a person who is both the owner and  
5            occupier of private land and parts of speech in the plural number  
6            shall be construed accordingly.
- 7            (4) For the purposes of this Act a person is related to —  
8            (a) an individual, if the person is —  
9                   (i) a spouse or de facto partner; or  
10                   (ii) a parent, grandparent or great-grandparent; or  
11                   (iii) a child, grandchild or great-grandchild; or  
12                   (iv) a sibling,  
13            of the individual, whether the relationship is a step  
14            relationship or a relationship established by, or traced  
15            through marriage or a de facto relationship, a written  
16            law or a natural relationship; and  
17            (b) a body corporate, if the person is a related entity (as  
18            defined in section 9 of the Corporations Act) in relation  
19            to the body corporate.
- 20            (5) For the purposes of this Act —  
21            (a) a prospecting licence has retention status if an approval  
22            under section 54 has effect in relation to the licence; and  
23            (b) an exploration licence has retention status if an approval  
24            under section 69B has effect in relation to the licence.

25            *[Section 8 amended: No. 69 of 1981 s. 6; No. 122 of 1982 s. 5;*  
26            *No. 100 of 1985 s. 5; No. 105 of 1986 s. 7; No. 22 of 1990 s. 4;*  
27            *No. 37 of 1993 s. 10(2), 12(2), 26 and 27; No. 14 of 1996 s. 4;*  
28            *No. 54 of 1996 s. 4; No. 5 of 1997 s. 40; No. 31 of 1997 s. 71(1)*  
29            *and 141; No. 10 of 2001 s. 130; No. 15 of 2002 s. 4; No. 12 of*  
30            *2003 s. 4; No. 28 of 2003 s. 152; No. 39 of 2004 s. 20, 42, 47*  
31            *and 87; No. 27 of 2005 s. 4; No. 35 of 2007 s. 100(2) and (3);*  
32            *No. 8 of 2010 s. 17; No. 12 of 2010 s. 14; (correction to reprint:*

1                    *Gazette 1 Jun 2012 p. 2282); No. 51 of 2012 s. 5; No. 44*  
2                    *of 2016 s. 20.]*

3        **8A.        Rights in respect of oil shale or coal**

4            (1)        Notwithstanding anything in section 8, a mining tenement (other  
5            than a coal mining lease) granted and in force under, or  
6            continued in force by, this Act in respect of land which is the  
7            subject of an exploration permit specified in the Schedule to the  
8            *Petroleum and Geothermal Energy Resources Act 1967* does  
9            not confer on the holder of that mining tenement any rights in  
10           respect of oil shale or coal.

11          (2)        If land referred to in subsection (1) ceases to be the subject of an  
12          exploration permit referred to in that subsection, the holder of  
13          the mining tenement referred to in that subsection may apply to  
14          the Minister for rights in respect of oil shale or coal or both in  
15          respect of that land.

16          (3)        On receiving an application made under subsection (2), the  
17          Minister may in writing confer on the applicant such rights in  
18          respect of oil shale or coal or both in respect of the land  
19          concerned as he thinks fit, in which case the mining tenement  
20          concerned shall be amended accordingly.

21                    *[Section 8A inserted: No. 69 of 1981 s. 7; amended: No. 35 of*  
22                    *2007 s. 100(4).]*

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

24          (1)        Subject to this Act —

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

30            (b)        all other minerals existing in their natural condition on  
31            or below the surface of any land that was not alienated

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1 in fee simple from the Crown before 1 January 1899 are  
2 the property of the Crown.

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

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

11 **9A. Effect of change of baseline**

12 (1) If —  
13 (a) an offshore area is covered by a mining tenement; and  
14 (b) there is a change to the inner limit of the coastal waters  
15 of the State as defined in section 16(1) and (2) of the  
16 *Offshore Minerals Act 2003*; and  
17 (c) as a result of the change the offshore area comes within  
18 those coastal waters,

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

22 (2) In subsection (1) —  
23 ***offshore area*** means an area that comes within paragraph (b) of  
24 the definition of ***land*** in section 8(1).

25 (3) If —  
26 (a) a mining lease takes effect immediately after an  
27 exploration licence expires; and  
28 (b) the holder of the mining lease immediately after it takes  
29 effect was the holder of the exploration licence  
30 immediately before it expired,

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

3 (4) If —

- 4 (a) a retention licence takes effect immediately after an  
5 exploration licence expires; and  
6 (b) the holder of the retention licence immediately after it  
7 takes effect was the holder of the exploration licence  
8 immediately before it expired,

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

11 (5) If —

- 12 (a) a mining lease takes effect immediately after a retention  
13 licence expires; and  
14 (b) the retention licence took effect immediately after an  
15 exploration licence expired; and  
16 (c) the holder of the mining lease immediately after it takes  
17 effect was the holder of the retention licence  
18 immediately before it expired; and  
19 (d) the holder of the retention licence immediately after it  
20 took effect was the holder of the exploration licence  
21 immediately before it expired,

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

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

26 **9B. Position on Earth's surface**

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

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- 1 (2) Regulations that prescribe a datum for the purposes referred to  
2 in subsection (1), or amend that datum or prescribe another  
3 datum to replace that datum, may make any transitional or  
4 savings provisions that are necessary or convenient to be  
5 made —  
6 (a) in relation to mining tenements granted or acquired  
7 before the regulations take effect; or  
8 (b) in relation to applications for mining tenements pending  
9 when the regulations take effect; or  
10 (c) for any other purpose.  
11 (3) Regulations referred to in subsection (2) may modify or  
12 otherwise affect the operation of this Act.  
13 *[Section 9B inserted: No. 54 of 2000 s. 5(2).]*

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**Part II — Administration, mineral fields and courts**

**10. Administration of Act**

(1) This Act shall be administered by the Minister.

(2) The Minister —

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

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

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

**11. Chief executive officer and other officers**

There shall be a department of the Public Service of the State to assist the Minister in the administration of this Act, to which department there shall be appointed, under Part 3 of the *Public Sector Management Act 1994*, a chief executive officer and such number of persons to be mining registrars, geologists, surveyors, inspectors and such other officers as may be necessary for the due administration of this Act.

*[Section 11 amended: No. 113 of 1987 s. 32; No. 32 of 1994 s. 19.]*

**12. Delegation**

(1) The Minister may delegate to an officer of the Department any power or duty of the Minister except this power of delegation.

(2) A delegation under subsection (1) must be in writing signed by the Minister.

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1 (3) The Director General of Mines may delegate to an officer of the  
2 Department any power or duty of the Director General of Mines  
3 except this power of delegation.

4 (4) A delegation under subsection (3) must be in writing signed by  
5 the Director General of Mines.

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

10 (6) Nothing in this section limits the ability of the Minister or the  
11 Director General of Mines to perform a function through an  
12 officer or agent.

13 ~~12. Delegation~~

14 ~~(1) The Minister may~~

15 ~~(a) by instrument in writing delegate any of his powers and~~  
16 ~~functions (except this power of delegation) to~~

17 ~~(i) any officer of the Department; or~~

18 ~~(ii) the person for the time being occupying a~~  
19 ~~position in the Department,~~

20 ~~being an officer named or a position specified in the~~  
21 ~~instrument of delegation; and~~

22 ~~(b) vary or revoke a delegation given by him.~~

23 ~~(2) Any delegation of a power or function under this section by the~~  
24 ~~Minister ceases to have effect upon the appointment (other than~~  
25 ~~in the capacity of an acting Minister) of another person to be the~~  
26 ~~Minister for the purpose of this Act.~~

27 ~~(3) A power or function delegated by the Minister under this~~  
28 ~~section~~



- 1 ~~(a) shall, if exercised or performed, be exercised or~~  
2 ~~performed in accordance with the instrument of~~  
3 ~~delegation; and~~  
4 ~~(b) may, if the exercise of the powers or the performance of~~  
5 ~~the functions is dependent upon the opinion, belief or~~  
6 ~~state of mind of the Minister in relation to a matter be~~  
7 ~~exercised upon the opinion, belief or state of mind of the~~  
8 ~~delegate in relation to that matter.~~

9 ~~[Section 12 amended: No. 100 of 1985 s. 6.]~~

10 **13. Wardens of mines, mining registrar**

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

15 [(2), (3) deleted]

- 16 (4) A person who holds office under Part 3 of the *Public Sector*  
17 *Management Act 1994* may, with the consent of the Public  
18 Sector Commissioner, be appointed to hold or act in the office  
19 of a mining registrar notwithstanding that he is not a person  
20 appointed to the Department pursuant to section 11 and that  
21 person shall, whilst holding, acting in or performing the  
22 functions of the office of mining registrar, be deemed for the  
23 purposes of this Act to be an officer of the Department.

24 [Section 13 amended: No. 100 of 1985 s. 7; No. 32 of 1994  
25 s. 19; No. 39 of 2004 s. 48; No. 59 of 2004 s. 116; No. 39 of  
26 2010 s. 89.]

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

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1 **15. Prohibition from adjudicating in certain matters or from**  
2 **using certain information**

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

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

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

10 Penalty: imprisonment for 2 years or a fine of \$1 000.

11 (2) A warden or an officer appointed pursuant to section 11 who  
12 uses any information that comes to his knowledge in the course  
13 of, or by reason of, his appointment as a warden or as such an  
14 officer for the purpose of personal gain is guilty of a crime.

15 Penalty: Imprisonment for 2 years or a fine of \$1 000.

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

18 **16. Power to proclaim mineral fields**

19 (1) The Governor may, by proclamation —

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

23 (b) divide any mineral field into districts; or

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

26 (d) abolish a mineral field or district.

27 (2) Any part of the State that was immediately before the  
28 commencing date a mineral field or district thereof or a  
29 goldfield or district thereof under the repealed Act, shall be

1           deemed to be a mineral field or district thereof constituted under  
2           this Act and may be dealt with as provided in subsection (1).

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

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

9           **17. Designated tenement contact**

10          (1) In this section —

11           ***give*** includes serve, notify, send or any similar expression;

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

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

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

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

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

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

27           *[Section 17 inserted: No. 44 of 2016 s. 21.]*

1 **Part III — Land open for mining**

2 **Division 1 — Crown land**

3 **18. Crown land open for mining**

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

- 6 (a) where any person may set up pegs or otherwise mark out  
7 the land pursuant to section 104 in connection with an  
8 application for a mining tenement; and  
9 (b) where the holder of a miner's right may do the things  
10 authorised by section 40D; and  
11 (c) which may be made the subject of an application for a  
12 mining tenement,

13 subject to and in accordance with this Act.

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

16 **19. Minister may exempt land from mining etc.**

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

- 19 (a) exempt any land, not being private land or land that is  
20 the subject of a mining tenement or of an application  
21 therefor, from —  
22 (i) mining; or  
23 (ii) a specified mining purpose; or  
24 (iii) this Act; or  
25 (iv) a specified provision of this Act;  
26 or

- 1 (b) vary or cancel an exemption referred to in paragraph (a),  
2 and shall cause any such instrument to be published in the  
3 *Government Gazette* as soon as is practicable after its execution  
4 by him.
- 5 (2) Each instrument made under subsection (1) has effect on and  
6 from the date thereof and shall specify the area and description  
7 of land to which the instrument relates.
- 8 (2a) An instrument made under subsection (1)(a) before the  
9 prescribed day, has effect until it is cancelled under  
10 subsection (1)(b).
- 11 (2b) An instrument made under subsection (1)(a) on or after the  
12 prescribed day, has effect until it is cancelled under  
13 subsection (1)(b) or until it expires under subsection (2c),  
14 whichever occurs first.
- 15 (2c) An instrument referred to in subsection (2b) expires at the end  
16 of the period of 2 years from its date unless it is extended for a  
17 period or periods (not exceeding 2 years at a time) by  
18 instrument in writing under the Minister's hand published in the  
19 *Government Gazette*.
- 20 (2d) In subsections (2a) and (2b) the *prescribed day* means the day  
21 on which section 4 of the *Mining Amendment Act 1994*  
22 commences.
- 23 (3) While any land is so exempted from mining or any specified  
24 mining purpose, or from this Act or any specified provision  
25 thereof, the land to the extent of the exemption, may be dealt  
26 with by the Minister in accordance with this section and to that  
27 extent is not subject to the other provisions of this Act.
- 28 (4) The Minister may, while any land is exempted under this  
29 section, call in such manner as he determines for applications  
30 for the grant of such mining tenements as he determines in  
31 respect of that land or a part thereof.

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- 1 (5) A person applying to the Minister for the grant of a mining  
2 tenement in respect of any land or a part thereof referred to in  
3 subsection (4) shall do so in such manner as the Minister  
4 directs.
- 5 (6) On receiving an application made under subsection (5), the  
6 Minister may —
- 7 (a) grant the mining tenement applied for or another mining  
8 tenement subject to such terms and conditions as he  
9 thinks fit; or
- 10 (b) refuse that application.
- 11 (7) This Act applies to a mining tenement granted under this  
12 section as if that mining tenement had been granted under  
13 Part IV.
- 14 (8) Nothing in this section authorises or allows land to which  
15 section 24, 24A or 25 applies to be exempted from a provision  
16 of Division 2 or to be dealt with otherwise than in accordance  
17 with Division 2.
- 18 *[Section 19 amended: No. 69 of 1981 s. 8; No. 100 of 1985*  
19 *s. 12; No. 21 of 1993 s. 45; No. 58 of 1994 s. 4; No. 52 of 1995*  
20 *s. 20; No. 5 of 1997 s. 41(2).]*

21 **20. Protection of certain Crown land**

22 *[(1)-(4) deleted]*

- 23 (5) Notwithstanding that any Crown land to which this subsection  
24 refers may be marked out as or be included in a mining  
25 tenement, a mining tenement or Miner's Right does not entitle  
26 the holder thereof to prospect or fossick on, explore, or mine on  
27 or under, or otherwise interfere with, any Crown land that is —
- 28 (a) for the time being under crop, or which is situated  
29 within 100 m thereof;

- 1 (b) used as or situated within 100 m of a yard, stockyard,  
2 garden, cultivated field, orchard, vineyard, plantation,  
3 airstrip or airfield;
- 4 (c) situated within 100 m of any land that is in actual  
5 occupation and on which a house or other substantial  
6 building is erected;
- 7 (d) the site of or situated within 100 m of any cemetery or  
8 burial ground;
- 9 (e) land the subject of a pastoral lease within the meaning of  
10 the *Land Administration Act 1997* which is the site of, or  
11 is situated within 400 m of the outer edge of, any water  
12 works, race, dam, well or bore, not being an excavation  
13 previously made and used for mining purposes by a  
14 person other than a lessee of that pastoral lease,  
15 without the written consent of the occupier, unless —
- 16 (ea) the warden in relation to any land other than land  
17 referred to in paragraph (c) otherwise directs; or
- 18 (eb) in the case of mining, it is carried out not less than 30 m  
19 below the lowest part of the natural surface of the land,  
20 but nothing in this subsection prevents such a holder from  
21 passing and repassing over any Crown land that is situated  
22 within —
- 23 (f) 100 m of any Crown land that is —
- 24 (i) for the time being under crop; or
- 25 (ii) used as a yard, stockyard, garden, cultivated  
26 field, orchard, vineyard, plantation, airstrip or  
27 airfield; or
- 28 (iii) in actual occupation and on which a house or  
29 other substantial building is erected; or
- 30 (iv) the site of any cemetery or burial ground;
- 31 or

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- 1 (g) 400 m of any Crown land that is the site of any water  
2 works, race, dam, well or bore,  
3 in order to gain access to other land (not being Crown land  
4 referred to in paragraph (f) or (g)), for the purpose of  
5 prospecting or fossicking on, exploring, mining on or under, or  
6 marking out that other land but a warden shall not give a  
7 direction under paragraph (ea) unless he is satisfied that the land  
8 is *bona fide* required for mining purposes and he is satisfied that  
9 compensation in accordance with section 123 for all loss or  
10 damage suffered or likely to be suffered by an owner or  
11 occupier of the land has been agreed upon or otherwise  
12 determined, or is assessed and settled in accordance with this  
13 Act.
- 14 (5a) The holder of a mining tenement or Miner's Right who passes  
15 or repasses over any Crown land that is situated within —  
16 (a) 100 m of any Crown land referred to in  
17 subsection (5)(f); or  
18 (b) 400 m of any Crown land referred to in  
19 subsection (5)(g),  
20 in order to gain access to the other land referred to in  
21 subsection (5) for the purpose referred to therein shall —  
22 (c) before so passing or repassing, take all reasonable and  
23 practicable steps to notify the occupier of the Crown  
24 land so situated of his intention to do so; and  
25 (d) when so passing or repassing —  
26 (i) take all necessary steps to prevent damage or  
27 injury to property or livestock whether resulting  
28 from fire, the presence of dogs, the discharge of  
29 firearms, the use of vehicles or any other cause;  
30 and  
31 ~~(i) take all necessary steps to prevent fire, damage~~  
32 ~~to trees or other property and to prevent damage~~  
33 ~~to any property or damage to livestock by the~~



- 1 ~~presence of dogs, the discharge of firearms, the~~  
2 ~~use of vehicles or otherwise; and~~
- 3 (ii) cause as little inconvenience as possible to the  
4 occupier of the Crown land so situated; and
- 5 (iii) comply with any reasonable request made by the  
6 occupier of the Crown land so situated in relation  
7 to the manner in which that holder so passes or  
8 repasses;
- 9 and
- 10 (e) restrict the number of occasions on which he so passes  
11 or repasses to the minimum necessary for the purpose of  
12 prospecting or fossicking on, exploring, mining  
13 operations on or under, or marking out that other land;  
14 and
- 15 (f) make good any damage caused by that passing or  
16 repassing to any improvements or livestock on the  
17 Crown land so situated,
- 18 and the occupier of the Crown land so situated is entitled to be  
19 compensated by that holder for any damage referred to in  
20 paragraph (f) that is not made good by that holder, and, in  
21 respect of land under cultivation, for any other loss or damage  
22 for which that holder is liable in accordance with section 123.
- 23 (5b) The amount of any compensation payable under subsection (5a)  
24 by the holder of the mining tenement or Miner's Right  
25 concerned to an occupier of Crown land referred to in that  
26 subsection shall be determined —
- 27 (a) by agreement between that holder and that occupier; or  
28 (b) in default of agreement, by the warden's court on the  
29 application of that holder or that occupier.

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

4 *[Section 20<sup>3</sup> amended: No. 122 of 1982 s. 6; No. 100 of 1985*  
5 *s. 13; No. 22 of 1990 s. 5; No. 31 of 1997 s. 141; No. 63 of 2000*  
6 *s. 4; No. 15 of 2002 s. 5; No. 39 of 2004 s. 50 and 88; No. 51 of*  
7 *2012 s. 8.]*

8 *[20A-20C. Deleted: No. 51 of 2012 s. 9.]*

9 **21. Power to resume land**

10 (1) Any land, including land under the surface (not being land that  
11 is the subject of a mining tenement or land on which mining  
12 operations are lawfully being carried on under an agreement in  
13 writing with the owner of the land) that in the opinion of the  
14 Governor on the recommendation of the Minister ought to be  
15 taken for the purposes of this Act is hereby authorised to be  
16 taken on behalf of the Crown pursuant to Part 9 of the *Land*  
17 *Administration Act 1997* as though the taking were required for  
18 a public purpose, and for that purpose the Minister or the  
19 Minister administering that Act may cause the land to be  
20 inspected, surveyed, explored, and reported upon by such  
21 officers and workmen as he directs, all of whom may thereupon  
22 enter upon the land and carry out all necessary operations in  
23 accordance with that Act.

24 (2A) In subsection (1) —  
25 **land** does not include Commonwealth land.

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

32 (3) Upon the taking of any land pursuant to this section the owner  
33 and occupier is entitled to compensation, and the amount of the

1 compensation shall be determined in the manner prescribed by  
2 Part 10 of the *Land Administration Act 1997* but in assessing the  
3 amount of the compensation to be paid no allowance shall be  
4 made for the value of any minerals known or supposed to be on  
5 or under the land taken, other than minerals which are the  
6 property of the owner.

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

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

16 **22. Effect of resumption**

17 Where any private land is taken under section 21 pursuant to  
18 Part 9 of the *Land Administration Act 1997* that land shall for  
19 the purposes of this Act be taken to be Crown land under and  
20 subject to this Act, but every mining tenement granted in respect  
21 of, or occupied upon the land shall notwithstanding any of the  
22 provisions of this Act to the contrary, be subject to such rent,  
23 royalty or other payment to the Crown as may be determined by  
24 the Minister in each case, and the provisions as to royalty, other  
25 than as to the amount thereof as hereinafter provided by this Act  
26 shall be applicable.

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

1 **Division 2 — Public reserves, etc. and Commonwealth land**

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

3 **23. Mining on public reserves etc. and Commonwealth land**

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

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

9 (b) Commonwealth land.

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

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

16 (a) contravenes this section; or

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

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

20 **24. Classification of reserves**

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

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

- 1 (b) any land comprised within —
- 2 (i) a national park, being land to which section 6(3)
- 3 of the *Conservation and Land Management*
- 4 *Act 1984* applies; or
- 5 (ii) a nature reserve, being land to which section 6(5)
- 6 of the *Conservation and Land Management*
- 7 *Act 1984* applies and which is reserved under
- 8 Part 4 of the *Land Administration Act 1997* and
- 9 classified as a class A reserve pursuant to that
- 10 Part or so classified pursuant to any other Act; or
- 11 (iii) a nature reserve, not being land to which
- 12 section 6(5) of the *Conservation and Land*
- 13 *Management Act 1984* applies but which is
- 14 reserved under Part 4 of the *Land Administration*
- 15 *Act 1997* for the conservation of flora or fauna,
- 16 or both flora and fauna, and classified as a
- 17 class A reserve pursuant to that Part or so
- 18 classified pursuant to any other Act;
- 19 and
- 20 (c) land reserved under Part 4 of the *Land Administration*
- 21 *Act 1997*, not being —
- 22 (i) land to which paragraph (a) or (b) of this
- 23 subsection refers;
- 24 (ii) land reserved for mining or commons;
- 25 (iii) land reserved and designated for public utility for
- 26 any purpose pursuant to that Part;
- 27 (iv) land that is a townsite within the meaning of the
- 28 *Land Administration Act 1997*;
- 29 and
- 30 (d) land within the South West Mineral Field that is a State
- 31 forest or a timber reserve within the meaning of the
- 32 *Conservation and Land Management Act 1984*; and

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- 1 (da) land, not being land to which paragraph (d) refers, that is  
2 a State forest or a timber reserve within the meaning of  
3 the *Conservation and Land Management Act 1984*; and
- 4 (e) land that is a water reserve or catchment area for the  
5 purposes of the *Metropolitan Water Supply, Sewerage,  
6 and Drainage Act 1909* or of the *Country Areas Water  
7 Supply Act 1947* or any other relevant Act within the  
8 meaning of that term as defined by section 5 of the  
9 *Water Agencies (Powers) Act 1984*, or of that Act; and
- 10 (f) land to which Part III of the *Aboriginal Affairs Planning  
11 Authority Act 1972* applies; and
- 12 (fa) land dedicated under section 21 of the *Western  
13 Australian Land Authority Act 1992* or vested in or  
14 under the control of the Western Australian Land  
15 Authority established by that Act; and
- 16 (g) land that is reserved under any Act other than those Acts  
17 already referred to in this subsection.
- 18 (2A) The Governor may, from time to time, by Order in Council,  
19 apply this section to any other land or class of land specified in  
20 the Order in Council and as from the date so specified this  
21 section shall apply to the extent and in the manner specified in  
22 the Order in Council.
- 23 (2B) The Minister shall cause an Order in Council made pursuant to  
24 subsection (2A) to be laid on the table of each House of  
25 Parliament within 12 sitting days of its making and if either  
26 House does not pass a resolution disallowing such Order in  
27 Council within 12 sitting days of that House after the Order in  
28 Council has been laid before it the order in council shall have  
29 effect from the date of its making.
- 30 (3A) Subject to subsection (4) mining may be carried out on any land  
31 referred to in subsection (1)(a) or (b) with the written consent of  
32 the Minister who may refuse his consent or who may give his  
33 consent subject to such terms and conditions as the Minister  
34 specifies in the consent.

- 1 (3B) Before giving his consent under subsection (3A) whether  
2 conditionally or unconditionally the Minister shall first consult  
3 with, and obtain the concurrence thereto, of the responsible  
4 Minister.
- 5 (4) No mining lease or general purpose lease shall be granted on  
6 any land referred to in subsection (1)(a) or (b) unless both  
7 Houses of Parliament by resolution consent thereto, and then  
8 only on such terms and conditions as are specified in the  
9 resolution.
- 10 (5A) Mining on any land referred to in subsection (1)(c) may be  
11 carried out with the written consent of the Minister who may  
12 refuse his consent or who may give his consent subject to such  
13 terms and conditions as the Minister specifies in the consent.
- 14 (5B) Before giving his consent under subsection (5A) whether  
15 conditionally or unconditionally the Minister shall first consult  
16 the responsible Minister and the local government, public body,  
17 or trustees or other persons in which the control and  
18 management of such land is vested with respect thereto, and  
19 obtain its or their recommendations thereon.
- 20 (6A) Mining may be carried out on any land referred to in  
21 subsection (1)(d) with the written consent of the Minister who  
22 may refuse his consent or who may give his consent subject to  
23 such terms and conditions as are specified in the consent.
- 24 (6B) Before giving his consent under subsection (6A), whether  
25 conditionally or unconditionally the Minister shall first consult  
26 with, and obtain the concurrence thereto, of the responsible  
27 Minister.
- 28 (7A) Mining may be carried out on any land referred to in  
29 subsection (1)(da), (e), (f), (fa) or (g) with the written consent of  
30 the Minister who may refuse his consent or who may give his  
31 consent, subject to such terms and conditions as are specified in  
32 the consent.

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- 1 (7B) Before giving his consent under subsection (7A), whether  
2 conditionally or unconditionally, the Minister shall first consult  
3 the responsible Minister with respect thereto and obtain his  
4 recommendation thereon.
- 5 (7C) The giving by the Minister of his consent under subsection (7A)  
6 in relation to land referred to in subsection (1)(f) does not  
7 prevent or in any way affect the application of section 31 of the  
8 *Aboriginal Affairs Planning Authority Act 1972* to any person  
9 acting under that consent.
- 10 (8) The responsible Minister for the purposes of this section is the  
11 Minister for the time being charged with the administration of  
12 the land or the enactment to which the land is subject, and if in  
13 any case a question arises as to who is the responsible Minister  
14 under this section, the question shall be determined by the  
15 Governor whose decision shall be final.

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

21 **24A. Mining in marine reserves**

- 22 (1) Without limiting section 23, nothing in section 13A, 13B or 13C  
23 of the *Conservation and Land Management Act 1984* —
- 24 (a) prevents a mining tenement from being —
- 25 (i) held and renewed; or
- 26 (ii) applied for, granted, held and renewed,  
27 in a marine nature reserve, marine park or marine  
28 management area; or
- 29 (b) affects the validity or effect of a mining tenement in a  
30 marine nature reserve, marine park or marine  
31 management area.



- 1 (2) Subject to subsection (4) mining may be carried out in a marine  
2 nature reserve or marine park with the written consent of the  
3 Minister who may refuse consent or who may give consent  
4 subject to such terms and conditions as the Minister specifies in  
5 the consent.
- 6 (3) Before giving consent under subsection (2), whether  
7 conditionally or unconditionally, the Minister shall first —  
8 (a) consult, and obtain the concurrence of, the conservation  
9 Minister; and  
10 (b) consult and obtain the recommendations of the fisheries  
11 Minister and the marine Minister.
- 12 (4) No mining lease or general purpose lease shall be granted in  
13 respect of any marine nature reserve or marine park unless both  
14 Houses of Parliament by resolution consent to the grant, and  
15 then only on such terms and conditions as are specified in the  
16 resolution.
- 17 (5) Mining in any marine management area may be carried out with  
18 the written consent of the Minister who may refuse consent or  
19 who may give consent subject to such terms and conditions as  
20 the Minister specifies in the consent.
- 21 (6) Before giving consent under subsection (5), whether  
22 conditionally or unconditionally, the Minister shall first consult  
23 and obtain the recommendations of the conservation Minister,  
24 the fisheries Minister and the marine Minister.
- 25 (7) Despite any consent given under subsection (2) or (4), nothing  
26 in this Act authorises the disturbance of —  
27 (a) the sea bed or other land beneath waters in any restricted  
28 area in a mining tenement; or  
29 (b) land in any restricted area in a mining tenement; or  
30 (c) the subsoil below any sea bed or land referred to in  
31 paragraph (a) or (b), to a depth of 200 m.

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

3 (9) In this section —

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

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

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

12 **restricted area** means —

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

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

17 (i) a sanctuary area; or

18 (ii) a recreation area; or

19 (iii) a special purpose area which, or that part of such  
20 an area which, the conservation Minister has  
21 declared in the classification notice to be an area  
22 where disturbance of the land, sea bed or subsoil  
23 would be incompatible with a conservation  
24 purpose specified in the classification notice.

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

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

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

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

- 1 (b) any part of the sea bed between the mean low water  
2 springs level of the sea and the inner limits of the coastal  
3 waters of the State as defined in section 16(1) and (2) of  
4 the *Offshore Minerals Act 2003*; and  
5 (c) any land under navigable waters in the State; and  
6 (d) any land that is a townsite within the meaning of the  
7 *Land Administration Act 1997*,

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

10 (2A) Mining on any land referred to in subsection (1)(a), (b) or (c)  
11 may be carried out with the written consent of the Minister who  
12 may refuse his consent or who may give his consent subject to  
13 such terms and conditions as the Minister specifies in the  
14 consent.

15 (2B) Before giving his consent under subsection (2A) whether  
16 conditionally or unconditionally the Minister shall first consult  
17 the Minister to whom the administration of the *Fish Resources*  
18 *Management Act 1994* is for the time being committed by the  
19 Governor, the Minister to whom the administration of the  
20 *Marine and Harbours Act 1981* is for the time being committed  
21 by the Governor, the LAA Minister and the Minister to whom  
22 the administration of the *Environmental Protection Act 1986* is  
23 for the time being committed by the Governor with respect  
24 thereto and obtain their recommendations thereon.

25 (3A) Mining on any land referred to in subsection (1)(d) may be  
26 carried out with the written consent of the Minister who may  
27 refuse his consent or who may give his consent subject to such  
28 terms and conditions as the Minister specifies in the consent.

29 (3B) Before giving his consent under subsection (3A) whether  
30 conditionally or unconditionally the Minister shall first consult  
31 the LAA Minister and the local government, in respect thereto  
32 and obtain their recommendations thereon.

33 *[Section 25 amended: No. 77 of 1986 s. 9; No. 22 of 1990 s. 7;*

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1 *No. 37 of 1993 s. 4; No. 14 of 1996 s. 4; No. 5 of 1997 s. 42;*  
2 *No. 31 of 1997 s. 71(12) and 141; No. 24 of 2000 s. 26(1); No.*  
3 *12 of 2003 s. 8; No. 8 of 2010 s. 18; No. 19 of 2010 s. 51.]*

4 **25A. Mining on Commonwealth land**

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

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

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

15 **26. Terms and conditions**

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

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

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

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

30 (d) the person carrying out such mining operations shall  
31 lodge with the Minister, within such period as the

- 1 Minister specifies in writing, a security to cover the  
2 probable cost of the work referred to in paragraph (b);
- 3 (e) compensation to be assessed in accordance with this Act  
4 shall be paid to the person having the control and  
5 management of the land affected for any loss or damage  
6 caused by such mining operations.
- 7 (1a) A security referred to in subsection (1)(d) shall be in accordance  
8 with and subject to section 126.
- 9 (2) In relation to any application for a mining tenement in respect of  
10 any land, or land of a class, to which section 24, 24A or 25  
11 applies —
- 12 (a) land to which section 24(1)(a) or (b) refers may be  
13 marked out only with the consent of the Minister and the  
14 responsible Minister; and
- 15 (aa) a marine nature reserve or marine park may be marked  
16 out only with the consent of the Minister and the  
17 conservation Minister as defined in section 24A(9); and
- 18 (b) land to which section 24(1)(d) refers may be marked out  
19 only in accordance with such conditions and restrictions,  
20 if any, as are lawfully prescribed pursuant to  
21 section 128(1)(h) of the *Conservation and Land*  
22 *Management Act 1984*,
- 23 but otherwise the land shall be marked out as a mining tenement  
24 in accordance with this Act.
- 25 (3) The responsible Minister for the purposes of subsection (2)(a) is  
26 the person who is the responsible Minister in relation to the land  
27 as determined pursuant to section 24(8).
- 28 (4) In relation to any application for a mining tenement in respect of  
29 Commonwealth land, the Commonwealth land may be marked  
30 out only with the consent of the Minister and the Minister of the  
31 Commonwealth responsible for the control and management of  
32 the land, but otherwise the land is to be marked out as a mining  
33 tenement in accordance with this Act.

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

3 **26A. Mining tenements within townsites**

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

13 (2) Where the holder of a mining tenement fails to surrender land  
14 when required to do so under subsection (1), the land specified  
15 in the notice shall, on the expiry of the period referred to in that  
16 subsection, be deemed to have been surrendered and a memorial  
17 to that effect shall be entered in the register.

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

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

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

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

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

33 (b) refuse the application.

- 1 (5) Subject to subsections (3)(a) and (4), land surrendered or  
2 deemed to have been surrendered under this section is not open  
3 for mining while the mining tenement in respect of that land  
4 remains in force.
- 5 (6) Where part of land the subject of a mining tenement is  
6 surrendered pursuant to subsection (1), section 95(4) and (5)  
7 apply, with such modifications as the circumstances require, for  
8 the purpose of that surrender.
- 9 (7) Where part of land the subject of a mining tenement is deemed  
10 to have been surrendered pursuant to subsection (2),  
11 section 95(5) applies, with such modifications as the  
12 circumstances require, for the purpose of that surrender.
- 13 (8) Where land the subject of a mining tenement is surrendered or  
14 deemed to have been surrendered under this section the holder  
15 of the mining tenement is entitled to claim and receive  
16 compensation under Part 10 of the *Land Administration*  
17 *Act 1997* as if the land had been taken by the Crown under  
18 that Act.
- 19 (9) Section 205 of the *Land Administration Act 1997* applies to a  
20 claim for compensation referred to in subsection (8) except that  
21 the compensation payable is limited to compensation for actual  
22 loss sustained through damage to buildings or other structures  
23 on the surface of the land.

24 [Section 26A inserted: No. 22 of 1990 s. 8; amended: No. 54 of  
25 1996 s. 6; No. 31 of 1997 s. 71(13)-(16).]

26 **Division 3 — Private land**

27 **27. Private land open for mining**

- 28 (1) Subject to this Act, a mining tenement may be applied for in  
29 respect of any private land (which for the purposes of this  
30 Division does not include private land that is the subject of a  
31 mining tenement, other than in relation to mining for gold  
32 pursuant to a special prospecting licence or mining lease under

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1 section 56A, 70 or 85B in which case the land which is the  
2 subject of the application for that licence or lease is to be dealt  
3 with as private land) and such land is open for mining in  
4 accordance with this Act.

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

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

9 **28. Unlawful entry on private land**

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

- 13 (a) is the owner in occupation of that private land; or  
14 (b) is authorised to do so, by a permit issued under  
15 section 30, or by any other provision of this Act, or by  
16 virtue of a mining tenement.

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

18 **29. Granting of mining tenements in respect of private land**

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

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

- 28 (a) which is in *bona fide* and regular use as a yard,  
29 stockyard, garden, orchard, vineyard, plant nursery or  
30 plantation or is land under cultivation; or  
31 (b) which is the site of a cemetery or burial ground; or



- 1 (c) which is the site of a dam, bore, well or spring; or  
2 (d) on which there is erected a substantial improvement; or  
3 (e) which is situated within 100 m of any private land  
4 referred to in paragraph (a), (b), (c) or (d); or  
5 (f) which is a separate parcel of land and has an area of  
6 2 000 m<sup>2</sup> or less,

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

10 [(3) *deleted*]

11 (4) If a question arises as to whether something is a substantial  
12 improvement for the purposes of subsection (2)(d), the question  
13 is to be determined by the warden and the warden's  
14 determination is final and conclusive and not subject to appeal.

15 (5) The holder of a mining tenement which —

- 16 (a) has been granted wholly or partly in respect of private  
17 land referred to in subsection (2)(a), (b), (c), (d), (e)  
18 or (f); but  
19 (b) has not been granted in respect of that portion of the  
20 private land referred to in paragraph (a) that is less than  
21 30 m below the lowest part of the natural surface of that  
22 private land because the consents referred to in  
23 subsection (2) have not been given,

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

30 (6) On receiving an application made under subsection (5), the  
31 Minister may, if he is satisfied that both the owner and the  
32 occupier of the private land referred to in paragraph (a) of that

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- 1 subsection have consented in writing to the grant of the mining  
2 tenement concerned in respect of the portion referred to in  
3 paragraph (b) of that subsection, grant that application.
- 4 (6a) Subsection (6b) applies to a mining tenement if it —
- 5 (a) has been granted wholly or partly in respect of private  
6 land referred to in subsection (2)(a), (b), (c), (d), (e)  
7 or (f); but
- 8 (b) has not been granted in respect of that portion of the  
9 private land (the *relevant portion*) that is less than 30 m  
10 below the lowest part of the natural surface of that  
11 private land because the consents referred to in  
12 subsection (2) have not been given.
- 13 (6b) If during the currency of a mining tenement to which this  
14 subsection applies, the relevant portion or any part of the  
15 relevant portion ceases to be private land, the relevant portion or  
16 that part of the relevant portion, as the case requires, is, by  
17 operation of this subsection, included in the mining tenement.
- 18 (7) A mining tenement granted under this Division in respect of any  
19 private land —
- 20 (a) shall, subject to this Act, authorise the holder of that  
21 mining tenement —
- 22 (i) to carry out mining on the natural surface of the  
23 private land and at any depth thereunder; or
- 24 (ii) to carry out mining at a depth of not less than  
25 30 m from the lowest part of the natural surface  
26 of the private land;
- 27 (b) shall comprise a right of access by a right of way, to be  
28 marked in the prescribed manner at the expense of the  
29 holder of that mining tenement, from the private land  
30 through any land, whether occupied under a mining  
31 tenement or otherwise, to the nearest practicable point of  
32 a street or road, but except with the consent in writing of  
33 the owner and the occupier of any land used as a yard,

1 garden, orchard or cultivated field no such right of way  
2 shall be had by the holder of that mining tenement  
3 through that land;

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

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

20 *[Section 29 inserted: No. 69 of 1981 s. 9; amended: No. 100 of*  
21 *1985 s. 20; No. 105 of 1986 s. 9; No. 58 of 1994 s. 6; No. 39 of*  
22 *2004 s. 52.]*

23 **30. Granting of permits in respect of private land**

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

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

31 (3) A warden or a prescribed official, on being satisfied that an  
32 application made under subsection (1) is made in good faith,

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- 1 may grant a permit in writing to enter on the private land  
2 concerned —
- 3 (a) for such term not exceeding 30 days from the date  
4 thereof; and
- 5 (b) subject to such conditions, not being conditions  
6 preventing the marking out of any mining tenement or  
7 the maintenance of any marks or notices relating thereto,
- 8 as he thinks fit and specifies in that permit and, where the holder  
9 of the permit marks out and applies for a mining tenement in  
10 relation to that land or any part thereof, the permit shall be  
11 deemed to continue in force, for the purpose only of repairing or  
12 maintaining the marks so set up and the notices posted thereon,  
13 until such time as the application for the mining tenement is  
14 determined.
- 15 (4) A warden or a prescribed official may, on granting a permit  
16 under subsection (3), fix a sum of money and require that sum  
17 to be paid to the Director General of Mines by the applicant for  
18 the permit before the issue thereof to the applicant.
- 19 (5) A sum fixed under subsection (4) shall be a sum that, in the  
20 opinion of the warden or prescribed official, would provide  
21 reasonable compensation to the owner and the occupier of the  
22 private land to which the permit concerned relates for any  
23 damage likely to be caused by the holder of the permit during  
24 the currency of the permit.
- 25 (6) The owner or the occupier of the private land to which a permit  
26 relates may apply to the warden's court within the prescribed  
27 period for payment of all or part of a sum paid by the holder of  
28 the permit under subsection (4).
- 29 (6a) If the warden's court is satisfied, on an application made under  
30 subsection (6), that the applicant has suffered damage caused by  
31 the holder of the permit during the currency of the permit, the  
32 warden's court may order that all or part of the sum be paid to  
33 the applicant.

- 1 (6b) If an order is made under subsection (6a) that all of the sum be  
2 paid to the applicant, the Director General of Mines shall give  
3 effect to the order.
- 4 (6c) If an order is made under subsection (6a) that part of the sum be  
5 paid to the applicant, the Director General of Mines shall —  
6 (a) give effect to the order; and  
7 (b) pay the balance of the sum to the holder of the permit.
- 8 (6d) If —  
9 (a) no application is made under subsection (6); or  
10 (b) an application made under subsection (6) is refused,  
11 withdrawn or discontinued,  
12 the Director General of Mines shall pay the sum to the holder of  
13 the permit.
- 14 (7) A permit under subsection (3) shall be deemed to be held  
15 subject to the condition that the holder is liable —  
16 (a) in accordance with section 123, in respect of loss or  
17 damage arising out of the lawful exercise of the  
18 authorisation conferred by the permit; and  
19 (b) generally for any loss or damage arising by reason of  
20 any entry on the land effected in purported pursuance of  
21 the authorisation conferred by the permit where the  
22 exercise of that authorisation contravened conditions to  
23 which the permit was subject or the entry was otherwise  
24 unlawful.
- 25 (8) In this section —  
26 *prescribed official* means a person who holds or acts in an  
27 office or position in the Department that is prescribed for the  
28 purposes of this section.  
29 [Section 30 inserted: No. 69 of 1981 s. 10; amended: No. 100 of  
30 1985 s. 21; No. 22 of 1990 s. 9; No. 39 of 2004 s. 53.]

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

2 (1) The holder of a permit issued under section 30 or his duly  
3 authorised employee or agent shall hand a copy of the permit to  
4 the occupier of the private land over which the permit has been  
5 granted on the first occasion that the holder, his employee or  
6 agent enters upon that land after the issue of the permit, but if  
7 the occupier is not present on the private land on that occasion,  
8 the holder of the permit, his employee or agent shall —

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

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

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

23 (3) Where none of the owners of any private land is also in  
24 occupation of that land, the holder of a permit granted over that  
25 private land shall cause a copy of the permit to be sent, within  
26 48 hours of his first entering the land after the issue of the  
27 permit, by prepaid registered post to one of those owners at —

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

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

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

1 **32. Rights conferred by a permit**

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

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

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

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

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

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

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

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

- 1     **33. Application for mining tenement by permit holder**
- 2         (1) Subject to subsection (1a), where an application is made in  
3             accordance with this Act for a mining tenement that relates to  
4             private land notice of the application shall be given in the  
5             prescribed manner by the applicant to —
- 6                 (a) the chief executive officer of the local government; and  
7                 (b) the owner and occupier of the private land; and  
8                 (c) each mortgagee of the land under a mortgage endorsed  
9                 or noted on the title or land register or record relating to  
10                 that land,
- 11             but if there is no occupier of the land, or no such occupier can  
12             be found, the notice of the application shall be affixed in some  
13             conspicuous manner on the land.
- 14         (1a) Where the application for a mining tenement relates only to that  
15             portion of the land that is not less than 30 m below the lowest  
16             part of the natural surface of the private land, it shall not be  
17             necessary to give notice of the application to the owner or  
18             occupier or to a mortgagee of the land, but no application shall  
19             be made under section 29(5) or otherwise in respect of that  
20             portion of the land that is less than 30 m below the lowest part  
21             of the natural surface unless notice is given in accordance with  
22             subsection (1) notwithstanding the prior grant of an application  
23             for a mining tenement over any portion of the land.
- 24         (1b) Where the application relates to land to which section 29(2) or  
25             (5) applies, the applicant shall be required to establish that both  
26             the owner and the occupier have consented in writing to the  
27             grant of the mining tenement concerned but otherwise, subject  
28             to the determination of the amount of any compensation payable  
29             in accordance with section 123, a mining tenement in respect of  
30             private land may be granted in accordance with this Act.
- 31         (2) The owner and occupier of the private land or any portion of  
32             that land and any mortgagee referred to in subsection (1)(c) are  
33             entitled to be heard in relation to any application in respect of



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

8 (2a) If a warden makes an order for the payment of costs under  
9 subsection (2), those costs are recoverable in accordance with  
10 the regulations.

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

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

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

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

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

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

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

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

2 **37. Application to bring certain private land under this Division**

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

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

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

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

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

28 **38. Right of owner to apply for mining tenement**

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

- 1 (2) Where within the period referred to in subsection (1) the owner  
2 of the private land fails to apply for a mining tenement with  
3 respect to the land as provided in that subsection, or if he so  
4 applies but a tenement is not granted, —
- 5 (a) the land shall come within the operation of this Division  
6 and all rent and royalties received by the Crown for any  
7 minerals won from the land shall be paid to the owner of  
8 the land less one-tenth of the amount thereof; and
- 9 (b) the Minister may grant to the person who made the  
10 application under section 37(1) for such period as he  
11 thinks fit, the prior right to the exclusion of all other  
12 persons to mark out the private land or any part thereof  
13 and/or apply for a mining tenement in respect thereof.

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

16 **39. Owner to comply with mining tenement conditions**

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

**s. 40A**

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1 **Part IIIA — Miner's rights and related permits**

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

3 **40A. Terms used**

4 In this Part —

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

- 6 (a) Crown land or conservation land that is not the subject  
7 of a mining tenement; or  
8 (b) Crown land or conservation land that is the subject of an  
9 exploration licence if the holder of the miner's right  
10 holds a permit under section 40E in respect of the land;

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

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

14 **40B. Conservation land**

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

- 17 (a) the land is of the class referred to in section 24(1)(c) and  
18 is not land that is classified as a class A reserve; and  
19 (b) the care, control and management of the land is placed  
20 by order under the *Land Administration Act 1997* Part 4  
21 with the Conservation and Parks Commission  
22 established under the *Conservation and Land*  
23 *Management Act 1984*.

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

28 *[Section 40B inserted: No. 51 of 2012 s. 15; amended: No. 28 of*  
29 *2015 s. 77.]*

1 **40C. Issue of miner's right**

- 2 (1) The Minister, the Director General of Mines or a mining  
3 registrar may, on the application of any person and on being  
4 satisfied of the identity of the person, issue a miner's right to the  
5 person.
- 6 (2) An application for a miner's right must be accompanied by the  
7 prescribed application fee (if any).
- 8 (3) A miner's right —  
9 (a) must be in the prescribed form; and  
10 (b) is not limited in term; and  
11 (c) is not transferable.

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

14 **40D. Authorisation under miner's right**

- 15 (1) Subject to this Act the holder of a miner's right is authorised to  
16 do all or any of the following things —
- 17 (a) pass and repass over Crown land or conservation land  
18 with such employees and agents, vehicles, machinery  
19 and equipment as may be necessary or expedient for the  
20 purpose of prospecting and marking out any land which  
21 may be made the subject of an application for a mining  
22 tenement;
- 23 (b) prospect for minerals and conduct tests for minerals on  
24 available land for the purpose of determining whether to  
25 mark out or apply for a mining tenement in respect of  
26 any part of the land;
- 27 (c) extract or remove from available land samples or  
28 specimens of rock, ore or minerals with as little damage  
29 to the surface of the land as possible, in quantities, in  
30 total or on occasions, not exceeding the prescribed  
31 limits;

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- 1 (d) keep as the holder's property or use for testing or  
2 evaluation purposes any samples and specimens of any  
3 mineral found by the holder on available land;
- 4 (e) for the purpose of prospecting and for domestic  
5 purposes and subject to the *Rights in Water and*  
6 *Irrigation Act 1914*, or any Act amending or replacing  
7 the relevant provisions of that Act —
- 8 (i) take and use water from any natural spring, lake,  
9 pool or watercourse situated in or flowing  
10 through available land; and
- 11 (ii) sink a well or bore on available land and take and  
12 use water from the well or bore;
- 13 (f) for the purpose of prospecting, camp on Crown land or  
14 conservation land in such manner and subject to such  
15 conditions as may be prescribed;
- 16 (g) fossick by prescribed means on Crown land or  
17 conservation land with the prior written consent of —
- 18 (i) any occupier of that land; and  
19 (ii) if the land is subject to a mining tenement, the  
20 holder of the mining tenement.
- 21 (2) Every miner's right is to be regarded as having been issued  
22 subject to the conditions that the holder of the miner's right or  
23 any other person acting in the exercise or purported exercise of  
24 an authorisation conferred or alleged to be conferred by  
25 subsection (1) —
- 26 (a) must not, on conservation land, do any of the things  
27 referred to in that subsection unless authorised to do so  
28 under the *Conservation and Land Management*  
29 *Act 1984*; and
- 30 (b) must not use explosives or tools, other than tools  
31 prescribed for the purposes of this paragraph or hand  
32 tools; and

- 1           (c) must cause to be filled in or otherwise made safe —
- 2               (i) all holes, pits, trenches and other disturbances on
- 3               the surface of the land which were made by the
- 4               person while acting in the exercise or purported
- 5               exercise of the authorisation and which are likely
- 6               to endanger the safety of any person or animal;
- 7               and
- 8               (ii) such other holes, pits, trenches and other
- 9               disturbances made, wholly or in part, by the
- 10              person as the Minister may from time to time
- 11              direct;
- 12              and
- 13              (d) must take all necessary steps to prevent damage or
- 14              injury to property or livestock whether resulting from
- 15              fire, the presence of dogs, the discharge of firearms, the
- 16              use of vehicles or any other cause.
- 17              ~~(d) must take all necessary steps to prevent the following —~~
- 18              ~~(i) fire damage to trees or other property;~~
- 19              ~~(ii) damage to property or to livestock by the~~
- 20              ~~presence of dogs, the discharge of firearms, the~~
- 21              ~~use of vehicles or otherwise.~~
- 22           (3) The holder of a miner's right is liable to pay compensation in
- 23           accordance with section 123, as may be agreed or as may be
- 24           determined by the warden's court on the application of the
- 25           owner or occupier of the land or of the holder of any mining
- 26           tenement affected, for any loss or damage caused by, and not
- 27           made good by, the holder or any other person acting in the
- 28           exercise or purported exercise of an authorisation conferred or
- 29           alleged to be conferred by subsection (1).
- 30           (4) A determination made by the warden's court under
- 31           subsection (3) is, for the purposes of section 147(1), a final
- 32           determination of the warden's court.
- 33           *[Section 40D inserted: No. 51 of 2012 s. 15.]*

**s. 40E**

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- 1 **40E. Permit to prospect on Crown land or conservation land**  
2 **subject of exploration licence**
- 3 (1) The mining registrar or the holder of a prescribed office in the  
4 Department may issue a permit to prospect for minerals on  
5 Crown land or conservation land that is the subject of an  
6 exploration licence to —
- 7 (a) a natural person who is the holder of a miner's right; or  
8 (b) 2 or 3 natural persons, each of whom is the holder of a  
9 miner's right, as joint holders of the permit.
- 10 (2) A permit cannot be issued under subsection (1) if the applicant  
11 for the permit is already the holder of a permit under this section  
12 in respect of the exploration licence to which his or her  
13 application relates.
- 14 (3) An application for a permit —
- 15 (a) must be made in the prescribed form; and  
16 (b) must be lodged in the prescribed manner; and  
17 (c) must be accompanied by the prescribed application fee  
18 (if any).
- 19 (4) The area of land in respect of which a permit is issued is to be  
20 specified in the permit in the prescribed manner.
- 21 (5) A permit is subject to such conditions as are imposed in  
22 accordance with the regulations and specified in the permit.
- 23 (6) In addition to any conditions that may be imposed under  
24 subsection (5) every permit is to be regarded as having been  
25 issued subject to conditions that the holder or each holder (in the  
26 case of joint holders) —
- 27 (a) must not use explosives or tools, other than hand tools,  
28 on the land the subject of the permit; and  
29 (b) must not prospect below the prescribed depth; and  
30 (c) must comply with the prescribed limits referred to in  
31 section 40D(1)(c); and



- 1           (d) must not prospect within 100 m of any activities that are  
2           being carried out under the authority of an exploration  
3           licence; and  
4           (e) must not prospect on land that is the subject of a special  
5           prospecting licence under section 70.

6       (7) A permit is not transferable.

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

8       **40F. Power to remove Crown land or conservation land from**  
9       **operation of s. 40E**

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

- 13           (a) the subject of a specified exploration licence; or  
14           (b) in a specified block (within the meaning of Part IV  
15           Division 2); or  
16           (c) in a specified area of the State.

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

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

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

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

26       **40G. Limitation on actions in tort**

27       (1) In this section —

28           *permit* means a permit issued under section 40E;

**s. 40G**

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- 1            *permit land* means land that is the subject of both the permit  
2            and the exploration licence concerned.
- 3            (2) The holder of a permit cannot bring an action in tort against the  
4            holder of an exploration licence for injury, loss or damage  
5            suffered by the holder of the permit as a result of —
- 6                    (a) the condition of the permit land; or  
7                    (b) a thing that the holder of the exploration licence has  
8                    done on the permit land under the authority of that  
9                    licence.
- 10           (3) Nothing in subsection (2)(b) prevents the bringing of an action  
11           in tort if the thing was done —
- 12                    (a) with the deliberate intent of causing injury, loss or  
13                    damage to the holder of the permit; or  
14                    (b) with reckless disregard for the presence of the holder of  
15                    the permit on the permit land.
- 16           (4) In this section a reference to the doing of a thing includes a  
17           reference to an omission to do a thing.
- 18           *[Section 40G inserted: No. 51 of 2012 s. 15.]*

1 **Part IV — Mining tenements**

2 **Division 1 — Prospecting licence**

3 *[39A. Deleted: No. 52 of 1995 s. 21.]*

4 **40. Grant of prospecting licence**

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

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

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

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

16 **41. Application for prospecting licence**

17 (1) An application for a prospecting licence —

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

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

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

26 *[(d) deleted]*

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

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

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

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

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

16 **42. Determination of application for prospecting licence**

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

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

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

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

27 (3) Where a notice of objection —

28 (a) is lodged within the prescribed time; or

29 (b) is not lodged within the prescribed time but is lodged  
30 before the mining registrar has granted or refused the  
31 prospecting licence under subsection (2) and the warden

1 is satisfied that there are reasonable grounds for late  
2 lodgment,

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

8 *[Section 42 inserted: No. 58 of 1994 s. 9(1); amended: No. 39*  
9 *of 2004 s. 56; No. 12 of 2010 s. 17.]*

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

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

16 (2) Subsection (1) does not apply in relation to a special  
17 prospecting licence granted under section 56A, 70 or 85B or a  
18 prospecting licence granted in respect of an application under  
19 section 56B or a reversion licence application.

20 *[Section 43 inserted: No. 15 of 2002 s. 6; amended: No. 39 of*  
21 *2004 s. 4; No. 27 of 2005 s. 5.]*

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

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

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

1 **45. Term of prospecting licence**

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

5 (1a) Notwithstanding subsection (1) the Minister may, if satisfied  
6 that a prescribed ground for extension exists, extend the term of  
7 a prospecting licence —

8 (a) by one period of 4 years; and

9 (b) if the licence has retention status, by a further period or  
10 periods of 4 years.

11 (1b) An application for the extension of the term of a prospecting  
12 licence under subsection (1a) (an *extension application*) shall  
13 be made within the prescribed time and in the prescribed  
14 manner.

15 (1c) If an extension application is made in respect of a prospecting  
16 licence and the term of the licence would but for this subsection  
17 expire, the licence continues in force in respect of the land the  
18 subject of the extension application until the application is  
19 determined.

20 (1d) If —

21 (a) an extension application is made in respect of a  
22 prospecting licence the term of which has been extended  
23 under subsection (1a)(a); and

24 (b) an application for retention status in respect of the  
25 prospecting licence —

26 (i) is pending when the extension application is  
27 made; or

28 (ii) is made at the same time as the extension  
29 application,

30 the extension application shall not be determined until  
31 the application for retention status has been determined.

1 (1e) If the holder of a prospecting licence transfers the licence after  
2 making an extension application in respect of the licence, the  
3 extension application continues in the name of the transferee of  
4 the licence as if the transferee had made it.

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

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

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

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

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

17 (2a) For the purposes of subsection (2)(b) the holding of shares in a  
18 listed public company which held the prospecting licence in  
19 question does not of itself constitute an interest in the  
20 prospecting licence.

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

24 **46. Conditions attached to every prospecting licence**

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

30 (a) that all minerals of economic interest discovered in or  
31 on the land the subject of the prospecting licence be

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- 1 promptly reported in writing by the holder to the  
2 Minister;
- 3 ~~(aa) that no ground disturbing equipment will be used by the~~  
4 ~~holder when prospecting on the land the subject of the~~  
5 ~~prospecting licence unless —~~
- 6 ~~(i) the holder has lodged in the prescribed manner a~~  
7 ~~programme of work in respect of that use; and~~
- 8 ~~(iia) the holder has paid the prescribed assessment fee~~  
9 ~~in respect of the programme of work; and~~
- 10 ~~(ii) the programme of work has been approved in~~  
11 ~~writing by the Minister or a prescribed official;~~
- 12 ~~(b) that all holes, pits, trenches and other disturbances to the~~  
13 ~~surface of the land the subject of the prospecting licence~~  
14 ~~which are —~~
- 15 ~~(i) made while prospecting; and~~
- 16 ~~(ii) in the opinion of a prescribed official, likely to~~  
17 ~~endanger the safety of any person or animal,~~  
18 ~~will be filled in or otherwise made safe to the~~  
19 ~~satisfaction of the prescribed official;~~
- 20 ~~(c) that all necessary steps are taken by the holder to~~  
21 ~~prevent fire, damage to trees or other property and to~~  
22 ~~prevent damage to any property or damage to livestock~~  
23 ~~by the presence of dogs, the discharge of firearms, the~~  
24 ~~use of vehicles or otherwise.~~
- 25 (b) that all holes, pits, trenches and other disturbances to the  
26 surface of the land the subject of the prospecting licence  
27 that are made while prospecting, and that are likely to  
28 endanger the safety of any person or animal, will be  
29 filled in or otherwise made safe;
- 30 (c) that all necessary steps are taken by the holder to  
31 prevent damage or injury to property or livestock  
32 whether resulting from fire, the presence of dogs, the



1 discharge of firearms, the use of vehicles or any other  
2 cause.

3 *[Section 46 amended: No. 69 of 1981 s. 16; No. 100 of 1985*  
4 *s. 32; No. 57 of 1997 s. 89(1); No. 39 of 2004 s. 6(1); No. 51 of*  
5 *2012 s. 16.]*

6 **~~46A.— Conditions for prevention or reduction of injury to land~~**

7 ~~— (1) Reasonable conditions may be imposed on the holder of a~~  
8 ~~prospecting licence for the purpose of preventing or reducing, or~~  
9 ~~making good, injury to the land in respect of which the licence~~  
10 ~~is sought or was granted, or injury to anything on or below the~~  
11 ~~natural surface of that land or consequential damage to any~~  
12 ~~other land.~~

13 ~~— (2) A condition may be imposed under this section —~~

14 ~~— (a) by the mining registrar, the warden or the Minister on~~  
15 ~~the granting of the licence; or~~

16 ~~— (b) by the Minister at any subsequent time.~~

17 ~~— (3) A condition imposed under this section may be cancelled or~~  
18 ~~varied by the Minister at any time.~~

19 ~~— (4) A condition imposed in relation to a licence under this~~  
20 ~~section —~~

21 ~~— (a) may, either in full or with sufficient particularity as to~~  
22 ~~identify the recommendation or other source from which~~  
23 ~~it derives, be endorsed on the licence, for which purpose~~  
24 ~~the holder of the licence shall produce the licence on~~  
25 ~~demand; and~~

26 ~~— (b) whether or not so endorsed, on notice of the imposition~~  
27 ~~of the condition being given in writing to the holder of~~  
28 ~~the licence shall for all purposes have effect as a~~  
29 ~~condition to which the licence is subject.~~

30 ~~— *[Section 46A inserted: No. 22 of 1990 s. 12; amended: No. 58 of*~~  
31 ~~*1994 s. 9(2); No. 12 of 2010 s. 5.]*~~

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

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

9 (2) A survey required under subsection (1) shall be —

- 10 (a) arranged in accordance with the regulations; and  
11 (b) paid for by such party or parties to the dispute as the  
12 warden or the Minister determines.

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

15 **48. Rights conferred by prospecting licence**

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

- 19 (a) to enter and re-enter the land the subject of the licence  
20 with such agents, employees, vehicles, machinery and  
21 equipment as may be necessary or expedient for the  
22 purpose of prospecting for minerals in, on or under the  
23 land;  
24 (b) to prospect, subject to any conditions imposed under  
25 section 24, 24A or 25, for minerals, and to carry on such  
26 operations and carry out such works as are necessary for  
27 that purpose on such land including digging pits,  
28 trenches and holes, and sinking bores and tunnels to the  
29 extent necessary for the purpose in, on or under the land;  
30 (c) to excavate, extract or remove, subject to any conditions  
31 imposed under section 24, 24A or 25, from such land,  
32 earth, soil, rock, stone, fluid or mineral bearing

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

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

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

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

20 (1) The holder of a prospecting licence has —

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

23 (b) while the prospecting licence continues in force,

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

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

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

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

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

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

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

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

17 **50. Compliance with expenditure conditions**

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

22 (2) In the case of a prospecting licence that has retention status,  
23 expenditure conditions prescribed for the purposes of  
24 subsection (1) —

25 (a) shall provide for a reduction calculated in the prescribed  
26 manner of the amount of expenditure required during the  
27 year of the term of the licence in which retention status  
28 is approved; and

29 (b) shall not require expenditure during any subsequent year  
30 of the term of the licence.

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

1 **51. Reports of work and expenditure**

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

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

9 **51A. Geological samples**

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

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

15 **52. Security relating to prospecting licence**

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

22 ~~(1a) The Minister may require the holder of a prospecting licence to~~  
23 ~~lodge, in the prescribed manner and within such period as the~~  
24 ~~Minister specifies in writing, an additional security for~~  
25 ~~compliance with conditions imposed in relation to the licence~~  
26 ~~under section 46A.~~

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

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

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

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

7 **53. Application for retention status**

8 (1) In this section —  
9 **prospecting licence** does not include a prospecting licence that  
10 is a primary tenement for the purposes of Division 2A.

11 (2) The holder of a prospecting licence may apply to the Minister  
12 for approval of retention status under section 54.

13 (3) An application under subsection (2) —  
14 (a) shall be in writing; and  
15 (b) shall be made in the prescribed manner; and  
16 (c) shall contain the prescribed information; and  
17 (d) shall be accompanied by any map, statement or other  
18 information required by the regulations; and  
19 (e) shall be accompanied by the prescribed application fee.

20 (4) For the purposes of subsection (3)(d), but without limiting  
21 section 162(5), the regulations may require a statement or other  
22 information to be in the form of a statutory declaration.

23 (5) If the holder of a prospecting licence transfers the licence after  
24 making an application under subsection (2) in respect of the  
25 licence, the application continues in the name of the transferee  
26 of the licence as if the transferee had made it.

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

1 **54. Approval of retention status**

- 2 (1) The Minister may approve retention status for the whole or any  
3 part of the land the subject of a prospecting licence if satisfied  
4 that —
- 5 (a) there is an identified mineral resource located in, on or  
6 under that land; and
- 7 (b) the mining of that identified mineral resource is  
8 impracticable because —
- 9 (i) the resource is uneconomic or subject to  
10 marketing problems although the resource may  
11 reasonably be expected to become economic or  
12 marketable in the future; or
- 13 (ii) the resource is required to sustain the future  
14 operations of an existing or proposed mining  
15 operation; or
- 16 (iii) there are existing political, environmental or  
17 other difficulties in obtaining requisite approvals.
- 18 (2) An approval shall be in writing.
- 19 (3) An approval takes effect on the day on which notice of the  
20 approval is published in the *Gazette* or on a later day specified  
21 in the notice.
- 22 (4) The area of land to which an approval applies shall be an area  
23 that, in the opinion of the Minister, is sufficient to include —
- 24 (a) the land in, on or under which the identified mineral  
25 resource is located; and
- 26 (b) such other land as may be required for future mining  
27 operations in respect of that identified mineral resource.
- 28 (5) The area of land to which an approval applies may be less than  
29 the area of land in respect of which the approval was sought.
- 30 (6) If retention status is approved for part of the land the subject of  
31 a prospecting licence, the holder of the prospecting licence shall

1 mark out in the prescribed manner the boundaries of the land  
2 covered by the approval as soon as practicable after the day on  
3 which the approval takes effect.

4 (7) If retention status is approved for part of the land the subject of  
5 a prospecting licence, the land not covered by the approval  
6 ceases to be the subject of the licence on the day on which the  
7 approval takes effect.

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

9 **55. Consultation with other Ministers**

10 (1) Before approving retention status under section 54 for land of a  
11 class referred to in section 24(1), the Minister shall consult and  
12 obtain the recommendations of the relevant responsible Minister  
13 under section 24(8).

14 (2) Before approving retention status under section 54 for land in a  
15 marine management area, marine nature reserve or marine park,  
16 the Minister shall consult and obtain the recommendations of  
17 the other Ministers referred to in section 24A(6).

18 (3) Before approving retention status under section 54 for land of a  
19 class referred to in section 25(1)(a), (b) or (c), the Minister shall  
20 consult and obtain the recommendations of the other Ministers  
21 referred to in section 25(2B).

22 (4) Before approving retention status under section 54 for land of  
23 the class referred to in section 25(1)(d), the Minister shall  
24 consult and obtain the recommendations of the other Minister  
25 referred to in section 25(3B).

26 *[Section 55 inserted: No. 39 of 2004 s. 22; amended: No. 19 of*  
27 *2010 s. 51.]*

28 **55A. Programme of work**

29 (1) On the approval of retention status under section 54, or at any  
30 subsequent time, the Minister may impose on the holder of the  
31 prospecting licence a condition requiring the holder to comply



- 1 with a specified programme of work in respect of the land the  
2 subject of the licence within a specified period.
- 3 (2) Before imposing a condition under subsection (1), the Minister  
4 may require the holder of the licence to submit to the Minister a  
5 draft programme of work in ~~a form approved by the Minister~~an  
6 approved form and the holder shall comply with that  
7 requirement.
- 8 (3) A condition imposed under subsection (1) may be cancelled or  
9 varied by the Minister at any time.
- 10 (4) On and from giving notice in writing to the holder of the licence  
11 of the imposition of the condition, the condition has effect for  
12 all purposes as a condition to which the licence is subject.
- 13 ~~(4) A condition imposed under subsection (1) —~~  
14 ~~(a) may be endorsed on the prospecting licence, for which~~  
15 ~~purpose the holder of the licence shall produce the~~  
16 ~~licence on demand; and~~  
17 ~~(b) whether or not so endorsed, on notice of the imposition~~  
18 ~~of the condition being given in writing to the holder of~~  
19 ~~the licence shall for all purposes have effect as a~~  
20 ~~condition to which the licence is subject.~~
- 21 (5) In subsection (1) —  
22 *specified* means specified in writing by the Minister.  
23 [Section 55A inserted: No. 39 of 2004 s. 22.]
- 24 **55B. Holder of prospecting licence with retention status may be**  
25 **required to apply for mining lease**
- 26 (1) The Minister may at any time, by notice in writing, require the  
27 holder of a prospecting licence that has retention status to show  
28 cause why a mining lease should not be applied for in respect of  
29 the whole or any part of the land the subject of the prospecting  
30 licence.

1 (2) Where —

2 (a) the holder of a prospecting licence fails to show cause  
3 within the time specified in the notice referred to in  
4 subsection (1); or

5 (b) the Minister is of the opinion that the holder of a  
6 prospecting licence has shown insufficient cause,

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

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

13 **56. Appeal against refusal to grant prospecting licence**

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

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

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

25 **56A. Special prospecting licences**

26 (1) Where any land is the subject of a prospecting licence (in this  
27 section called the *primary tenement*) then, notwithstanding  
28 section 117, a person may at any time after the expiry of  
29 12 months from —

30 (a) in the case of land which was the subject of a mineral  
31 claim or dredging claim granted under the repealed Act

- 1 that by the operation of the transitional provisions set  
2 forth in the Second Schedule Division 1 became subject  
3 to the primary tenement, the date of approval of the  
4 claim; and
- 5 (b) in any other case, unless subsection (1aa) applies, the  
6 date on which the primary tenement was granted,  
7 mark out and, in accordance with section 41, apply for a  
8 prospecting licence for gold (in this section called a *special*  
9 *prospecting licence*) in respect of any part of the land the  
10 subject of the primary tenement.
- 11 (1aa) If the primary tenement was granted as a result of an application  
12 under section 56B or a reversion licence application, a special  
13 prospecting licence may be marked out and applied for at any  
14 time after the date on which the primary tenement was granted.
- 15 (1a) A special prospecting licence may only be applied for by,  
16 granted to or held by a natural person.
- 17 (2) Unless subsection (5a) applies, an applicant for a special  
18 prospecting licence shall, within the prescribed period, serve  
19 notice of his application on the holder of the primary tenement  
20 as if that holder were the occupier of the land to which that  
21 application relates, and subsections (3) to (5) apply in respect of  
22 that application.
- 23 (3) If, after being served with notice of an application for a special  
24 prospecting licence, the holder of the primary tenement does not  
25 lodge an objection against that application, the mining registrar  
26 may, subject to this Act, grant that application as provided in  
27 subsection (6).
- 28 (4) If the holder of the primary tenement lodges an objection to an  
29 application for a special prospecting licence, the warden shall  
30 obtain a report from the Director, Geological Survey, in respect

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- 1 of the prospecting carried on by the holder of the primary  
2 tenement on the land to which the application relates.
- 3 (4a) A report prepared by the Director, Geological Survey for the  
4 purposes of subsection (4) is to be based solely on information  
5 contained in reports filed by or on behalf of the holder of the  
6 primary tenement under section 51 or 115A.
- 7 (5) After hearing an objection referred to in subsection (4), the  
8 warden may refuse the application for the special prospecting  
9 licence concerned on the ground that prospecting for gold on the  
10 land to which that application relates would result in undue  
11 detriment to the prospecting being carried on by the holder of  
12 the primary tenement or he may recommend that application to  
13 the Minister, who may —
- 14 (a) refuse that application; or  
15 (b) subject to this Act, grant that application as provided in  
16 subsection (6),
- 17 but, if the warden refuses an application under this subsection,  
18 the applicant may within the time and in the manner prescribed  
19 appeal to the Minister against that refusal and the Minister may  
20 dismiss that appeal or uphold that appeal and grant that  
21 application as provided in subsection (6).
- 22 (5a) If at the time when an applicant for a special prospecting licence  
23 marked out the land to which his application relates —
- 24 (a) a special prospecting licence was in force in respect of  
25 land the subject of the primary tenement; or  
26 (b) another application for a special prospecting licence in  
27 respect of land the subject of the primary tenement had  
28 been made, but had not been determined, under this  
29 section,
- 30 the applicant shall, within the prescribed period and in the  
31 prescribed manner, lodge the written consent of the holder of  
32 the primary tenement to the grant of his application.

- 1 (5b) If written consent to the grant of an application is lodged in  
2 accordance with subsection (5a), the mining registrar may,  
3 subject to this Act, grant the application as provided for in  
4 subsection (6).
- 5 (6) Subject to this section, the mining registrar or the Minister may  
6 grant an application for a special prospecting licence on such  
7 terms and conditions as he thinks fit, but a special prospecting  
8 licence so granted —
- 9 (a) shall not exceed 10 ha in area; and  
10 (b) shall authorise the holder thereof to prospect only for  
11 gold; and  
12 (c) shall not, unless the Minister otherwise directs, prevent  
13 the holder of the primary tenement from prospecting for  
14 minerals other than gold in or on the land the subject of  
15 the special prospecting licence; and  
16 (d) does not authorise the holder thereof to excavate, extract  
17 or remove during the period for which the tenement  
18 remains in force a total amount of earth, soil, rock,  
19 stone, fluid or mineral bearing substances in excess of  
20 500 t, except in so far as the prior written approval of  
21 the Minister may otherwise permit; and  
22 (e) does not authorise mining to be carried out in any  
23 portion of the land that is —
- 24 (i) below a depth specified in the terms and  
25 conditions of the special prospecting licence, and  
26 any depth so specified shall be less than 50 m  
27 below the lowest part of the natural surface of  
28 the land the subject of the special prospecting  
29 licence; or  
30 (ii) if a depth is not so specified, 50 m or more below  
31 the lowest part of the natural surface of the land  
32 the subject of the special prospecting licence,  
33 except in so far as both the prior written consent  
34 of the holder of the primary tenement and the

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- 1 prior written approval of the Minister may  
2 otherwise permit.
- 3 (6aa) A special prospecting licence may be granted for a period of  
4 3 months or for any period which is a multiple of 3 months but  
5 which does not exceed 4 years.
- 6 (6a) A special prospecting licence —
- 7 (a) continues in force notwithstanding that the holder of the  
8 primary tenement may apply for and be granted a  
9 retention licence, mining lease or general purpose lease  
10 in respect of the land; but
- 11 (b) ceases (and the land in respect to which it was granted  
12 reverts to the primary tenement holder as an integral part  
13 of the tenement held by him) on the surrender, forfeiture  
14 or expiry of that special prospecting licence.
- 15 (7) No legal or equitable interest in or affecting —
- 16 (a) a special prospecting licence; or
- 17 (b) a mining lease in respect of the land or any part thereof  
18 the subject of a special prospecting licence,
- 19 is capable of being created, affected or dealt with, whether  
20 directly or indirectly, except with the prior written consent of  
21 the holder of the primary tenement, and no person shall hold or  
22 have any beneficial, legal or equitable interest in —
- 23 (c) more than 10 such special prospecting licences; or  
24 (d) more than one such mining lease.
- 25 (7a) A reference in subsection (7) to a person includes a reference to  
26 any other person who would, for the purposes of the  
27 Corporations Act, be taken to be an associate of the  
28 first-mentioned person.
- 29 (7b) No more than one mining lease in respect of the land or any part  
30 thereof which is the subject of a special prospecting licence  
31 shall be granted in respect of the primary tenement.

- 1 (8) The holder of a special prospecting licence granted for a period  
2 of 4 years may make an application for a mining lease for gold  
3 in respect of the land or any part thereof which is the subject of  
4 the special prospecting licence, and on an application being  
5 made the Minister may, subject to subsection (7b), grant the  
6 application for a lease in respect to that portion of the land to  
7 which the special prospecting licence relates that is less than a  
8 depth of 50 m, or such greater depth as the Minister approves  
9 with the prior written consent of the holder of the primary  
10 tenement, below the lowest part of the natural surface of the  
11 land and on such terms and conditions as the Minister thinks fit,  
12 and thereupon the area of land in respect of which that mining  
13 lease is granted shall be excised from the primary tenement  
14 (whether or not the primary tenement has in the meantime been  
15 converted into a retention licence or a mining lease).
- 16 (8aa) Sections 74, 74A and 75 apply to an application for a mining  
17 lease under subsection (8).
- 18 (8a) A mining lease granted pursuant to subsection (8) —
- 19 (a) has effect in relation to gold and any minerals occurring  
20 in conjunction with that gold;
- 21 (b) does not authorise the lessee thereof, his agents or  
22 employees to excavate, extract or remove a total amount  
23 of earth, soil, rock, stone, fluid or mineral bearing  
24 substances in excess of 750 t in any year, except in so  
25 far as both the prior written consent of the holder of the  
26 primary tenement and the prior written approval of the  
27 Minister may otherwise permit;
- 28 [(c) *deleted*]
- 29 (d) ceases to have effect (and the land in respect to which it  
30 was granted reverts to the primary tenement holder as an  
31 integral part of the tenement held by him) on the  
32 surrender, forfeiture or expiry of that lease.

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- 1 (9) Subject to this section, the provisions of this Act relating to —  
2 (a) prospecting licences apply to a special prospecting  
3 licence; and  
4 (b) mining leases apply to a mining lease,  
5 granted under this section.
- 6 (9a) Where, before the determination of an application for a special  
7 prospecting licence in respect of land, the primary tenement is  
8 surrendered or forfeited or expires, the application is, by virtue  
9 of this subsection, converted into an application for a  
10 prospecting licence in respect of that land and the provisions of  
11 this Act relating to such applications apply accordingly.
- 12 (10) On the surrender, forfeiture or expiry of the primary tenement, a  
13 special prospecting licence in respect of any land the subject of  
14 the primary tenement immediately before the date of its  
15 surrender, forfeiture or expiry is, by virtue of this subsection,  
16 converted into a prospecting licence in respect of that land and,  
17 subject to subsection (11), the provisions of this Act relating to  
18 prospecting licences apply accordingly.
- 19 (11) Where a special prospecting licence is converted into a  
20 prospecting licence, the prospecting licence remains in force,  
21 subject to this Act, for the remainder of the period for which the  
22 special prospecting licence was granted.
- 23 (12) Subsections (9a) and (10) do not apply if —  
24 (a) the primary tenement is amalgamated with an  
25 exploration licence under section 67A(1); or  
26 (b) prior to the surrender, forfeiture or expiry of the primary  
27 tenement the holder of the primary tenement applies for  
28 a retention licence, a mining lease or a general purpose  
29 lease and the licence or lease is subsequently granted in  
30 respect of any land the subject of the application for a  
31 special prospecting licence or the special prospecting  
32 licence, as the case requires; or



- 1 (c) prior to the surrender, forfeiture or expiry of the primary  
2 tenement the holder of the primary tenement makes an  
3 application under section 56B and a prospecting licence  
4 is granted as a result of that application in respect of any  
5 land the subject of the application for a special  
6 prospecting licence or the special prospecting licence, as  
7 the case requires; or
- 8 (d) prior to the surrender, forfeiture or expiry of the primary  
9 tenement the holder of the primary tenement makes a  
10 reversion licence application and a prospecting licence  
11 or an exploration licence is granted as a result of that  
12 application in respect of any land the subject of the  
13 application for a special prospecting licence or the  
14 special prospecting licence, as the case requires.

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

21 **56B. Certain licence holders to have right to apply for further**  
22 **prospecting licence**

- 23 (1) In this section —  
24 *relevant licence* means a prospecting licence applied for before  
25 10 February 2006.
- 26 (2) Despite sections 18, 23 and 27 but subject to the other  
27 provisions of this Act, the holder of a relevant licence has, while  
28 the licence continues in force, the right to apply for a  
29 prospecting licence in respect of the whole or any part of the  
30 land the subject of the relevant licence.
- 31 (3) Where the holder of a relevant licence exercises the right  
32 conferred by subsection (2) and the term of the relevant licence  
33 would but for this subsection expire, the relevant licence shall

1 continue in force in respect of the land the subject of the  
2 application for a prospecting licence until the application is  
3 determined.

4 (4) If the holder of a relevant licence transfers the licence after  
5 making an application for a prospecting licence in the exercise  
6 of the right conferred by subsection (2), the application  
7 continues in the name of the transferee of the licence as if the  
8 transferee had made it.

9 *[Section 56B inserted: No. 39 of 2004 s. 7; amended: No. 51 of*  
10 *2012 s. 18.]*

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12 *[56AA. Deleted: No. 52 of 1995 s. 25.]*

13 **56C. Graticular sections**

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

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

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

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

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

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

28 (2) For the purposes of this Division —

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

- 1 (b) if part of a graticular section is within the State that part  
2 of the graticular section constitutes a block.
- 3 (3) In this Division —
- 4 (a) a reference to a graticular section that constitutes a block  
5 includes a reference to a graticular section part of which  
6 constitutes a block;
- 7 (b) a reference to a part of a block includes a reference to  
8 2 or more parts of the block;
- 9 (c) a reference to a part of a graticular section includes a  
10 reference to 2 or more parts of the graticular section.
- 11 (4) For the purposes of this Division each block shall be identified  
12 by reference to the number of the block on a plan held at the  
13 Department.
- 14 (5) In subsection (2) —
- 15 *State* includes any area that comes within paragraph (b) of the  
16 definition of *land* in section 8(1).
- 17 [*Section 56C inserted: No. 22 of 1990 s. 15; amended: No. 12*  
18 *of 2003 s. 9.*]
- 19 **57. Grant of exploration licence**
- 20 (1) Subject to this Act the Minister may on the application of any  
21 person and after receiving a recommendation of the mining  
22 registrar or the warden in accordance with section 59, grant to  
23 that person a licence to be known as an exploration licence on  
24 such terms and conditions as the Minister may determine.
- 25 (2) The area of land in respect of which an exploration licence may  
26 be granted shall be a block or blocks but shall not be more than  
27 70 blocks unless subsection (2aa) applies.
- 28 (2aa) If the area of land referred to in subsection (2) is in an area of  
29 the State designated under section 57A(1) it shall not be more  
30 than 200 blocks.

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- 1 (2a) Where an exploration licence is granted in respect of 2 or more  
2 blocks the graticular sections that constitute those blocks  
3 shall —
- 4 (a) constitute a single area; and  
5 (b) each have a side in common with at least one other  
6 graticular section in that area.
- 7 (2b) Where —
- 8 (a) an application is made for an exploration licence in  
9 respect of 3 or more blocks; and  
10 (b) before the exploration licence is granted one or more of  
11 the blocks applied for becomes the subject of another  
12 mining tenement; and  
13 (c) the exploration licence is granted in respect of 2 or more  
14 of the other blocks applied for,  
15 the graticular sections that constitute the blocks in respect of  
16 which the licence is granted need not comply with  
17 subsection (2a)(a) and (b) if they form 2 or 3 discrete areas each  
18 consisting of —
- 19 (d) a single graticular section; or  
20 (e) a number of graticular sections each having a side in  
21 common with at least one other graticular section in that  
22 area.
- 23 (2c) Where an application for an exploration licence is made with  
24 respect to one block, the land in respect of which the licence is  
25 granted may comprise part of the block if the rest of the block  
26 consists of land that is unavailable for exploration.
- 27 (2d) Where an application for an exploration licence is made with  
28 respect to 2 or more blocks, the land in respect of which the  
29 licence is granted may include part of a block if the rest of the  
30 block consists of land that is unavailable for exploration.
- 31 (2e) For the purposes of subsections (2c) and (2d) land is unavailable  
32 for exploration if that land is, or was when the application for

- 1 the exploration licence was made, the subject of a current  
2 mining tenement (other than a miscellaneous licence).
- 3 (2ea) Where the application for the exploration licence is a reversion  
4 licence application, the reference in subsection (2e) to a current  
5 mining tenement does not include a continuing licence as  
6 defined in section 120AA(1).
- 7 (2f) Where the land in respect of which an exploration licence is  
8 granted comprises or includes part of a block —
- 9 (a) the licence is deemed to be granted in respect of that  
10 block for the purposes of subsections (2), (2a) and (2b);  
11 and
- 12 (b) that block is deemed to be subject to the licence for the  
13 purposes of section 65; and
- 14 (c) the boundaries of the land the subject of the licence shall  
15 be deemed to be the same as the boundaries of the block  
16 for the purposes of section 67A.
- 17 (2g) A person may be granted more than one exploration licence.
- 18 (2h) Where the land in respect of which an exploration licence is  
19 granted comprises or includes part of a block, no other  
20 exploration licence shall be granted in respect of that block or  
21 any part of that block.
- 22 (3) The mining registrar or the warden shall not recommend the  
23 grant of an exploration licence under this section unless he is  
24 satisfied that the applicant is able to effectively explore the land  
25 in respect of which the application has been made.
- 26 (4) Where in any particular area extensive mining is being carried  
27 on, the Minister may, from time to time, by notice published in  
28 the *Government Gazette* declare that no application for an  
29 exploration licence shall be made or granted with respect to any  
30 land comprising the area or any land within such area as is  
31 specified in the notice.

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1 *[Section 57 amended: No. 69 of 1981 s. 17; No. 122 of 1982*  
2 *s. 17; No. 100 of 1985 s. 38; No. 22 of 1990 s. 16; No. 37 of*  
3 *1993 s. 7; No. 58 of 1994 s. 13 and 15(2) and (3); No. 15 of*  
4 *2002 s. 10; No. 39 of 2004 s. 12; No. 27 of 2005 s. 7.]*

5 **57A. Designation of areas for purposes of s. 57(2aa)**

6 (1) The Minister may, by notice published in the *Gazette*, designate  
7 one or more areas of the State for the purposes of  
8 section 57(2aa).

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

11 (3) A notice under this section comes into operation on the day on  
12 which the notice is published in the *Gazette* or such later day as  
13 is specified in the notice.

14 (4) The variation or cancellation of a designation under  
15 subsection (2) does not affect the operation of any exploration  
16 licence granted before the variation or cancellation takes effect.

17 (5) If —

18 (a) an application for an exploration licence is made in  
19 respect of an area of land that is in an area of the State  
20 designated under subsection (1) (a *designated area*); and

21 (b) before the application is determined the designation is  
22 varied or cancelled under subsection (2) with the result  
23 that the area of land to which the application relates  
24 ceases to be in a designated area,

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

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

28 **58. Application for exploration licence**

29 (1) An application for an exploration licence —

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

- 1 (b) shall be accompanied by a statement specifying —
- 2 (i) the proposed method of exploration of the area in
- 3 respect of which the licence is sought; and
- 4 (ii) the details of the programme of work proposed to
- 5 be carried out in such area; and
- 6 (iii) the estimated amount of money proposed to be
- 7 expended on the exploration; and
- 8 (iv) the technical and, subject to subsection (1aa),
- 9 financial resources available to the applicant;
- 10 and
- 11 (c) shall be accompanied by the amount of the prescribed
- 12 rent for the first year of the term of the licence or portion
- 13 thereof as prescribed; and
- 14 (d) shall be lodged in the prescribed manner; and
- 15 (e) shall be accompanied by the prescribed application fee.
- 16 (1aa) The statement under subsection (1)(b) does not have to specify
- 17 the financial resources available to the applicant if —
- 18 (a) the applicant is a natural person; and
- 19 (b) the application is in respect of not more than 4 blocks;
- 20 and
- 21 (c) the statement specifies that the applicant intends to
- 22 utilise his or her own labour to carry out the programme
- 23 of work referred to in subsection (1)(b)(ii).
- 24 [(1a) *deleted*]
- 25 (2) An application referred to in subsection (1) must identify the
- 26 block or blocks applied for by number in accordance with
- 27 section 56C(4).
- 28 (2a) On an application for an exploration licence or on an
- 29 exploration licence being granted the land affected is not
- 30 thereby required to be surveyed, but where a dispute arises with
- 31 respect to the position of such land or the boundaries or any
- 32 boundary thereof the warden or Minister may require a survey

1 to be made of the boundaries or the boundary in order to settle  
2 the dispute.

3 (2b) A survey required under subsection (2a) shall be —

- 4 (a) arranged in accordance with the regulations; and  
5 (b) paid for by such party or parties to the dispute as the  
6 warden or the Minister determines.

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

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

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

23 **59. Determination of application for exploration licence**

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

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



- 1 (3) The mining registrar shall —
- 2 (a) recommend the grant of the exploration licence if
- 3 satisfied that the applicant has complied in all respects
- 4 with the provisions of this Act; or
- 5 (b) recommend the refusal of the exploration licence if not
- 6 so satisfied.
- 7 (4) Where a notice of objection —
- 8 (a) is lodged within the prescribed time; or
- 9 (b) is not lodged within the prescribed time but is lodged
- 10 before the mining registrar has forwarded a report to the
- 11 Minister under subsection (2) and the warden is satisfied
- 12 that there are reasonable grounds for late lodgment,
- 13 and the notice of objection is not withdrawn, the warden shall
- 14 hear the application for the exploration licence on a day
- 15 appointed by the warden and may give any person who has
- 16 lodged such a notice of objection an opportunity to be heard.
- 17 (5) The warden shall as soon as practicable after the hearing of the
- 18 application forward to the Minister for the Minister's
- 19 consideration —
- 20 (a) the notes of evidence; and
- 21 (b) any maps or other documents referred to in the notes of
- 22 evidence; and
- 23 (c) a report which recommends the grant or refusal of the
- 24 exploration licence and sets out the reasons for that
- 25 recommendation.
- 26 (6) On receipt of a report under subsection (2) or (5), the Minister
- 27 may grant or refuse the exploration licence as the Minister
- 28 thinks fit, and irrespective of whether —
- 29 (a) the report recommends the grant or refusal of the
- 30 exploration licence; and
- 31 (b) the applicant has or has not complied in all respects with
- 32 the provisions of this Act.

1 *[Section 59 inserted: No. 58 of 1994 s. 15(1); amended: No. 39*  
2 *of 2004 s. 59; No. 12 of 2010 s. 22.]*

3 **60. Security relating to exploration licence**

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

9 ~~(1a) The Minister may require the holder of an exploration licence to~~  
10 ~~lodge, in the prescribed manner and within such period as the~~  
11 ~~Minister specifies in writing, an additional security for~~  
12 ~~compliance with conditions imposed in relation to the licence~~  
13 ~~under section 63AA.~~

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

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

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

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

25 **61. Term of exploration licence**

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

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

32 (a) by one period of 5 years; and

1 (b) by a further period or periods of 2 years,  
2 as to the whole or any part of the land the subject of that  
3 exploration licence on such terms and conditions as the Minister  
4 thinks fit.

5 (3) An application for the extension of the term of an exploration  
6 licence under subsection (2) shall be made within the prescribed  
7 time and in the prescribed manner.

8 (3a) If an application for the extension of the term of an exploration  
9 licence is made under this section and the term of the licence  
10 would but for this subsection expire, the licence shall continue  
11 in force in respect of the land the subject of the application until  
12 the application is determined.

13 (4) If the holder of an exploration licence transfers the licence after  
14 making an application for the extension of the term of the  
15 licence under subsection (2), the application continues in the  
16 name of the transferee of the licence as if the transferee had  
17 made it.

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

21 **62. Expenditure conditions**

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

26 (2) In the case of an exploration licence that has retention status,  
27 expenditure conditions prescribed for the purposes of  
28 subsection (1) —

29 (a) are to provide for a reduction calculated in the  
30 prescribed manner of the amount of expenditure  
31 required during the year of the term of the licence in  
32 which retention status is approved; and

- 1 (b) are not to require expenditure during any subsequent  
2 year of the term of the licence.

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

4 **63. Condition attached to exploration licence**

5 Every exploration licence ~~shall be deemed~~ is taken to be granted  
6 subject to the condition that the holder thereof will explore for  
7 minerals and —

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

11 (b) will fill in or otherwise make safe on the surface of the  
12 land the subject of the exploration licence all holes, pits,  
13 trenches and other disturbances that —

14 (i) are made while exploring for minerals; and

15 (ii) are likely to endanger the safety of any person or  
16 animal;

17 and

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

22 ~~(aa) will not use ground disturbing equipment when~~  
23 ~~exploring for minerals on the land the subject of the~~  
24 ~~exploration licence unless —~~

25 ~~(i) the holder has lodged in the prescribed manner a~~  
26 ~~programme of work in respect of that use; and~~

27 ~~(iia) the holder has paid the prescribed assessment fee~~  
28 ~~in respect of the programme of work; and~~

29 ~~(ii) the programme of work has been approved in~~  
30 ~~writing by the Minister or a prescribed official;~~

31 ~~and~~

- 1 ~~— (b) will fill in or otherwise make safe to the satisfaction of a~~  
2 ~~prescribed official all holes, pits, trenches and other~~  
3 ~~disturbances to the surface of the land the subject of the~~  
4 ~~exploration licence which are —~~  
5 ~~— (i) made while exploring for minerals; and~~  
6 ~~— (ii) in the opinion of the prescribed official, likely to~~  
7 ~~endanger the safety of any person or animal;~~  
8 ~~— and~~  
9 ~~— (c) will take all necessary steps to prevent fire, damage to~~  
10 ~~trees or other property and to prevent damage to any~~  
11 ~~property or damage to livestock by the presence of dogs,~~  
12 ~~the discharge of firearms, the use of vehicles or~~  
13 ~~otherwise.~~

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

16 **~~63AA. Conditions for prevention or reduction of injury to land~~**

- 17 ~~— (1) On the granting of an exploration licence, or at any subsequent~~  
18 ~~time, the Minister may impose on the holder of the licence~~  
19 ~~reasonable conditions for the purpose of preventing or reducing,~~  
20 ~~or making good, injury to the land in respect of which the~~  
21 ~~licence is sought or was granted, or injury to anything on or~~  
22 ~~below the natural surface of that land or consequential damage~~  
23 ~~to any other land.~~  
24 ~~— (2) A condition imposed under this section may be cancelled or~~  
25 ~~varied by the Minister at any time.~~  
26 ~~— (3) A condition imposed in relation to a licence under this~~  
27 ~~section —~~  
28 ~~— (a) may, either in full or with sufficient particularity as to~~  
29 ~~identify the recommendation or other source from which~~  
30 ~~it derives, be endorsed on the licence, for which purpose~~  
31 ~~the holder of the licence shall produce the licence on~~  
32 ~~demand; and~~

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1 ~~(b) whether or not so endorsed, on notice of the imposition~~  
2 ~~of the condition being given in writing to the holder of~~  
3 ~~the licence shall for all purposes have effect as a~~  
4 ~~condition to which the licence is subject.~~

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

7 **63A. When exploration licence liable to forfeiture**

8 An exploration licence is liable to forfeiture if —

- 9 (a) the prescribed rent or royalty in respect thereof is not  
10 paid in accordance with this Act; or
- 11 (aa) any requirement under [section 65\(4\), 69E\(2\),](#)  
12 [103AU\(1\)](#)~~section 60(1a), 65(4), 69E(2)~~ or 115B(2) in  
13 relation to the exploration licence is not complied with;  
14 or
- 15 (b) the terms and conditions, including the prescribed  
16 expenditure conditions referred to in section 62, and any  
17 conditions to which the licence is ~~deemed to be subject~~  
18 ~~pursuant to~~ [taken to be subject under section 63, 103AD](#)  
19 [or 103AF, or any conditions imposed under](#)  
20 [section 69D\(1\) or 103AT\(1\),](#) ~~section 63,~~ are not  
21 complied with; or
- 22 (baa) any request under section 68(1) or (2) in relation to the  
23 exploration licence is not complied with; or
- 24 (ba) a report required under section 68(3) or 115A in relation  
25 to the land the subject of the exploration licence is not  
26 filed in accordance with this Act; or
- 27 (c) the holder of the exploration licence is convicted of an  
28 offence against this Act.

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

1 **64. Consent to dealing in exploration licence**

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

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

9 (i) who is dead; or

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

13 (iii) who is otherwise incapacitated at law; or

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

16 or

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

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

27 *[Section 64 inserted: No. 100 of 1985 s. 44; amended: No. 37 of*  
28 *1993 s. 27; No. 54 of 1996 s. 8; No. 10 of 2001 s. 132.]*

1 **65. Surrender of certain areas subject to exploration licence**

2 (1) In this section —

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

- 4 (a) the day (the *anniversary day*) that is 6 years after the  
5 day on which the licence was granted; or
- 6 (b) if, on the anniversary day, an application for retention  
7 status under section 69A in respect of the whole or part  
8 of the land the subject of the licence has been made but  
9 not determined, the day on which that application is  
10 determined;

11 *surrender day*, in relation to a surrender, means —

- 12 (a) if the surrender is lodged under subsection (3), the end  
13 day; or
- 14 [~~(b) deleted~~]
- 15 (c) if the surrender is lodged in compliance with a  
16 requirement under subsection (4), the day on which the  
17 surrender is registered.

18 (2) This section applies in relation to an exploration licence if —

- 19 (a) the term of the licence has been extended under  
20 section 61; or
- 21 (b) an application under section 61 for the extension of the  
22 term of the licence has been made but has not been  
23 determined.

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

- 27 (a) 40% of the number of the blocks that are subject to the  
28 licence; or
- 29 (b) if 40% of that number is not a whole number, the nearest  
30 whole number of the blocks.



- 1 (3A) Subsection (3) does not apply to the holder of an exploration  
2 licence for which retention status has been approved under  
3 section 69B(1).
- 4 (4) If the holder of an exploration licence fails to lodge a surrender  
5 in accordance with subsection (3), the Minister must, by notice  
6 in writing, require the holder to lodge the surrender for  
7 registration within a period specified in the notice.
- 8 (4a) A surrender under this section takes effect on the surrender day.
- 9 (4b) The blocks that remain subject to an exploration licence after a  
10 surrender under this section are to form not more than 6 discrete  
11 areas each consisting of —
- 12 (a) a single graticular section; or  
13 (b) a number of graticular sections each having a side in  
14 common with at least one other graticular section in that  
15 area.
- 16 (4c) If, before the surrender day, the holder of an exploration  
17 licence —
- 18 (a) is granted a mining lease or general purpose lease in  
19 respect of a part of the land the subject of the  
20 exploration licence (the *granted land*); or  
21 (b) surrenders a part of the land the subject of the  
22 exploration licence (the *surrendered land*),
- 23 then, in calculating the area of land that is required to be  
24 surrendered under this section, the area of granted land or  
25 surrendered land shall be taken into account as though it were  
26 an area of land surrendered in satisfaction of that requirement.
- 27 (5) A surrender under this section shall be endorsed on the public  
28 plans of the Department —
- 29 (a) at the office of the Department at Perth; and  
30 (b) at the office of the mining registrar for the mineral field  
31 or district thereof in which the land is situate.

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

10 *[Section 65 amended: No. 69 of 1981 s. 20; No. 100 of 1985*  
11 *s. 45; No. 12 of 1987 s. 5; No. 22 of 1990 s. 19; No. 57 of 1997*  
12 *s. 89(2); No. 15 of 2002 s. 12; No. 39 of 2004 s. 16; No. 27 of*  
13 *2005 s. 9; No. 51 of 2012 s. 20.]*

14 **66. Rights conferred by exploration licence**

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

- 18 (a) to enter and re-enter the land the subject of the licence with  
19 such agents, employees, vehicles, machinery and  
20 equipment as may be necessary or expedient for the  
21 purpose of exploring for minerals in, on or under the land;
- 22 (b) to explore, subject to any conditions imposed under  
23 section 24, 24A or 25, for minerals, and to carry on such  
24 operations and carry out such works as are necessary for  
25 that purpose on such land including digging pits,  
26 trenches and holes, and sinking bores and tunnels to the  
27 extent necessary for the purpose in, on or under the land;
- 28 (c) to excavate, extract or remove, subject to any conditions  
29 imposed under section 24, 24A or 25, from such land,  
30 earth, soil, rock, stone, fluid or mineral bearing  
31 substances in such amount, in total during the period for  
32 which the licence remains in force, as does not exceed

- 1 the prescribed limit, or in such greater amount as the  
2 Minister may, in any case, approve in writing;
- 3 (d) to take and divert, subject to the *Rights in Water and*  
4 *Irrigation Act 1914*, or any Act amending or replacing  
5 the relevant provisions of that Act water from any  
6 natural spring, lake, pool or stream situate in or flowing  
7 through such land or from any excavation previously  
8 made and used for mining purposes and subject to that  
9 Act to sink a well or bore on such land and take water  
10 therefrom and to use the water so taken for his domestic  
11 purposes and for any purpose in connection with  
12 exploring for minerals on the land.

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

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

- 17 (1) The holder of an exploration licence has —
- 18 (a) subject to this Act and to any conditions to which the  
19 exploration licence is subject; and
- 20 (b) while the exploration licence continues in force,  
21 the right to apply for, and subject to section 75(9) to have  
22 granted pursuant to section 75(7), one or more mining leases or  
23 one or more general purpose leases or both in respect of any  
24 part or parts of the land the subject of the exploration licence.
- 25 (2) Where an application for a mining lease or a general purpose  
26 lease is made by the holder of an exploration licence in respect  
27 of any land and the term of the exploration licence would but  
28 for this subsection expire, that licence shall continue in force in  
29 respect to the land the subject of that application until the  
30 application for a lease is determined.

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

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

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

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

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

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

18 **67A. Holder of exploration licence may apply to amalgamate**  
19 **secondary tenement**

20 (1) Where a person is the holder of both an exploration licence and  
21 a secondary tenement the person or an agent of the person may,  
22 without marking out the land, apply in writing to the Minister in  
23 the prescribed manner for the secondary tenement to be  
24 amalgamated with the exploration licence.

25 (2) The holder of an exploration licence or an agent of the holder  
26 may, without marking out the land, apply in writing to the  
27 Minister in the prescribed manner for a secondary tenement to  
28 be amalgamated with the exploration licence where the  
29 secondary tenement was surrendered or forfeited, or expired,  
30 after the application for the exploration licence was made but  
31 before the exploration licence was granted.

- 1 (3) The holder of an exploration licence or an agent of the holder  
2 may, without marking out the land, apply in writing to the  
3 Minister in the prescribed manner for a secondary tenement to  
4 be amalgamated with the exploration licence where the  
5 secondary tenement is surrendered or forfeited, or expires.
- 6 (4) On receiving an application under subsection (1), (2) or (3), the  
7 Minister may —
- 8 (a) grant the application and amend the exploration licence  
9 to include the land the subject of the secondary  
10 tenement, in such manner and on such conditions as the  
11 Minister thinks fit; or
- 12 (b) refuse the application.
- 13 (5) Where an application is made under subsection (1) and the term  
14 of the secondary tenement would but for this subsection expire,  
15 the secondary tenement shall continue in force with respect to  
16 the land that is the subject of the application until the  
17 application is determined.
- 18 (6) Notwithstanding anything in section 45(2), 69(1) or 85A(1), an  
19 application by the holder of an exploration licence who was also  
20 the holder of the secondary tenement immediately before the  
21 date of its surrender, forfeiture or expiry may be made —
- 22 (a) under subsection (2) at any time after the granting of the  
23 exploration licence; and
- 24 (b) under subsection (3) at any time after the surrender,  
25 forfeiture or expiry of the secondary tenement.
- 26 (6a) Section 105A applies, with all necessary changes, in relation to  
27 a person who makes an application under subsection (2) or (3)  
28 as if a reference in that section —
- 29 (a) to an applicant included a reference to such a person;
- 30 (b) to an application for a mining tenement included a  
31 reference to an application under subsection (2) or (3);

1 (c) to compliance with the initial requirement included, in  
2 relation to an application under subsection (2) or (3), a  
3 reference to lodging the application in the prescribed  
4 manner.

5 (7) In this section —

6 **secondary tenement**, in relation to an exploration licence —

7 (a) means a mining tenement (other than a retention licence)  
8 situated wholly within the boundaries (whether or not  
9 any of those boundaries are common boundaries) of the  
10 land the subject of the exploration licence; and

11 (b) where the exploration licence was granted in respect of  
12 an application made on or after the commencement of  
13 section 16 of the *Mining Amendment Act 1990*, includes  
14 any part of a mining tenement (other than a retention  
15 licence) situated within the boundaries (whether or not  
16 any of those boundaries are common boundaries) of the  
17 land the subject of the exploration licence.

18 (8) This section does not affect the operation of section 40(1)(b)  
19 and (c) of the *Mining Amendment Act 1990*.

20 [Section 67A inserted: No. 37 of 1993 s. 8; amended: No. 58 of  
21 1994 s. 19; No. 15 of 2002 s. 13; No. 39 of 2004 s. 60; No. 12 of  
22 2010 s. 24.]

23 **68. Holder of exploration licence to keep geological records**

24 (1) The holder of an exploration licence shall keep complete and  
25 detailed records of the surveys and other operations conducted  
26 pursuant to the licence and shall, at the written request of the  
27 Minister, produce the records for the inspection of the Minister  
28 and the Director, Geological Survey.

29 (2) The holder of an exploration licence shall furnish the Minister  
30 with such information relating to the surveys and other  
31 operations conducted by the holder pursuant to the licence and

1 such geological samples obtained in the course of those  
2 operations as the Minister may request.

3 (3) The holder of an exploration licence shall at such times and in  
4 such manner as may be prescribed, file or cause to be filed a  
5 report of all work done on, and money expended in connection  
6 with, exploration in the area the subject of the licence during the  
7 period to which the report relates.

8 (4) Notwithstanding section 154(1), a holder of an exploration  
9 licence who fails to comply with subsection (1), (2) or (3) does  
10 not commit an offence against this Act.

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

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

15 (1) When an exploration licence is surrendered or forfeited, or  
16 expires, or any part of the land the subject of the licence is  
17 surrendered in accordance with section 65, the land the subject  
18 of the licence or the part so surrendered shall not be marked out  
19 or applied for as a prospecting licence or an exploration  
20 licence —

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

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

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

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

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

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

7 **69A. Application for retention status**

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

11 (2) The holder of an exploration licence may apply to the Minister  
12 for approval of retention status under section 69B.

13 (3) An application under subsection (2) —  
14 (a) shall be in writing; and  
15 (b) shall be made in the prescribed manner; and  
16 (c) shall contain the prescribed information; and  
17 (d) shall be accompanied by any map, statement or other  
18 information required by the regulations; and  
19 (e) shall be accompanied by the prescribed application fee.

20 (4) For the purposes of subsection (3)(d), but without limiting  
21 section 162(5), the regulations may require a statement or other  
22 information to be in the form of a statutory declaration.

23 (5) If the holder of an exploration licence transfers the licence after  
24 making an application under subsection (2) in respect of the  
25 licence, the application continues in the name of the transferee  
26 of the licence as if the transferee had made it.

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



1 **69B. Approval of retention status**

- 2 (1) The Minister may approve retention status for the whole or any  
3 part of the land the subject of an exploration licence if satisfied  
4 that —
- 5 (a) there is an identified mineral resource located in, on or  
6 under that land; and
- 7 (b) the mining of that identified mineral resource is  
8 impracticable because —
- 9 (i) the resource is uneconomic or subject to  
10 marketing problems although the resource may  
11 reasonably be expected to become economic or  
12 marketable in the future; or
- 13 (ii) the resource is required to sustain the future  
14 operations of an existing or proposed mining  
15 operation; or
- 16 (iii) there are existing political, environmental or  
17 other difficulties in obtaining requisite approvals.
- 18 (2) An approval shall be in writing.
- 19 (3) An approval takes effect on the day on which notice of the  
20 approval is published in the *Gazette* or on a later day specified  
21 in the notice.
- 22 (4) The area of land to which an approval applies —
- 23 (a) shall be a block or blocks; and
- 24 (b) shall be an area that, in the opinion of the Minister, is  
25 sufficient to include —
- 26 (i) the land in, on or under which the identified  
27 mineral resource is located; and
- 28 (ii) such other land as may be required for future  
29 mining operations in respect of that identified  
30 mineral resource.

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1 (5) The area of land to which an approval applies may be less than  
2 the area of land in respect of which the approval was sought.

3 (6) If retention status is approved for part of the land the subject of  
4 an exploration licence, the land not covered by the approval  
5 ceases to be the subject of the licence on the day on which the  
6 approval takes effect.

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

8 **69C. Consultation with other Ministers**

9 (1) Before approving retention status under section 69B for land of  
10 a class referred to in section 24(1), the Minister shall consult  
11 and obtain the recommendations of the relevant responsible  
12 Minister under section 24(8).

13 (2) Before approving retention status under section 69B for land in  
14 a marine management area, marine nature reserve or marine  
15 park the Minister shall consult and obtain the recommendations  
16 of the other Ministers referred to in section 24A(6).

17 (3) Before approving retention status under section 69B for land of  
18 a class referred to in section 25(1)(a), (b) or (c), the Minister  
19 shall consult and obtain the recommendations of the other  
20 Ministers referred to in section 25(2B).

21 (4) Before approving retention status under section 69B for land of  
22 the class referred to in section 25(1)(d), the Minister shall  
23 consult and obtain the recommendations of the other Minister  
24 referred to in section 25(3B).

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

27 **69D. Programme of work**

28 (1) On the approval of retention status under section 69B, or at any  
29 subsequent time, the Minister may impose on the holder of the  
30 exploration licence a condition requiring the holder to comply

- 1 with a specified programme of work in respect of the land the  
2 subject of the licence within a specified period.
- 3 (2) Before imposing a condition under subsection (1), the Minister  
4 may require the holder of the licence to submit to the Minister a  
5 draft programme of work in ~~a form approved by the Minister~~an  
6 approved form and the holder shall comply with that  
7 requirement.
- 8 (3) A condition imposed under subsection (1) may be cancelled or  
9 varied by the Minister at any time.
- 10 (4) On and from giving notice in writing to the holder of the licence  
11 of the imposition of the condition, the condition has effect for  
12 all purposes as a condition to which the licence is subject.
- 13 ~~(4) A condition imposed under subsection (1) —~~  
14 ~~(a) may be endorsed on the exploration licence, for which~~  
15 ~~purpose the holder of the licence shall produce the~~  
16 ~~licence on demand; and~~  
17 ~~(b) whether or not so endorsed, on notice of the imposition~~  
18 ~~of the condition being given in writing to the holder of~~  
19 ~~the licence shall for all purposes have effect as a~~  
20 ~~condition to which the licence is subject.~~
- 21 (5) In subsection (1) —  
22 *specified* means specified in writing by the Minister.  
23 [Section 69D inserted: No. 39 of 2004 s. 24.]
- 24 **69E. Holder of exploration licence with retention status may be**  
25 **required to apply for mining lease**
- 26 (1) The Minister may at any time, by notice in writing, require the  
27 holder of an exploration licence that has retention status to show  
28 cause why a mining lease should not be applied for in respect of  
29 the whole or any part of the land the subject of the exploration  
30 licence.

1 (2) Where —

2 (a) the holder of an exploration licence fails to show cause  
3 within the time specified in the notice referred to in  
4 subsection (1); or

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

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

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

13 **70. Special prospecting licence on an exploration licence**

14 (1) Where any land is the subject of an exploration licence (in this  
15 section called the *primary tenement*) then, notwithstanding  
16 section 117, a person may at any time after the expiry of  
17 12 months from —

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

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

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

30 (1aa) If the primary tenement was granted as a result of a reversion  
31 licence application, a special prospecting licence may be

- 
- 1 marked out and applied for at any time after the date on which  
2 the primary tenement was granted.
- 3 (1a) A special prospecting licence may only be applied for by,  
4 granted to or held by a natural person.
- 5 (2) Unless subsection (5a) applies, an applicant for a special  
6 prospecting licence shall, within the prescribed period, give  
7 notice thereof to the holder of the primary tenement as if such  
8 holder were the occupier of the land to which the application  
9 relates, and subsections (3) to (5) apply in respect of the  
10 application.
- 11 (3) Where, after being served with notice of the application for the  
12 special prospecting licence, the holder of the primary tenement  
13 does not lodge an objection against the application the mining  
14 registrar may, subject to this Act, grant the application as  
15 provided in subsection (6).
- 16 (4) Where such an objection is lodged by the holder of the primary  
17 tenement the warden shall obtain a report from the Director,  
18 Geological Survey in respect of the exploration carried on by  
19 the holder of the primary tenement on the land to which the  
20 application relates.
- 21 (4a) A report prepared by the Director, Geological Survey for the  
22 purposes of subsection (4) is to be based solely on information  
23 contained in reports filed by or on behalf of the holder of the  
24 primary tenement under section 68(3) or 115A.
- 25 (5) After hearing the objection of the holder of the primary  
26 tenement the warden may refuse the application for the special  
27 prospecting licence on the ground that prospecting for gold on  
28 the land to which the application relates would result in undue  
29 detriment to the exploration being carried on by the holder of  
30 the primary tenement or he may recommend the application to  
31 the Minister who may refuse the application or subject to this  
32 Act, grant it as provided in subsection (6), but where the warden  
33 refuses an application under this subsection, the applicant may

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- 1 within the time and in the manner prescribed appeal to the  
2 Minister against such refusal and the Minister may dismiss the  
3 appeal or uphold the appeal and grant the application as  
4 provided in subsection (6).
- 5 (5a) If, at the time when an applicant for a special prospecting  
6 licence marked out the land to which his application relates, the  
7 grant of the application would have resulted in the number of  
8 special prospecting licences in respect of the primary tenement  
9 exceeding one for each 200 ha of the primary tenement, the  
10 applicant shall, within the prescribed period and in the  
11 prescribed manner, lodge the written consent of the holder of  
12 the primary tenement to the grant of the application.
- 13 (5b) If written consent to the grant of an application is lodged in  
14 accordance with subsection (5a), the mining registrar may,  
15 subject to this Act, grant the application as provided for in  
16 subsection (6).
- 17 (6) Subject to this section the mining registrar or Minister may  
18 grant the application on such terms and conditions as he thinks  
19 fit but a special prospecting licence granted pursuant to this  
20 section —
- 21 (a) shall not exceed 10 ha in area; and  
22 (b) shall authorise the holder to prospect only for gold; and  
23 (c) shall not unless the Minister otherwise directs, prevent  
24 the holder of the primary tenement from exploring for  
25 minerals other than gold in or on the land the subject of  
26 the special prospecting licence and the primary  
27 tenement; and  
28 (d) does not authorise the holder thereof to excavate, extract  
29 or remove during the period for which the tenement  
30 remains in force a total amount of earth, soil, rock,  
31 stone, fluid or mineral bearing substances in excess of  
32 500 t, except in so far as the prior written approval of  
33 the Minister may otherwise permit; and

- 1 (e) does not authorise mining to be carried out in any  
2 portion of the land that is —
- 3 (i) below a depth specified in the terms and  
4 conditions of the special prospecting licence, and  
5 any depth so specified shall be less than 50 m  
6 below the lowest part of the natural surface of  
7 the land the subject of the special prospecting  
8 licence; or
- 9 (ii) if a depth is not so specified, 50 m or more below  
10 the lowest part of the natural surface of the land  
11 the subject of the special prospecting licence,  
12 except in so far as both the prior written consent  
13 of the holder of the primary tenement and the  
14 prior written approval of the Minister may  
15 otherwise permit.
- 16 (6aa) A special prospecting licence may be granted for a period of  
17 3 months or for any period which is a multiple of 3 months but  
18 which does not exceed 4 years.
- 19 (6a) A special prospecting licence —
- 20 (a) continues in force notwithstanding that the holder of the  
21 primary tenement may apply for and be granted a  
22 retention licence, mining lease or general purpose lease  
23 in respect to the land; but
- 24 (b) ceases (and the land in respect to which it was granted  
25 reverts to the primary tenement holder as an integral part  
26 of the tenement held by him) on the surrender, forfeiture  
27 or expiry of that special prospecting licence.
- 28 (7) No legal or equitable interest in or affecting —
- 29 (a) a special prospecting licence; or
- 30 (b) a mining lease in respect of the land or any part thereof  
31 the subject of a special prospecting licence,

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- 1 is capable of being created, affected or dealt with, whether  
2 directly or indirectly, except with the prior written consent of  
3 the holder of the primary tenement, and no person shall hold or  
4 have any beneficial, legal or equitable interest in —
- 5 (c) more than 10 such special prospecting licences; or  
6 (d) more than one such mining lease.
- 7 (7a) A reference in subsection (7) to a person includes a reference to  
8 any other person who would, for the purposes of the  
9 Corporations Act, be taken to be an associate of the  
10 first-mentioned person.
- 11 (7b) A mining lease in respect of the land or any part thereof which  
12 is the subject of a special prospecting licence shall not be  
13 granted in respect of the primary tenement where the number of  
14 such leases granted in respect of that primary tenement exceeds  
15 one for each 200 ha of the primary tenement.
- 16 (8) The holder of a special prospecting licence granted for a period  
17 of 4 years may make an application for a mining lease for gold  
18 in respect of the land or any part thereof which is the subject of  
19 the special prospecting licence, and on an application being  
20 made the Minister may, subject to subsection (7b), grant the  
21 application for a lease in respect to that portion of the land to  
22 which the special prospecting licence relates that is less than a  
23 depth of 50 m, or such greater depth as the Minister approves  
24 with the prior written consent of the holder of the primary  
25 tenement, below the lowest part of the natural surface of the  
26 land and on such terms and conditions as the Minister thinks fit,  
27 and thereupon the area of land in respect of which the mining  
28 lease is granted shall be excised from the primary tenement  
29 (whether or not the primary tenement has in the meantime been  
30 converted into a retention licence or a mining lease).
- 31 (8aa) Sections 74, 74A and 75 apply to an application for a mining  
32 lease under subsection (8).



- 1 (8a) A mining lease granted pursuant to subsection (8) —
- 2 (a) has effect in relation to gold and any minerals occurring
- 3 in conjunction with that gold; and
- 4 (b) does not authorise the lessee thereof, his agents or
- 5 employees to excavate, extract or remove a total amount
- 6 of earth, soil, rock, stone, fluid or mineral bearing
- 7 substances in excess of 750 t in any year, except in so
- 8 far as both the prior written consent of the holder of the
- 9 primary tenement and the prior written approval of the
- 10 Minister may otherwise permit; and
- 11 [(c) *deleted*]
- 12 (d) ceases to have effect (and the land in respect to which it
- 13 was granted reverts to the primary tenement holder as an
- 14 integral part of the tenement held by him) on the
- 15 surrender, forfeiture or expiry of that lease.
- 16 (9) Subject to this section, the provisions of this Act relating to a
- 17 prospecting licence, or mining lease apply to a special
- 18 prospecting licence or mining lease granted pursuant to this
- 19 section.
- 20 (9a) Where, before the determination of an application for a special
- 21 prospecting licence in respect of land, the primary tenement is
- 22 surrendered or forfeited or expires, the application is, by virtue
- 23 of this subsection, converted into an application for a
- 24 prospecting licence in respect of that land and the provisions of
- 25 this Act relating to such applications apply accordingly.
- 26 (10) On the surrender, forfeiture or expiry of the primary tenement, a
- 27 special prospecting licence in respect of any land the subject of
- 28 the primary tenement immediately before the date of its
- 29 surrender, forfeiture or expiry is, by virtue of this subsection,
- 30 converted into a prospecting licence in respect of that land and,
- 31 subject to subsection (11), the provisions of this Act relating to
- 32 prospecting licences apply accordingly.

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

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

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

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

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

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

1 **Division 2A — Retention licence**

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

3 **70A. Term used: primary tenement**

4 In this Division —

5 ***primary tenement*** means —

6 (a) a prospecting licence that —

7 (i) is in force immediately before the  
8 commencement of section 25 of the *Mining*  
9 *Amendment Act 2004*; or

10 (ii) is granted after that commencement in respect of  
11 an application made before that commencement;

12 or

13 (b) an exploration licence that —

14 (i) is in force immediately before the  
15 commencement of section 25 of the *Mining*  
16 *Amendment Act 2004*; or

17 (ii) is granted after that commencement in respect of  
18 an application made before that commencement;

19 or

20 (c) a mining lease.

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

22 **70B. Grant of retention licence**

- 23 (1) Subject to this Act, the Minister may, on the application of the  
24 holder of a primary tenement, after receiving a recommendation  
25 of the mining registrar or the warden in accordance with  
26 section 70D, grant to that person a licence to be known as a  
27 retention licence in respect of the whole or any part of the land  
28 the subject of the primary tenement on such terms and  
29 conditions as the Minister considers reasonable.

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- 1 (2) The holder of a primary tenement may be granted more than one  
2 retention licence.
- 3 (3) Where the applicant for a retention licence is the holder of 2 or  
4 more primary tenements, a retention licence may be granted in  
5 respect of the whole or any part of the land within the  
6 boundaries of those tenements.
- 7 (4) The land in respect of which a retention licence is granted —  
8 (a) shall be of an area that, in the opinion of the Minister, is  
9 sufficient to include —  
10 (i) the land in, on or under which an identified  
11 mineral resource is located; and  
12 (ii) such other land as may be required for future  
13 mining operations in respect of that identified  
14 mineral resource;  
15 and  
16 (b) may be of an area that is less than the area of land in  
17 respect of which the retention licence is sought.

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

20 **70C. Application for retention licence**

- 21 (1) An application for a retention licence —  
22 (a) shall be in the prescribed form; and  
23 (b) shall be accompanied by the amount of the prescribed  
24 rent for the first year of the term of the licence or portion  
25 thereof as prescribed; and  
26 (c) shall be accompanied by the prescribed application fee;  
27 and  
28 (d) shall be lodged in the prescribed manner; and

- 1 (e) shall be accompanied by a statement specifying —
- 2 (i) the details of the programme of work (if any)
- 3 proposed to be carried out in the area in respect
- 4 of which the licence is sought; and
- 5 (ii) the estimated amount of money (if any) proposed
- 6 to be expended on such work.
- 7 (2A) An applicant is to lodge within the prescribed time and in the
- 8 prescribed manner a statutory declaration made by the applicant
- 9 to the effect that —
- 10 (a) there is an identified mineral resource in the area in
- 11 respect of which the licence is sought; and
- 12 (b) mining of that identified mineral resource is for the time
- 13 being impracticable for one or more of the reasons
- 14 referred to in subsection (2) (that reason or those reasons
- 15 being set out in the statutory declaration).
- 16 (2) For the purposes of subsection (2A)(b) mining of an identified
- 17 mineral resource may be impracticable because —
- 18 (a) the identified mineral resource is uneconomic or subject
- 19 to marketing problems although that resource may
- 20 reasonably be expected to become economic or
- 21 marketable in the future; or
- 22 (b) the identified mineral resource is required to sustain the
- 23 future operations of an existing or proposed mining
- 24 operation; or
- 25 (c) there are existing political, environmental or other
- 26 difficulties in obtaining requisite approvals.
- 27 (3) An applicant shall at the request of the mining registrar or
- 28 warden furnish such further information in relation to the
- 29 application, or such evidence in support of the application, as
- 30 the mining registrar or warden may require but the mining
- 31 registrar or warden shall not require information or evidence
- 32 relating to assays or other results of any testing or sampling that

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- 1 the applicant may have carried out on the land the subject of the  
2 application.
- 3 (4) Within the prescribed period the applicant shall serve such  
4 notice of the application as may be prescribed on the owner and  
5 occupier of the land to which the application relates and on such  
6 other persons as may be prescribed.
- 7 (5) The application shall be made by reference to a written  
8 description of the area of the land in respect of which the  
9 licence is sought, and be accompanied by a map on which are  
10 clearly delineated the boundaries of that area.
- 11 (6) Where an application is made by the holder of a primary  
12 tenement and the term of the primary tenement would but for  
13 this subsection expire, the primary tenement shall continue in  
14 force in respect of the land the subject of the application until —  
15 (a) the retention licence is granted; or  
16 (b) if the retention licence is refused, the expiry of a period  
17 of 30 days after that refusal.
- 18 (7) If, after an application is made under subsection (1) in respect of  
19 land the subject of a primary tenement —  
20 (a) the holder of the tenement transfers the tenement; or  
21 (b) where there are 2 or more holders of the tenement, a  
22 holder transfers the holder's interest in the tenement,  
23 the application continues in the name of the transferee of the  
24 tenement or interest as if the transferee were the applicant or  
25 one of the applicants, as the case requires.
- 26 (8) For the purposes of subsection (7), where there are 2 or more  
27 transferees of the primary tenement, each of the transferees is to  
28 be regarded as an applicant for an interest in the relevant  
29 retention licence that corresponds to the interest held by that  
30 transferee in the primary tenement.

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

4        **70D. Determination of application for retention licence**

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

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

14           (3) The mining registrar shall —

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

18                    (b) recommend the refusal of the retention licence if not so  
19                    satisfied.

20           (4) Where a notice of objection —

21                    (a) is lodged within the prescribed time; or

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

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

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- 1 (5) The warden shall as soon as practicable after the hearing of the  
2 application forward to the Minister for the Minister's  
3 consideration —
- 4 (a) the notes of evidence; and  
5 (b) any maps or other documents referred to in the notes of  
6 evidence; and  
7 (c) a report which recommends the grant or refusal of the  
8 retention licence and sets out the reasons for that  
9 recommendation.
- 10 (6) On receipt of a report under subsection (2) or (5), the Minister  
11 may, subject to subsection (7), grant or refuse the retention  
12 licence as the Minister thinks fit, and irrespective of whether —
- 13 (a) the report recommends the grant or refusal of the  
14 retention licence; and  
15 (b) the applicant has or has not complied in all respects with  
16 the provisions of this Act.
- 17 (7) The Minister shall not grant a retention licence unless the  
18 Minister is satisfied that mining of an identified mineral  
19 resource on the land in respect of which the retention licence is  
20 sought is for the time being impracticable for one or more of the  
21 reasons referred to in section 70C(2).
- 22 (8) Before granting or refusing a retention licence the Minister may  
23 require the applicant to furnish such further information in  
24 relation to the application, or such evidence in support of the  
25 application, as the Minister thinks fit.
- 26 (9) Before granting a retention licence the Minister may require the  
27 applicant to mark out in the prescribed manner the land in  
28 respect of which the retention licence is sought.

29 *[Section 70D inserted: No. 58 of 1994 s. 24(1); amended: No.*  
30 *39 of 2004 s. 61; No. 12 of 2010 s. 28.]*



1 **70E. Term of retention licence and renewal**

2 (1) Subject to this Act, a retention licence remains in force for such  
3 period not exceeding 5 years as is specified in the licence and  
4 then expires.

5 (2) The Minister may, on receipt of an application made within the  
6 prescribed time and in the prescribed manner, renew or further  
7 renew a retention licence for a period not exceeding 5 years.

8 (3) If an application for renewal is made under this section and the  
9 term of the licence would but for this subsection expire, the  
10 licence shall continue in force in respect of the land the subject  
11 of the application until the application is determined.

12 (4) If the holder of a retention licence transfers the licence after  
13 making an application for renewal under this section, the  
14 application continues in the name of the transferee of the licence  
15 as if the transferee had made it.

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

18 **70F. Security relating to retention licence**

19 (1) The applicant for a retention licence shall lodge, in the  
20 prescribed manner and within the prescribed period, a security  
21 for compliance with —

22 (a) the conditions to which the retention licence, if granted,  
23 will from time to time be subject; and

24 (b) the provisions of this Part and the regulations.

25 ~~(2) — The Minister may require the holder of a retention licence to~~  
26 ~~lodge, in the prescribed manner and within such period as the~~  
27 ~~Minister specifies in writing, an additional security for~~  
28 ~~compliance with conditions imposed in relation to the licence~~  
29 ~~under section 70I.~~

30 (3) A security referred to in subsection (1) ~~or (2)~~ shall be in  
31 accordance with and subject to section 126.

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

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

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

9 **70G. Survey of area of retention licence not required in first**  
10 **instance**

11 (1) On an application for a retention licence or on a retention  
12 licence being granted the land affected is not thereby required to  
13 be surveyed, but where a dispute arises with respect to the  
14 position of that land or the boundaries or any boundary of that  
15 land the warden or the Minister may require a survey to be  
16 made of the boundaries or the boundary in order to settle the  
17 dispute.

18 (2) A survey required under subsection (1) shall be —

19 (a) arranged in accordance with the regulations; and

20 (b) paid for by such party or parties to the dispute as the  
21 warden or the Minister determines.

22 *[Section 70G inserted: No. 37 of 1993 s. 10(1); amended: No.*  
23 *39 of 2004 s. 62.]*

24 **70H. Conditions attached to retention licence**

25 (1) Every retention licence ~~shall be deemed~~ is taken to be granted  
26 subject to the conditions that the holder of the licence  
27 ~~shall~~ must —

28 ~~— (aa) not use ground disturbing equipment when exploring for~~  
29 ~~minerals on the land the subject of the licence unless —~~

30 ~~— (i) the holder has lodged in the prescribed manner a~~  
31 ~~programme of work in respect of that use; and~~

- 1 ~~\_\_\_\_\_ (iia) the holder has paid the prescribed assessment fee~~  
2 ~~in respect of the programme of work; and~~
- 3 ~~\_\_\_\_\_ (ii) the programme of work has been approved in~~  
4 ~~writing by the Minister or a prescribed official;~~
- 5 ~~\_\_\_\_\_ and~~
- 6 ~~\_\_\_\_\_ (a) fill in or otherwise make safe to the satisfaction of a~~  
7 ~~prescribed official all holes, pits, trenches and other~~  
8 ~~disturbances to the surface of the land the subject of the~~  
9 ~~licence which are —~~
- 10 ~~\_\_\_\_\_ (i) made while exploring for minerals; and~~
- 11 ~~\_\_\_\_\_ (ii) in the opinion of the prescribed official, likely to~~  
12 ~~endanger the safety of any person or animal;~~
- 13 ~~\_\_\_\_\_ and~~
- 14 ~~\_\_\_\_\_ (b) take all necessary steps to prevent fire, damage to trees~~  
15 ~~or other property and to prevent damage to any property~~  
16 ~~or damage to livestock by the presence of dogs, the~~  
17 ~~discharge of firearms, the use of vehicles or otherwise;~~  
18 ~~and~~
- 19 \_\_\_\_\_ (a) fill in or otherwise make safe on the surface of the land  
20 the subject of the licence all holes, pits, trenches and  
21 other disturbances that —
- 22 \_\_\_\_\_ (i) are made while exploring for minerals; and
- 23 \_\_\_\_\_ (ii) are likely to endanger the safety of any person or  
24 animal;
- 25 \_\_\_\_\_ and
- 26 \_\_\_\_\_ (b) take all necessary steps to prevent damage or injury to  
27 property or livestock whether resulting from fire, the  
28 presence of dogs, the discharge of firearms, the use of  
29 vehicles or any other cause; and
- 30 \_\_\_\_\_ [(c) deleted]

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- 1 (d) comply with the expenditure conditions (if any)  
2 applicable to such land; and
- 3 (e) not transfer or mortgage a legal interest in such land or  
4 any part thereof without the prior written consent of the  
5 Minister, or of an officer of the Department acting with  
6 the authority of the Minister; and
- 7 (f) lodge, in the prescribed manner, such periodical reports  
8 and returns as may be prescribed; and
- 9 (g) furnish to the Minister such geological samples obtained  
10 in the course of operations conducted by the holder  
11 under the licence as the Minister may request.

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

13 [(a) *deleted*]

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

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

19 **~~70I. — Conditions for prevention or reduction of injury to land~~**

20 ~~— (1) — On the granting of a retention licence, or at any subsequent~~  
21 ~~time, the Minister may impose on the holder of the licence~~  
22 ~~reasonable conditions for the purpose of preventing or reducing,~~  
23 ~~or making good, injury to the land in respect of which the~~  
24 ~~licence is sought or was granted, or injury to anything on or~~  
25 ~~below the natural surface of that land or consequential damage~~  
26 ~~to any other land.~~

27 ~~— (2) — A condition imposed under this section may be cancelled or~~  
28 ~~varied by the Minister at any time.~~

29 ~~— (3) — A condition imposed under this section —~~

30 ~~— (a) — may, either in full or with sufficient particularity as to~~  
31 ~~identify the recommendation or other source from which~~

1 ~~it derives, be endorsed on the licence, for which purpose~~  
2 ~~the holder of the licence shall produce the licence on~~  
3 ~~demand; and~~

4 ~~(b) whether or not so endorsed, on notice of the imposition~~  
5 ~~of the condition being given in writing to the holder of~~  
6 ~~the licence shall for all purposes have effect as a~~  
7 ~~condition to which the licence is subject.~~

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

10 **70IA. Programme of work**

11 (1) On the granting of a retention licence, or at any subsequent  
12 time, the Minister may impose on the holder of the licence a  
13 condition requiring the holder to comply with a specified  
14 programme of work in respect of the land the subject of the  
15 licence within a specified period.

16 (2) Before imposing a condition under subsection (1), the Minister  
17 may require the applicant for the licence or the holder of the  
18 licence, as the case requires, to submit to the Minister a draft  
19 programme of work in ~~a form approved by the Minister~~  
20 an approved form and the applicant or the holder, as the case  
21 requires, shall comply with that requirement.

22 ~~(3) Subsections (2) and (3) of section 70I apply to a condition~~  
23 ~~imposed under subsection (1) as if it were a condition imposed~~  
24 ~~under that section.~~

25 (3) A condition imposed under subsection (1) may be cancelled or  
26 varied by the Minister at any time.

27 (3A) On and from giving notice in writing to the holder of the licence  
28 of the imposition of the condition, the condition has effect for  
29 all purposes as a condition to which the licence is subject.

- 1 (4) In subsection (1) —  
2 *specified* means specified in writing by the Minister.  
3 [Section 70IA inserted: No. 17 of 1999 s. 12(1).]

4 **70J. Rights conferred by retention licence**

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

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

1                   therefrom and to use the water so taken for the holder's  
2                   domestic purposes and for any purpose in connection  
3                   with exploring for minerals on the land.

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

6       **70K.    When retention licence liable to forfeiture**

7                   A retention licence is liable to forfeiture if —

- 8                   (a)    the prescribed rent or royalty in respect of the licence is  
9                   not paid in accordance with this Act; or
- 10                  (b)    the terms and conditions of the licence are not complied  
11                  with, including —
- 12                   (i)    any conditions to which the licence is ~~deemed to~~  
13                   ~~be subject under~~ taken to be subject under  
14                   section 70H, 103AD or 103AF; and ~~section 70H;~~  
15                   ~~and~~
- 16                   (ii)   any conditions imposed under section 70IA(1) or  
17                   103AT(1); or ~~section 70I or 70IA,~~
- 18                  ~~are not complied with; or~~
- 19                  (ba)   a report required under section 70H(1)(f) or 115A in  
20                  relation to the land the subject of the retention licence is  
21                  not filed in accordance with this Act; or
- 22                  (bb)   the holder of the licence fails to comply with a  
23                  requirement under section 103AU(1) ~~section 70F(2)~~ to  
24                  lodge a security; or
- 25                  (c)    the holder of the licence is convicted of an offence  
26                  against this Act; or
- 27                  (d)    the holder of the licence fails to comply with a notice  
28                  under section 70M(2) requiring that person to apply for

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- 1 a mining lease in respect of the whole or any part of the  
2 land the subject of the licence; or
- 3 (e) the holder of the licence fails to comply with a notice  
4 under section 115B(2) requiring that person to file an  
5 audit statement or cause an audit statement to be filed.

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

9 **70L. Holder of retention licence to have priority for grant of**  
10 **mining lease or general purpose lease**

- 11 (1) The holder of a retention licence has —
- 12 (a) subject to this Act and to any conditions to which the  
13 retention licence is subject; and
- 14 (b) subject to satisfactory compliance with any conditions  
15 imposed under [section 70IA\(1\) or 103AT\(1\)](#);  
16 ~~and section 70I or 70IA; and~~
- 17 (c) while the retention licence remains in force,  
18 the right to apply for, and subject to section 75(9) to have  
19 granted pursuant to section 75(7), one or more mining leases or  
20 one or more general purpose leases or both in respect of any  
21 part or parts of the land the subject of the retention licence.
- 22 (2) Where an application for a mining lease or a general purpose  
23 lease is made by the holder of a retention licence in respect of  
24 any land and the term of the retention licence would but for this  
25 subsection expire, that licence shall continue in force in respect  
26 of the land the subject of the application until the application for  
27 a lease is determined.
- 28 (3) If, after an application is made under subsection (1) in respect of  
29 land the subject of a retention licence —
- 30 (a) the holder of the licence transfers the licence; or  
31 (b) where there are 2 or more holders of the licence, a  
32 holder transfers the holder's interest in the licence,



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

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

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

11 **70M. Holder of retention licence to show cause why mining lease**  
12 **should not be applied for**

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

17 (2) Where —

18 (a) the holder of a retention licence fails to show cause  
19 within the time specified in the notice referred to in  
20 subsection (1); or

21 (b) the Minister is of the opinion that the holder of a  
22 retention licence has shown insufficient cause,

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

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

28 **70N. Land subject of retention licence not to be again marked out**  
29 **for certain period**

30 (1) Where a retention licence is surrendered or forfeited, or expires,  
31 the land the subject of the retention licence or any part of that

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

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

14 **Division 3 — Mining lease**

15 **700. ~~Terms used~~ Significant mineralisation**

16 ~~(1) In this Division —~~

17 ~~*guidelines* means guidelines approved by the Director General  
18 of Mines for the purposes of this Division;~~

19 ~~*mine closure plan* means a document that —~~

20 ~~(a) is in the form required by the guidelines; and~~

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

26 ~~*mining proposal* means a document that —~~

27 ~~(a) is in the form required by the guidelines; and~~

28 ~~(b) contains information of the kind required by the  
29 guidelines about proposed mining operations in, on or~~

1 ~~under the land in respect of which a mining lease is~~  
2 ~~sought or granted, as the case requires; and~~

3 ~~— (c) — contains a mine closure plan;~~

4 ~~— *relevant mining proposal*, in relation to a mining lease,~~  
5 ~~means —~~

6 ~~— (a) — a mining proposal that accompanied the application for~~  
7 ~~the mining lease under section 74(1)(ca); or~~

8 ~~— (b) — a mining proposal for which there is approval as~~  
9 ~~described in section 82A(2)(b);~~

10 ~~— *significant mineralisation* has the meaning given in~~  
11 ~~subsection (2).~~

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

18 In this Division there is *significant mineralisation* in, on or  
19 under land to which an application for a mining lease relates if  
20 exploration results in respect of a deposit of minerals located in,  
21 on or under that land indicate that there is a reasonable prospect  
22 of minerals being obtained by mining operations on the land.

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

25 **70P. — Guidelines to be publicly available**

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

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

1 **71. Grant of mining lease**

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

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

9 **72. Person may be granted more than one mining lease**

10 Any person may be granted more than one mining lease.

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

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

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

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

20 **74. Application for mining lease**

21 (1) An application for a mining lease —

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

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

26 (c) shall be accompanied by the prescribed application fee;  
27 and

- 1 (ca) shall be accompanied by —
- 2 (i) a mining development and closure proposal
- 3 lodged in accordance with section 103AM; or
- 4 ~~(i) a mining proposal; or~~
- 5 (ii) a statement in accordance with subsection (1a)
- 6 and a mineralisation report prepared by a
- 7 qualified person; or
- 8 (iii) a statement in accordance with subsection (1a)
- 9 and a resource report;
- 10 and
- 11 (d) shall be lodged in the prescribed manner.
- 12 (1AA) Instead of accompanying an application for a mining lease
- 13 under subsection (1)(ca), a ~~mining proposal~~ mining development
- 14 and closure proposal may be lodged within the prescribed time
- 15 and in the prescribed manner and, if so lodged, is to be treated
- 16 for the purposes of this Division as a ~~mining proposal~~ mining
- 17 development and closure proposal that accompanied the
- 18 application for the mining lease under section 74(1)(ca).
- 19 (1a) The statement referred to in subsection (1)(ca)(ii) and (iii) shall
- 20 set out information about the mining operations that are likely to
- 21 be carried out in, on or under the land to which the application
- 22 relates including information as to —
- 23 (a) when mining is likely to commence; and
- 24 (b) the most likely method of mining; and
- 25 (c) the location, and the area, of land that is likely to be
- 26 required for the operation of plant, machinery and
- 27 equipment and for other activities associated with those
- 28 mining operations.
- 29 (2) The applicant shall at the request of the mining registrar or
- 30 warden furnish such further information in relation to the
- 31 application, or such evidence in support thereof, as the mining
- 32 registrar or warden may require but the mining registrar or

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- 1 warden shall not require any information or evidence relating to  
2 assays or other results of any testing or sampling that the  
3 applicant may have carried out on the land the subject of his  
4 application.
- 5 (3) Within the prescribed period the applicant shall serve such  
6 notice of the application as may be prescribed on the owner and  
7 occupier of the land to which the application relates and on such  
8 other persons as may be prescribed.
- 9 (4) The application shall be made by reference to a written  
10 description of the area of the land in respect of which the lease  
11 is sought, and be accompanied by a map on which are clearly  
12 delineated the boundaries of that area.
- 13 (5) The Director General of Mines shall ensure that —  
14 (a) any document referred to in subsection (1)(ca) that  
15 accompanies the application; and  
16 (b) any document furnished by the applicant in response to  
17 a request under subsection (2),  
18 are made available for public inspection at reasonable times.
- 19 (6) The regulations may require a person to pay a fee specified in  
20 the regulations —  
21 (a) for inspecting a document referred to in subsection (5);  
22 or  
23 (b) for obtaining a copy of the document or any part of it.
- 24 (7) In this section —  
25 **JORC Code** means the *Australasian Code for Reporting of*  
26 *Exploration Results, Mineral Resources and Ore Reserves*  
27 prepared by the Joint Ore Reserves Committee of the  
28 Australasian Institute of Mining and Metallurgy, the Australian  
29 Institute of Geoscientists and the Minerals Council of Australia  
30 as in force from time to time;

1 *likely* means reasonably likely having regard to the information  
2 available to the applicant when the application is made;

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

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

13 *qualified person* means a person who —

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

17 *resource report* means a report —

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

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

26 **74A. Report on significant mineralisation required for certain**  
27 **applications**

- 28 (1) If an application for a mining lease is accompanied by the  
29 documentation referred to in section 74(1)(ca)(ii), the Director,  
30 Geological Survey shall give the Minister a report as to whether  
31 or not there is significant mineralisation in, on or under the land  
32 to which the application relates.

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- 1 (2) For the purposes of preparing the report, the Director,  
2 Geological Survey may request the applicant to provide further  
3 information in relation to matters dealt with in the  
4 mineralisation report.
- 5 (3) The report shall be based solely on information contained in the  
6 mineralisation report and any further information provided by  
7 the applicant in response to a request under subsection (2).
- 8 (4) The Director, Geological Survey shall give a copy of the report  
9 to the mining registrar and the warden.
- 10 (5) The Director General of Mines shall ensure that the report is  
11 made available for public inspection at reasonable times.
- 12 (6) The regulations may require a person to pay a fee specified in  
13 the regulations —  
14 (a) for inspecting the report; or  
15 (b) for obtaining a copy of the report or any part of it.
- 16 (7) In this section —  
17 **mineralisation report** means the mineralisation report that  
18 accompanied the application.  
19 *[Section 74A inserted: No. 39 of 2004 s. 30.]*

20 **75. Determination of application for mining lease**

- 21 (1) A person who wishes to object to the granting of an application  
22 for a mining lease shall lodge a notice of objection within the  
23 prescribed time and in the prescribed manner.
- 24 (1a) A person is not entitled to lodge a notice of objection if the basis  
25 for the objection is that there is no significant mineralisation in,  
26 on or under the land to which the application relates.
- 27 (2) Subject to subsection (2a), if no notice of objection is lodged  
28 within the prescribed time, or any notice of objection is  
29 withdrawn, the mining registrar shall, unless subsection (4)(b)  
30 applies, forward to the Minister a report which recommends the



1 grant or refusal of the mining lease and sets out the reasons for  
2 that recommendation.

3 (2a) If the application for the mining lease is accompanied by the  
4 documentation referred to in section 74(1)(ca)(ii), the mining  
5 registrar shall not forward a report under subsection (2)  
6 unless —

7 (a) the mining registrar has received a copy of the  
8 section 74A report in relation to the application; and

9 (b) the section 74A report states that there is significant  
10 mineralisation in, on or under the land to which the  
11 application relates.

12 (3) The mining registrar shall —

13 (a) recommend the grant of the mining lease if satisfied that  
14 the applicant has complied in all respects with the  
15 provisions of this Act; or

16 (b) recommend the refusal of the mining lease if not so  
17 satisfied.

18 (4) Subject to subsection (4a), if a notice of objection —

19 (a) is lodged within the prescribed time; or

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

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

28 (4a) If the application for the mining lease is accompanied by the  
29 documentation referred to in section 74(1)(ca)(ii), the warden  
30 shall not hear the application unless —

31 (a) the warden has received a copy of the section 74A report  
32 in relation to the application; and

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- 1 (b) the section 74A report states that there is significant  
2 mineralisation in, on or under the land to which the  
3 application relates.
- 4 (5) The warden shall as soon as practicable after the hearing of the  
5 application forward to the Minister for the Minister's  
6 consideration —
- 7 (a) the notes of evidence; and  
8 (b) any maps or other documents referred to in the notes of  
9 evidence; and  
10 (c) a report which recommends the grant or refusal of the  
11 mining lease and sets out the reasons for that  
12 recommendation.
- 13 (6) On receipt of a report under subsection (2) or (5), the Minister  
14 may, subject to subsection (7), grant or refuse the mining lease  
15 as the Minister thinks fit, and irrespective of whether —
- 16 (a) the report recommends the grant or refusal of the mining  
17 lease; and  
18 (b) the applicant has or has not complied in all respects with  
19 the provisions of this Act.
- 20 (7) In the case of an application for a mining lease made by the  
21 holder of —
- 22 (a) a prospecting licence under section 49; or  
23 (b) an exploration licence under section 67; or  
24 (c) a retention licence under section 70L,
- 25 the Minister shall, subject to subsection (8) and the other  
26 provisions of this Act, grant to that holder one or more mining  
27 leases —
- 28 (d) in respect of any part or parts of the land the subject of  
29 the prospecting licence, exploration licence or retention  
30 licence, as the case requires; and

1 (e) on such terms and conditions as the Minister considers  
2 reasonable.

3 (8) In the case of an application for a mining lease that is  
4 accompanied by the documentation referred to in  
5 section 74(1)(ca)(ii), the Minister shall refuse to grant the  
6 mining lease if the section 74A report states that there is no  
7 significant mineralisation in, on or under the land to which the  
8 application relates.

9 (9) Subsection (7) does not apply to an application for a mining  
10 lease if all or part of the land to which that application relates  
11 falls within one or more of the classes of land referred to in  
12 section 24(1) or is in a marine nature reserve, marine park or  
13 marine management area.

14 (10) In this section —  
15 *section 74A report* means the report given to the Minister under  
16 section 74A.

17 [Section 75 inserted: No. 58 of 1994 s. 29(1); amended: No. 52  
18 of 1995 s. 29; No. 5 of 1997 s. 41(2); No. 39 of 2004 s. 31 and  
19 63; No. 12 of 2010 s. 32.]

20 **76. Priorities as to mining tenements**

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

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

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

1 **78. Term of leases, options and renewals**

2 (1) Subject to this Act, a mining lease shall remain in force —  
3 (a) for an initial term of 21 years; and  
4 (b) where application for renewal is made in the prescribed  
5 manner during the final year of the term of that lease or  
6 if section 111A(1)(d) applies, as from the expiry of the  
7 preceding term for a further term of 21 years, as of right  
8 but subject in respect of that further term to the  
9 provisions of this Act and the regulations thereunder as  
10 in force on and after the date of renewal.

11 (2) Subject to subsection (1), the Minister may, from time to time  
12 upon receipt of an application made in the prescribed manner,  
13 renew or further renew a mining lease for successive terms but  
14 so that no such term exceeds a period of 21 years.

15 (3) If an application for renewal is made under this section and the  
16 term of the lease would but for this subsection expire, that lease  
17 shall continue in force in respect of the land the subject of that  
18 application until the application is determined.

19 (4) If, after an application for renewal is made under this section —  
20 (a) the holder of the mining lease transfers the lease; or  
21 (b) where there are 2 or more holders of the mining lease, a  
22 holder transfers the holder's interest in the lease,  
23 the application continues in the name of the transferee of the  
24 lease or interest as if the transferee were an applicant or one of  
25 the applicants, as the case requires.

26 *[Section 78 inserted: No. 100 of 1985 s. 53; amended: No. 1 of*  
27 *1986 s. 5; No. 57 of 1997 s. 89(3); No. 17 of 1999 s. 14.]*

28 **79. Approval of application**

29 (1) Where a person has applied for a mining lease and has been  
30 notified in writing by or on behalf of the Minister that the  
31 Minister has granted the mining lease to which the application

1 relates, the applicant shall be deemed to be the holder of the  
2 lease comprising the land in respect of which the lease is  
3 granted as from the date of the written notification.

4 (2) Where a written notification is given under subsection (1) the  
5 term of the lease shall commence from the date of the written  
6 notification.

7 **80. Surveys of mining leases**

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

11 [(2) *deleted*]

12 [*Section 80 inserted: No. 100 of 1985 s. 54; amended: No. 37 of*  
13 *1993 s. 28(1).]*

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

15 **82. Covenants and conditions of lease**

16 (1) Every mining lease shall contain and be subject to the  
17 prescribed covenants by the lessee and in particular shall be  
18 deemed to be granted subject to the conditions that the lessee  
19 shall —

20 (a) pay the rents and royalties due under the lease at the  
21 prescribed time and in the prescribed manner;

22 (b) use the land in respect of which the lease is granted only  
23 for mining purposes in accordance with this Act;

24 (ba) arrange and pay for a survey of such land within the  
25 prescribed time and in the prescribed manner;

26 (bb) where the lease is surrendered in part, arrange and pay  
27 for a re-survey of such land within the prescribed time  
28 and in the prescribed manner;

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- 1 (c) comply with the prescribed expenditure conditions  
2 applicable to such land unless partial or total exemption  
3 therefrom is granted in such manner as is prescribed;
- 4 ~~(ca) not use ground disturbing equipment when mining on  
5 such land unless —~~
- 6 ~~(i) the lessee has lodged in the prescribed manner a  
7 programme of work in respect of that use and has  
8 paid the prescribed assessment fee in respect of  
9 the programme and the programme has been  
10 approved in writing by the Minister or a  
11 prescribed official; or~~
- 12 ~~(ii) that use is dealt with in a relevant mining  
13 proposal;~~
- 14 (d) not transfer or mortgage a legal interest in such land or  
15 any part thereof without the prior written consent of the  
16 Minister, or of an officer of the Department acting with  
17 the authority of the Minister;
- 18 (e) lodge, in the prescribed manner, such periodical reports  
19 and returns as may be prescribed;
- 20 (ea) furnish to the Minister such geological samples obtained  
21 in the course of operations conducted by the lessee  
22 under the lease as the Minister may request;
- 23 (f) promptly report in writing to the Minister details of all  
24 minerals of economic significance discovered in, on or  
25 under the land the subject of the mining lease;
- 26 ~~(ga) in accordance with section 84AA —~~
- 27 ~~(i) review the mine closure plan contained in a  
28 relevant mining proposal; and~~
- 29 ~~(ii) obtain the written approval for the reviewed  
30 mine closure plan from a prescribed official;~~
- 31 ~~(g) be liable to have the lease forfeited if he is in breach of  
32 any of the covenants or conditions of the lease, if he  
33 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.~~

(g) be liable to have the lease forfeited if the lessee —

(i) contravenes any of the covenants or conditions to which the lease is subject; or

(ii) fails to comply with any requirement under section 103AU(1) or 115B(2) in relation to the lease; or

(iii) 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.

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

6 **~~82A.— Condition to be included in certain mining leases~~**

7 ~~(1) This section applies to a mining lease if —~~

8 ~~(a) the application for the mining lease was made under this~~  
9 ~~Act, but was not determined, before the commencement~~  
10 ~~of section 33 of the *Mining Amendment Act 2004*; or~~

11 ~~(b) the application for the mining lease was accompanied by~~  
12 ~~the documentation referred to in section 74(1)(ca)(ii).~~

13 ~~(2) Every mining lease to which this section applies shall be~~  
14 ~~deemed to be granted subject to a condition requiring the lessee,~~  
15 ~~before the lessee carries out mining operations of a prescribed~~  
16 ~~kind on any part of the land the subject of the mining lease —~~

17 ~~(a) to lodge in the prescribed manner a mining proposal in~~  
18 ~~respect of those operations; and~~

19 ~~(ba) to pay the prescribed assessment fee in respect of the~~  
20 ~~mining proposal; and~~

21 ~~(b) to obtain written approval for the mining proposal from~~  
22 ~~a prescribed official.~~

23 ~~*[Section 82A inserted: No. 39 of 2004 s. 33; amended: No. 51 of*~~  
24 ~~*2012 s. 25.]*~~

25 **83. Issue of mining leases**

26 (1) Every mining lease —

27 (a) shall be dated as of the day of the notification by the  
28 Minister under section 79; and

29 (b) shall be executed by the Minister.



- 1 (2) Where a mining lease has been executed under  
2 subsection (1) —
- 3 (a) the mining lease shall be endorsed with the word  
4 “original” on its front page; and
- 5 (b) a copy of the mining lease shall be —
- 6 (i) endorsed with the word “duplicate” on its front  
7 page; and
- 8 (ii) issued to the lessee on payment of the prescribed  
9 fee.

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

11 **84AA. — Review of mine closure plans**

- 12 ~~— (1) The lessee of a mining lease must ensure that the mine closure~~  
13 ~~plan contained in a relevant mining proposal is reviewed —~~
- 14 ~~— (a) in the case of a mining proposal that accompanied the~~  
15 ~~application for the mining lease under section 74(1)(ca),~~  
16 ~~no later than 3 years after the lease is granted; or~~
- 17 ~~— (b) in the case of a mining proposal for which there is~~  
18 ~~approval as described in section 82A(2)(b), no later than~~  
19 ~~3 years after the approval; or~~
- 20 ~~— (c) no later than such other time as is approved in writing~~  
21 ~~by a prescribed official.~~
- 22 ~~— (2) The lessee of a mining lease must ensure that a mine closure~~  
23 ~~plan is reviewed no later than —~~
- 24 ~~— (a) 3 years after its most recent review; or~~
- 25 ~~— (b) such other time as is approved in writing by a prescribed~~  
26 ~~official.~~
- 27 ~~— (3) The lessee of a mining lease must ensure that a reviewed mine~~  
28 ~~closure plan is lodged, for the approval of a prescribed official,~~  
29 ~~in the prescribed manner and within the prescribed time.~~
- 30 ~~— *[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.]~~

1 **84A. Security relating to mining lease**

- 2 (1) The applicant for a mining lease shall lodge, in the prescribed  
3 manner and within the prescribed period, a security for  
4 compliance with —  
5 (a) the conditions to which the mining lease, if granted, will  
6 from time to time be subject; and  
7 (b) the provisions of this Part and the regulations.
- 8 ~~(2) The Minister may require the holder of a mining lease to lodge,  
9 in the prescribed manner and within such period as the Minister  
10 specifies in writing, an additional security for compliance with  
11 conditions imposed in relation to the lease under section 84.~~
- 12 (3) A security referred to in subsection (1) ~~or (2)~~ shall be in  
13 accordance with and subject to section 126.
- 14 (4) A mining lease shall not be granted unless a security has been  
15 lodged by the applicant for the mining lease in accordance with  
16 subsection (1).
- 17 (5) Notwithstanding section 154(1), an applicant for a mining lease  
18 who fails to comply with subsection (1) does not commit an  
19 offence against this Act.

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

22 **85. Rights of holder of mining lease**

- 23 (1) Subject to this Act and to any conditions to which the mining  
24 lease is subject, a mining lease authorises the lessee thereof and  
25 his agents and employees on his behalf to —  
26 (a) work and mine the land in respect of which the lease  
27 was granted for any minerals; and  
28 (b) take and remove from the land any minerals and dispose  
29 of them; and

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- 1 (c) take and divert subject to the *Rights in Water and*  
2 *Irrigation Act 1914*, or any Act amending or replacing  
3 the relevant provisions of that Act, water from any  
4 natural spring, lake, pool or stream situate in or flowing  
5 through such land or from any excavation previously  
6 made and used for mining purposes, and subject to that  
7 Act to sink a well or bore on such land and take water  
8 therefrom and to use the water so taken for his domestic  
9 purposes and for any purpose in connection with mining  
10 for minerals on the land; and
- 11 (d) do all acts and things that are necessary to effectually  
12 carry out mining operations in, on or under the land.
- 13 (2) Subject to this Act and to any conditions to which the mining  
14 lease is subject, the lessee of a mining lease —
- 15 (a) is entitled to use, occupy, and enjoy the land in respect  
16 of which the mining lease was granted for mining  
17 purposes; and
- 18 (b) owns all minerals lawfully mined from the land under  
19 the mining lease.
- 20 (3) The rights conferred by this section are exclusive rights for  
21 mining purposes in relation to the land in respect of which the  
22 mining lease was granted.

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

25 **85A. Land the subject of mining lease not to be again marked out**  
26 **for a certain period**

- 27 (1) Where a mining lease is surrendered or forfeited, or expires, the  
28 land the subject of the lease or any part of that land shall not be  
29 marked out or applied for as a prospecting licence or an  
30 exploration licence by or on behalf of —

- 1 (a) the person who was the holder of the mining lease  
2 immediately prior to the date of the surrender, forfeiture  
3 or expiry; or  
4 (b) any person who had an interest in the mining lease  
5 immediately prior to that date; or  
6 (c) any person who is related to a person referred to in  
7 paragraph (a) or (b),

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

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

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

14 **85B. Special prospecting licence on a mining lease**

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

- 22 (1a) A special prospecting licence may only be applied for by,  
23 granted to or held by a natural person.

- 24 (2) An application for a special prospecting licence shall be  
25 accompanied by the written consent of the holder of the primary  
26 tenement to the granting of the special prospecting licence.

- 27 (3) Subject to this section, the mining registrar may, if the mining  
28 registrar is satisfied that the holder of the primary tenement has  
29 consented in writing to the granting of the special prospecting  
30 licence, grant a special prospecting licence on such terms or  
31 conditions as the mining registrar thinks fit, but a special  
32 prospecting licence so granted —

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- 1 (a) shall not exceed 10 ha in area; and
- 2 (b) authorises the holder of the special prospecting licence  
3 to prospect only for gold; and
- 4 (c) does not, unless the Minister otherwise directs, prevent  
5 the holder of the primary tenement from prospecting for  
6 minerals other than gold in or on the land the subject of  
7 the special prospecting licence; and
- 8 (d) does not authorise the holder of the special prospecting  
9 licence to excavate, extract or remove during the period  
10 for which the mining tenement remains in force a total  
11 amount of earth, soil, rock, stone, fluid or mineral  
12 bearing substances in excess of 500 t, except in so far as  
13 the prior written approval of the Minister may otherwise  
14 permit; and
- 15 (e) does not authorise mining to be carried out in any  
16 portion of the land that is —
- 17 (i) below a depth specified in the terms and  
18 conditions of the special prospecting licence, and  
19 any depth so specified shall be less than 50 m  
20 below the lowest part of the natural surface of  
21 the land the subject of the special prospecting  
22 licence; or
- 23 (ii) if a depth is not so specified, 50 m or more below  
24 the lowest part of the natural surface of the land  
25 the subject of the special prospecting licence,  
26 except in so far as both the prior written consent  
27 of the holder of the primary tenement and the  
28 prior written approval of the Minister may  
29 otherwise permit.
- 30 (3a) A special prospecting licence may be granted for a period of  
31 3 months or for any period which is a multiple of 3 months but  
32 which does not exceed 4 years.

- 1 (4) A special prospecting licence —
- 2 (a) continues in force notwithstanding that the holder of the
- 3 primary tenement may apply for and be granted a
- 4 retention licence, mining lease or general purpose lease
- 5 in respect of the land; but
- 6 (b) ceases (and the land in respect of which it was granted
- 7 reverts to the holder of the primary tenement as an
- 8 integral part of the mining tenement held by that person)
- 9 on the surrender, forfeiture or expiry of that special
- 10 prospecting licence.
- 11 (5) No legal or equitable interest in or affecting —
- 12 (a) a special prospecting licence; or
- 13 (b) a mining lease in respect of the land or any part of the
- 14 land the subject of a special prospecting licence,
- 15 is capable of being created, affected or dealt with, whether
- 16 directly or indirectly, except with the prior written consent of
- 17 the holder of the primary tenement, and no person shall hold or
- 18 have any beneficial, legal or equitable interest in —
- 19 (c) more than 10 such special prospecting licences; or
- 20 (d) more than one such mining lease.
- 21 (6) A reference in subsection (5) to a person includes a reference to
- 22 any other person who would, for the purposes of the
- 23 Corporations Act, be taken to be an associate of the
- 24 first-mentioned person.
- 25 (7) The holder of a special prospecting licence granted for a period
- 26 of 4 years may make an application for a mining lease for gold
- 27 in respect of the land or any part of the land which is the subject
- 28 of the special prospecting licence, and on an application being
- 29 made the Minister may grant the application for a lease in
- 30 respect of that portion of the land to which the special
- 31 prospecting licence relates that is less than a depth of 50 m, or
- 32 such greater depth as the Minister approves with the prior
- 33 written consent of the holder of the primary tenement, below the

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- 1 lowest part of the natural surface of the land and on such terms  
2 and conditions as the Minister thinks fit, and thereupon the area  
3 of land in respect of which that mining lease is granted shall be  
4 excised from the primary tenement.
- 5 (7a) Sections 74, 74A and 75 apply to an application for a mining  
6 lease under subsection (7).
- 7 (8) A mining lease granted pursuant to subsection (7) —
- 8 (a) has effect in relation to gold and any minerals occurring  
9 in conjunction with that gold; and
- 10 (b) does not authorise the holder of the mining lease or any  
11 agents or employees of the holder to excavate, extract or  
12 remove a total amount of earth, soil, rock, stone, fluid or  
13 mineral bearing substances in excess of 750 t in any  
14 year, except in so far as both the prior written consent of  
15 the holder of the primary tenement and the prior written  
16 approval of the Minister may otherwise permit; and
- 17 (c) ceases to have effect (and the land in respect of which it  
18 was granted reverts to the holder of the primary  
19 tenement as an integral part of the tenement held by that  
20 person) on the surrender, forfeiture or expiry of that  
21 lease.
- 22 (9) Subject to this section, the provisions of this Act relating to —
- 23 (a) prospecting licences apply to a special prospecting  
24 licence; and
- 25 (b) mining leases apply to a mining lease,  
26 granted under this section.
- 27 (9a) Where, before the determination of an application for a special  
28 prospecting licence in respect of land, the primary tenement is  
29 surrendered or forfeited or expires, the application is, by virtue  
30 of this subsection, converted into an application for a  
31 prospecting licence in respect of that land and the provisions of  
32 this Act relating to such applications apply accordingly.



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

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

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

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

15 (b) prior to the surrender, forfeiture or expiry of the primary  
16 tenement the holder of the primary tenement applies for  
17 a retention licence, a mining lease or a general purpose  
18 lease and the licence or lease is subsequently granted in  
19 respect of any land the subject of the special prospecting  
20 licence.

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

24 **Division 4 — General purpose lease**

25 *[85C. Deleted: No. 52 of 1995 s. 30.]*

26 **86. Grant of general purpose lease**

27 (1) Subject to this Act, the Minister may, on the application of any  
28 person, after receiving a recommendation of the mining registrar  
29 or the warden, grant to such person a lease to be known as a  
30 general purpose lease for use by him in respect to mining  
31 operations on such terms and conditions as the Minister  
32 considers reasonable.

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- 1 (2) Any such person may be granted more than one general purpose  
2 lease.
- 3 (3) The area of land in respect of which any one general purpose  
4 lease may be granted shall not exceed 10 ha, unless the Minister  
5 is satisfied that a larger area of land is required for the purposes  
6 of the lease, and shall be limited to such depth below the natural  
7 surface of the land as may be specified in the lease or, where no  
8 depth is so specified, to 15 m below the lowest part of the  
9 natural surface of the land.
- 10 (4) An application for the grant of a general purpose lease in respect  
11 of any land —
- 12 (a) shall be made, and may be objected to, in like manner to  
13 an application for a mining lease; and
- 14 (b) shall be determined in the same manner as an  
15 application for a mining lease.
- 16 (5) An application for the grant of a general purpose lease in respect  
17 of an area of land which exceeds 10 ha shall be accompanied by  
18 a statement specifying the reasons why such an area of land is  
19 required for the purposes of the lease.

20 *[Section 86 amended: No. 100 of 1985 s. 59; No. 58 of 1994*  
21 *s. 32; No. 17 of 1999 s. 16.]*

22 **87. Purposes for which general purpose lease may be granted**

- 23 (1) A general purpose lease entitles the lessee thereof and his agents  
24 and employees to the exclusive occupation of the land in respect  
25 of which the general purpose lease was granted for one or more  
26 of the following purposes —
- 27 (a) for erecting, placing and operating machinery thereon in  
28 connection with the mining operations carried on by the  
29 lessee in relation to which the general purpose lease was  
30 granted;

- 1 (b) for depositing or treating thereon minerals or tailings  
2 obtained from any land in accordance with this Act;  
3 (c) for using the land for any other specified purpose  
4 directly connected with mining operations.

- 5 (2) The purpose or purposes for which a general purpose lease is  
6 granted shall be specified in the lease.

7 *[Section 87 amended: No. 100 of 1985 s. 60.]*

8 **88. Term of general purpose lease**

- 9 (1) Subject to this Act, a general purpose lease remains in force —  
10 (a) where it is granted in relation to a particular mining  
11 lease and contains no other provision for expiry, until —  
12 (i) it is surrendered or forfeited; or  
13 (ii) the date of surrender, forfeiture or expiry of the  
14 mining lease (or any renewal thereof) in relation  
15 to which it was granted or 21 years from the date  
16 deemed pursuant to section 79 to be the date on  
17 which the term of the general purpose lease  
18 commenced or, if any other date of  
19 commencement is specified in the general  
20 purpose lease, the specified date, whichever is  
21 the longer period;  
22 or  
23 (b) in any other case, for a period of 21 years or until it is  
24 sooner surrendered or forfeited.  
25 (2) Notwithstanding subsection (1), on receipt of an application  
26 made in the prescribed manner during the final year of the term  
27 of the lease, the Minister —  
28 (a) shall renew the term of the lease as to the whole of the  
29 land the subject of the lease —  
30 (i) for one further period of 21 years; and

- 1 (ii) on the terms and conditions to which the lease  
2 was subject before its renewal;  
3 and  
4 (b) may, in the case of a lease renewed under paragraph (a),  
5 renew or further renew the term of the lease as to the  
6 whole or any part of the land the subject of the lease —  
7 (i) for a period not exceeding 21 years; and  
8 (ii) on such terms and conditions as the Minister  
9 thinks fit.
- 10 (3) Where an application for a renewal of a general purpose lease is  
11 made in respect of any land and the term of that lease would but  
12 for this subsection expire, that lease shall continue in force in  
13 respect to the land the subject of that application until the  
14 application for a renewal is determined.
- 15 (4) If, after an application for renewal is made under this section —  
16 (a) the holder of the general purpose lease transfers the  
17 lease; or  
18 (b) where there are 2 or more holders of the general purpose  
19 lease, a holder transfers the holder's interest in the lease,  
20 the application continues in the name of the transferee of the  
21 lease or interest as if the transferee were an applicant or one of  
22 the applicants, as the case requires.
- 23 *[Section 88 inserted: No. 100 of 1985 s. 61; amended: No. 105*  
24 *of 1986 s. 11; No. 12 of 1987 s. 6; No. 17 of 1999 s. 17.]*

25 **89. Form of general purpose lease**

26 A general purpose lease shall be in the prescribed form and shall  
27 contain such covenants, terms and conditions as are prescribed  
28 and specified therein and such additional terms and conditions  
29 as the Minister may, from time to time, in writing specify.

30 *[Section 89 amended: No. 100 of 1985 s. 62.]*

1 **90. Application of certain provisions to general purpose leases**

2 (1) Section 6(1a), (1c) and (1d) apply, with such modifications as  
3 the circumstances require, to and in relation to a general purpose  
4 lease as if —

5 (a) a reference in those subsections, other than in  
6 subsection (1d)(a),~~subsections~~ to a mining lease were a  
7 reference to a general purpose lease; and

8 (b) subsection (1d)(a) were replaced by the following  
9 paragraph —

10  
11 (a) a programme of work lodged by the holder of  
12 the general purpose lease in compliance with a  
13 condition prescribed for the purposes of  
14 section 89; or

15  
16 ~~(b) the reference in subsection (1d)(a) to the condition~~  
17 ~~referred to in section 82(1)(ca) were a reference to a~~  
18 ~~condition prescribed by the regulations for the purposes~~  
19 ~~of section 89.~~

20 (2) Section 74 applies, with such modifications as the  
21 circumstances require, to and in relation to a general purpose  
22 lease as if —

23 (a) a reference in that section to a mining lease were a  
24 reference to a general purpose lease; and

25 (b) subsection (1)(ca)(ii) and (iii) were replaced by the  
26 following subparagraph —

27  
28 (ii) a statement in accordance with  
29 subsection (1a);

30  
31 ~~(b) in subsection (1)(ca)(ii) “and a mineralisation report~~  
32 ~~prepared by a qualified person” were deleted.~~

- 1 (3) Section 75 applies, with such modifications as the  
2 circumstances require, to and in relation to a general purpose  
3 lease as if —
- 4 (a) a reference in that section to a mining lease were a  
5 reference to a general purpose lease; and
- 6 (b) the amendments made to that section by section 31 of  
7 the *Mining Amendment Act 2004* had not come into  
8 operation.
- 9 (4) Sections 76, 79, 80, ~~83, 84A, 103AK, 103AR, 82A, 83, 84, 84A,~~  
10 104 and 105 apply, with such modifications as the  
11 circumstances require, to and in relation to a general purpose  
12 lease as if a reference in those sections to a mining lease were a  
13 reference to a general purpose lease.

14 *[Section 90 inserted: No. 39 of 2004 s. 91.]*

15 **Division 5 — Miscellaneous licences**

16 *[90A. Deleted: No. 52 of 1995 s. 31.]*

17 **91. Grant of miscellaneous licence**

- 18 (1) Subject to this Act, and in the case of a miscellaneous licence  
19 for water to the *Rights in Water and Irrigation Act 1914*, or any  
20 Act amending or replacing the relevant provisions of that Act,  
21 the mining registrar or the warden, in accordance with  
22 section 42 (as read with section 92), may, on the application of  
23 any person, grant in respect of any land a licence, to be known  
24 as a miscellaneous licence, for any one or more of the purposes  
25 prescribed.
- 26 (2) A person may be granted more than one miscellaneous licence.
- 27 (3) A miscellaneous licence shall —
- 28 (a) be in the prescribed form; and
- 29 (b) authorise the holder to do such matters and things as are  
30 specified in the licence.

1 [(4), (5) deleted]

2 (6) A miscellaneous licence shall not be granted unless the purpose  
3 for which it is granted is directly connected with mining.

4 (7) Sections 18, 23 and 27 do not prevent a miscellaneous licence  
5 from being applied for or granted in respect of land that is the  
6 subject of another mining tenement.

7 (8) If a miscellaneous licence is granted in respect of land that is  
8 subject to another mining tenement the miscellaneous licence  
9 and the other mining tenement apply concurrently with respect  
10 to that land.

11 (9) Before an application for a miscellaneous licence is determined  
12 a copy of the application shall, within the prescribed time, be  
13 given to the local government and to such other persons as may  
14 be prescribed.

15 (10) The local government is entitled to be heard on the application  
16 and may submit to the mining registrar or the warden, as the  
17 case requires, any terms and conditions to which it considers the  
18 miscellaneous licence, if granted, should be subject.

19 [Section 91 inserted: No. 58 of 1994 s. 33; amended: No. 14 of  
20 1996 s. 4; No. 35 of 1998 s. 4(1) and (2); No. 15 of 2002 s. 18;  
21 No. 51 of 2012 s. 26.]

22 **91A. Term and renewal of existing licence or licence granted in**  
23 **respect of existing application**

- 24 (1) This section applies to a miscellaneous licence that is —  
25 (a) in force on the commencement; or  
26 (b) granted on or after the commencement in respect of an  
27 application made under section 91 before the  
28 commencement.

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- 1 (2) Subject to this Act, a licence to which this section applies  
2 remains in force for —
- 3 (a) a period of 5 years from the day on which it is or was  
4 granted; or
- 5 (b) in the case of a licence referred to in subsection (1)(a)  
6 that was renewed before the commencement, the period  
7 for which it was so renewed.
- 8 (3) Notwithstanding subsection (2), on receipt of an application  
9 made in the prescribed manner during the final year of the term  
10 of the licence, the Minister —
- 11 (a) may renew the term of the licence as to the whole or any  
12 part of the land the subject of the licence —
- 13 (i) for one further period not exceeding 5 years; and  
14 (ii) on such terms and conditions as the Minister  
15 thinks fit;
- 16 and
- 17 (b) shall, in the case of a licence renewed under  
18 paragraph (a), renew or further renew the term of the  
19 licence as to the whole of the land the subject of the  
20 licence —
- 21 (i) for a period that is the same as the period for  
22 which the licence was renewed under  
23 paragraph (a); and
- 24 (ii) on the terms and conditions to which the licence  
25 was subject before its renewal.
- 26 (4) If an application for renewal is made under this section and the  
27 term of the licence would but for this subsection expire, the  
28 licence continues in force in respect of the land the subject of  
29 the application until the application is determined.
- 30 (5) If the holder of a licence to which this section applies transfers  
31 the licence after making an application for renewal under this



1 section, the application continues in the name of the transferee  
2 of the licence as if the transferee had made it.

3 (6) In this section and section 91B —

4 **commencement** means the commencement of the *Mining*  
5 *Amendment Act 1998*.

6 [*Section 91A inserted: No. 35 of 1998 s. 5.*]

7 **91B. Term and renewal of licence granted in respect of new**  
8 **application**

9 (1) This section applies to a miscellaneous licence granted in  
10 respect of an application made under section 91 on or after the  
11 commencement.

12 (2) Subject to this Act, a licence to which this section applies  
13 remains in force for a period of 21 years.

14 (3) Notwithstanding subsection (2), on receipt of an application  
15 made in the prescribed manner during the final year of the term  
16 of the licence, the Minister —

17 (a) shall renew the term of the licence as to the whole of the  
18 land the subject of the licence —

19 (i) for one further period of 21 years; and

20 (ii) on the terms and conditions to which the licence  
21 was subject before its renewal;

22 and

23 (b) may, in the case of a licence renewed under  
24 paragraph (a), renew or further renew the term of the  
25 licence as to the whole or any part of the land the subject  
26 of the licence —

27 (i) for a period not exceeding 21 years; and

28 (ii) on such terms and conditions as the Minister  
29 thinks fit.

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1 (4) If an application for renewal is made under this section and the  
2 term of the licence would but for this subsection expire, the  
3 licence continues in force in respect of the land the subject of  
4 the application until the application is determined.

5 (5) If the holder of a licence to which this section applies transfers  
6 the licence after making an application for renewal under this  
7 section, the application continues in the name of the transferee  
8 of the licence as if the transferee had made it.

9 *[Section 91B inserted: No. 35 of 1998 s. 5.]*

10 **92. Provisions applying to all miscellaneous licences**

11 Sections 41, 42, 44, 46, ~~46A~~, 47 and 52 apply, with such  
12 modifications as the circumstances require, to and in relation to  
13 a miscellaneous licence as though in those provisions a  
14 reference to a prospecting licence was to be construed as a  
15 reference to a miscellaneous licence.

16 *[Section 92 inserted: No. 100 of 1985 s. 64; amended: No. 22 of*  
17 *1990 s. 25; No. 58 of 1994 s. 34; No. 17 of 1999 s. 6(3); No. 39*  
18 *of 2004 s. 40.]*

19 **93. Map to accompany application**

20 *[(1) deleted]*

21 (2) An application for the grant of the miscellaneous licence shall  
22 be made by reference to a written description of the area of land  
23 in respect of which the miscellaneous licence is sought, and be  
24 accompanied by a map on which are clearly delineated the  
25 boundaries of that area.

26 *[Section 93 amended: No. 100 of 1985 s. 65; No. 58 of 1994*  
27 *s. 35; No. 51 of 2012 s. 27.]*

28 **94. Terms and conditions**

29 (1) A miscellaneous licence is subject to the terms and conditions  
30 prescribed.

1 (2) In addition to the terms and conditions prescribed in relation to  
2 a miscellaneous licence, the mining registrar or the warden, as  
3 the case requires, may make a miscellaneous licence subject to  
4 such further terms and conditions as he thinks fit and specifies  
5 in that licence.

6 (3) Where the mining registrar or the warden refuses an application  
7 for a miscellaneous licence or grants the application on  
8 conditions the applicant considers unreasonable, the applicant  
9 may within the time and in the manner prescribed appeal to the  
10 Minister against such refusal or conditions as the case may be.

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

14 *[Section 94 amended: No. 100 of 1985 s. 66; No. 21 of 1993*  
15 *s. 45; No. 58 of 1994 s. 36; No. 52 of 1995 s. 32.]*

16 **94A. Grant of mining tenement on land in a miscellaneous licence**

17 (1) Sections 18, 23, 27, 43 and 76 do not prevent another mining  
18 tenement from being marked out, applied for or granted in  
19 respect of land that is the subject of a miscellaneous licence.

20 (2) Notwithstanding section 43 or 76, if another mining tenement is  
21 granted in respect of land that is subject to a miscellaneous  
22 licence the other mining tenement and the miscellaneous licence  
23 apply concurrently with respect to that land.

24 *[Section 94A inserted: No. 22 of 1990 s. 26; amended: No. 15 of*  
25 *2002 s. 19.]*

26 **94B. Surrender, forfeiture or expiry of concurrent tenement**

27 Subject to this Act, if —

28 (a) under section 91(8) or 94A(2), 2 or more mining  
29 tenements apply concurrently with respect to land; and

30 (b) one of the mining tenements is surrendered or forfeited  
31 or expires,

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1 the land continues to be subject to the other mining tenement or  
2 tenements.

3 *[Section 94B inserted: No. 22 of 1990 s. 26; amended: No. 58 of*  
4 *1994 s. 37.]*

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

6 **Division 6 — Surrender and forfeiture of mining tenements**

7 **95. Surrender of mining tenement**

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

11 *[(2), (3) deleted]*

12 (4) Where a mining tenement is being surrendered as to part only,  
13 the form of surrender shall be prepared by reference to a written  
14 description of the area of the part to be surrendered, and be  
15 accompanied by a map on which are clearly delineated the  
16 respective boundaries of that mining tenement and of the part of  
17 that mining tenement which is being surrendered.

18 (5) Where part of a mining tenement is surrendered, notification  
19 thereof shall be endorsed as prescribed on the mining tenement,  
20 for which purpose the holder shall produce his copy of the  
21 document on demand, and thereafter the rent payable in respect  
22 thereof shall be reduced as provided for in the regulations.

23 (6) Notwithstanding anything to the contrary in this Act other than  
24 section 26A(3) and (4), where a mining tenement is surrendered,  
25 whether under this section or under section 26A or 65, in whole  
26 or in part, every right, title and interest held under the mining  
27 tenement in respect of —

28 (a) the whole of the land the subject of that tenement; or

- 1 (b) that part of that land which is being surrendered,  
2 as the case requires, absolutely ceases and determines in the  
3 case of —
- 4 (c) a conditional surrender, on the date on which the  
5 surrender becomes absolute;
- 6 (d) a surrender other than a conditional surrender or a  
7 surrender under section 26A(2) or 65, on the date the  
8 surrender is registered;
- 9 (e) a surrender under section 26A(2), on the expiry of the  
10 period referred to in section 26A(1);
- 11 (f) a surrender under section 65, on the date on which the  
12 surrender becomes effective under that section.

13 *[Section 95 amended: No. 52 of 1983 s. 5; No. 100 of 1985*  
14 *s. 67; No. 105 of 1986 s. 12; No. 22 of 1990 s. 27; No. 54 of*  
15 *1996 s. 14; No. 39 of 2004 s. 92.]*

16 **95A. Exploration licence — surrender of part of block**

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

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

1 **96. Forfeiture of certain mining tenements**

2 (1) The warden may upon the application of —

3 (a) the Minister or any mining registrar or other officer of  
4 the Department authorised by the Minister in writing in  
5 that behalf; or

6 (b) any person,

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

11 (1a) An authorisation under subsection (1)(a) may be given to a  
12 specified officer or to officers of a specified class, or may be  
13 given to the holder or holders for the time being of a specified  
14 office or class of office.

15 (2) An order for forfeiture may be made in relation to a mining  
16 tenement to which subsection (1) applies if —

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

19 (b) any term or condition to which the mining tenement is  
20 subject, ~~including any condition referred to in section 46~~  
21 ~~or section 50, including any condition referred to in~~  
22 [section 46, 50, 103AD, 103AF, 103AH, 103AL,](#)  
23 [103AN\(4\) and 103AR\(2\)](#) is not complied with; or

24 (ba) a report required under section 51 or 115A in relation to  
25 the mining tenement is not filed in accordance with this  
26 Act; or

27 (baa) any request under section 51A is not complied with; or

28 (bb) any requirement under [section 55B\(2\), 103AU\(1\)](#)  
29 ~~section 52(1a), 55B(2)~~ or 115B(2) is not complied with;  
30 or

31 (c) the holder of the mining tenement is convicted of an  
32 offence against this Act,

- 1 but an order shall not be made under subsection (1) unless the  
2 warden is satisfied that the requirements of this Act in relation  
3 to such mining tenement have not been complied with in a  
4 material respect and that the matter is of sufficient gravity to  
5 justify the forfeiture of the mining tenement.
- 6 (2a) An application for forfeiture under subsection (1)(b) and made  
7 in respect of the expenditure conditions applicable to the mining  
8 tenement shall be made during the expenditure year in relation  
9 to which the requirement is not complied with or within  
10 8 months thereafter, and not otherwise.
- 11 (3) A warden, as he thinks fit in the circumstances of the case, as an  
12 alternative to making an order under this section for forfeiture  
13 of such mining tenement may —
- 14 (a) impose on the holder of the mining tenement —
- 15 (i) in a case where expenditure conditions have not  
16 been complied with, a penalty not exceeding  
17 \$10 000;
- 18 (ii) in any other case, a penalty not exceeding  
19 \$75 000 if the holder is an individual or  
20 \$150 000 if the holder is a body corporate;
- 21 or
- 22 (b) award the whole or any part of the amount of any such  
23 penalty to the applicant if the applicant is not the  
24 Minister, a mining registrar or an officer of the  
25 Department authorised in writing by him; or
- 26 (c) impose no penalty on the holder.
- 27 (3a) Where —
- 28 (a) a mining tenement that is the subject of an application  
29 for forfeiture under this section is surrendered (other  
30 than by way of a conditional surrender or a surrender  
31 under section 26A or 65) before that application is dealt  
32 with by the warden; and

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1 (b) the applicant for forfeiture is not the Minister, a mining  
2 registrar or an officer of the Department authorised in  
3 writing by the Minister,

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

11 (3b) Where —

12 (a) a prospecting licence that is the subject of an application  
13 for forfeiture under this section has continued in force  
14 under section 49(2) or 70C(6) pending the determination  
15 of an application referred to in that section (the  
16 *tenement application*); and

17 (b) the applicant for forfeiture is not the Minister, a mining  
18 registrar or an officer of the Department authorised in  
19 writing by the Minister; and

20 (c) the tenement application is withdrawn in accordance  
21 with the regulations before the application for forfeiture  
22 is dealt with by the warden,

23 the applicant for forfeiture has, from the date on which the  
24 tenement application is withdrawn until the expiry of a period of  
25 14 days after the date of being served with written notice of the  
26 withdrawal by an officer of the Department, a right in priority to  
27 any other person to mark out or apply for, or both, a mining  
28 tenement upon the whole or any part of the land that was the  
29 subject of the prospecting licence.

30 (4) Where an order for the forfeiture of a mining tenement is made  
31 under this section, if the applicant therefor was not the Minister,  
32 a mining registrar or an officer authorised in writing by the  
33 Minister, such applicant shall have, for a period of 14 days after  
34 the date of the order, a right in priority to any other person to



- 1 mark out or apply for, or both, a mining tenement upon the  
2 whole or part of the land that was the subject thereof.
- 3 (5) If the applicant fails to proceed with his forfeiture application  
4 the warden may award the holder of the mining tenement such  
5 sum for costs and expenses as the warden thinks fit.
- 6 (6) Where any penalty imposed as an alternative to forfeiture under  
7 subsection (3)(a) is not paid within the time specified by the  
8 warden or within 30 days of the hearing of the application for  
9 forfeiture if no such time is specified by the warden, the mining  
10 tenement shall thereupon be forfeited and the rights conferred  
11 on the applicant for forfeiture under subsection (4) shall apply  
12 as if the warden had made an order for forfeiture on the day on  
13 which the mining tenement is forfeited pursuant to this  
14 subsection.
- 15 (7) No prospecting licence shall be forfeited for non-compliance by  
16 the holder thereof with the expenditure conditions, if the holder  
17 satisfies the warden that the non-compliance therewith has been  
18 occasioned by a strike.
- 19 (8) Subject to section 97A, the warden may, for any cause that he  
20 deems sufficient and subject to subsection (9), cancel —
- 21 (a) an order for the forfeiture of any mining tenement made  
22 under subsection (1); or
- 23 (b) the forfeiture arising under subsection (6) of any mining  
24 tenement referred to in subsection (1),
- 25 and restore the mining tenement so forfeited to the holder thereof.
- 26 (9) The warden may, in effecting a cancellation and restoration  
27 under subsection (8), impose on the holder of the mining  
28 tenement restored under that subsection such conditions as he  
29 thinks fit.

30 *[Section 96 amended: No. 69 of 1981 s. 21; No. 100 of 1985*  
31 *s. 68; No. 105 of 1986 s. 13; No. 22 of 1990 s. 28 and 38;*  
32 *No. 37 of 1993 s. 13; No. 58 of 1994 s. 41; No. 54 of 1996 s. 23;*

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1 *No. 17 of 1999 s. 6(4); No. 15 of 2002 s. 21 and 28; No. 39 of*  
2 *2004 s. 46 and 93; No. 51 of 2012 s. 28.]*

3 **96A. Forfeiture of exploration licence or retention licence**

4 (1) When —

5 (a) an exploration licence is liable to forfeiture by virtue of  
6 section 63A; or

7 (b) a retention licence is liable to forfeiture by virtue of  
8 section 70K,

9 the Minister may cause the licence to be forfeited by declaring  
10 by notice published in the *Government Gazette* that the licence  
11 is forfeited.

12 (2) Subject to section 97A, the Minister may, for any cause that he  
13 deems sufficient and subject to subsection (3), by notice under  
14 his hand published in the *Government Gazette* —

15 (a) cancel a declaration made under subsection (1); and

16 (b) restore the licence to which the declaration referred to in  
17 paragraph (a) relates to the holder thereof.

18 (3) The Minister may, in effecting the cancellation and restoration  
19 referred to in subsection (2), impose on the holder of the licence  
20 restored under that subsection such conditions as he thinks fit.

21 (4) The production of a copy of the *Government Gazette* containing  
22 a notice published therein under subsection (1) or (2) is  
23 evidence that the licence concerned has been forfeited or  
24 restored, as the case requires.

25 (5) The Minister, as he thinks fit in the circumstances of the case, as  
26 an alternative to causing the licence to be forfeited, may —

27 (a) impose on the holder of the licence a penalty not  
28 exceeding \$75 000 if the holder is an individual or  
29 \$150 000 if the holder is a body corporate; or

- 1 (b) award the whole or any part of the amount of any such  
2 penalty to any person, other than an officer of the  
3 Department; or  
4 (c) impose no penalty on the holder.
- 5 (6) Where any penalty imposed as an alternative to forfeiture under  
6 subsection (5) is not paid within the time specified by the  
7 Minister, or within 30 days of written notice of the penalty  
8 being given by the Minister to the holder of the licence if no  
9 other time is specified by the Minister, the licence is thereby  
10 forfeited.
- 11 (7) In this section *licence* means the exploration licence or the  
12 retention licence, as the case requires.
- 13 [Section 96A inserted: No. 69 of 1981 s. 22; amended: No. 100  
14 of 1985 s. 69; No. 22 of 1990 s. 38; No. 37 of 1993 s. 10(2);  
15 No. 15 of 2002 s. 28; No. 51 of 2012 s. 29.]

16 **97. Forfeiture of mining lease or general purpose lease**

- 17 (1) Where a mining lease or general purpose lease is liable to  
18 forfeiture for a breach of the lessee's covenant to pay rent or  
19 royalty or for breach of a covenant included in the lease under  
20 section 82(1) or section 89 or a condition to which the lease is  
21 subject, the Minister may declare, by notice under his hand  
22 published in the *Government Gazette*, such lease forfeited.
- 23 (2) The production of a copy of the *Government Gazette* containing  
24 a notice published therein pursuant to subsection (1), is  
25 evidence that a breach of such a covenant has been committed  
26 by the lessee, and that the estate and interest of the lessee in  
27 such lease has been lawfully determined.
- 28 (3) Subject to section 97A, the Minister, for any cause that he  
29 deems sufficient, may cancel the forfeiture of any such lease  
30 and by subsequent notice under his hand published in the  
31 *Government Gazette*, restore the lessee as of his former estate in  
32 respect of the forfeited lease.

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- 1 (4) The Minister, upon such cancellation and restoration as is  
2 referred to in subsection (3), may impose upon the lessee such  
3 conditions as he thinks fit.
- 4 (5) The Minister, as he thinks fit in the circumstances of the case, as  
5 an alternative to declaring the lease forfeited, may —
- 6 (a) impose on the lessee a penalty not exceeding \$75 000 if  
7 the lessee is an individual or \$150 000 if the lessee is a  
8 body corporate; or
- 9 (b) award the whole or any part of the amount of any such  
10 penalty to any person, other than an officer of the  
11 Department; or
- 12 (c) impose no penalty on the lessee.
- 13 (6) Where any penalty imposed as an alternative to forfeiture under  
14 subsection (5) is not paid within the time specified by the  
15 Minister, or within 30 days of written notice of the penalty  
16 being given by the Minister to the lessee if no other time is  
17 specified by the Minister, the lease is thereby forfeited.

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

20 **97A. Application for restoration of mining tenement after**  
21 **forfeiture**

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

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

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- 1 (ii) grant the application and restore the mining  
2 tenement to the former holder subject to such  
3 further or other conditions as the warden may  
4 specify; or  
5 (iii) refuse the application;  
6 and  
7 (b) in any other case, shall as soon as practicable thereafter  
8 transmit to the Minister for his consideration the notes  
9 of evidence and any maps or other documents referred  
10 to therein, and his report recommending the granting or  
11 refusal of the application together with his reasons for  
12 the recommendation.
- 13 (8) On receipt of notes of evidence and any maps or documents  
14 transmitted to him pursuant to subsection (7), the Minister may  
15 grant or refuse the application for restoration of the mining  
16 tenement, as he determines and whether the warden  
17 recommends the granting of the application or the refusal  
18 thereof, and may impose on a mining tenement so restored such  
19 further or other conditions as the Minister may specify.
- 20 *[Section 97A inserted: No. 100 of 1985 s. 71; amended: No. 37*  
21 *of 1993 s. 26; No. 39 of 2004 s. 64; No. 12 of 2010 s. 35.]*
- 22 **98. Application for forfeiture on other grounds**
- 23 (1) Where the requirements of this Act are not being complied with  
24 in respect of the expenditure conditions applicable to an  
25 exploration licence or a mining lease, any person may apply for  
26 the forfeiture of such licence or lease as provided in this section.
- 27 (2) An application for forfeiture under this section shall be made,  
28 during the expenditure year in relation to which the requirement  
29 is not complied with or within 8 months thereafter, in such form  
30 and manner as may be prescribed and shall be accompanied by  
31 the prescribed fee.
- 32 (3) The application for forfeiture shall be heard by the warden.

- 1 (4A) When the warden finds that the holder of an exploration licence  
2 or lessee of the mining lease has failed to comply with such  
3 requirements as are mentioned in subsection (1), the warden  
4 may recommend the forfeiture of such licence or lease, or  
5 impose a penalty not exceeding \$10 000 as an alternative to the  
6 forfeiture or dismiss the application.
- 7 (4B) Where a penalty is imposed under this section the warden may  
8 award the whole amount of the penalty or any part thereof to the  
9 applicant.
- 10 (5) A recommendation shall not be made under subsection (4A)  
11 unless the warden is satisfied that the non-compliance with such  
12 requirements is, in the circumstances of the case, of sufficient  
13 gravity to justify the forfeiture.
- 14 (6) As soon as practicable after the hearing of the application the  
15 warden shall forward to the Minister the notes of evidence, with  
16 a report and the warden's recommendation, if any, on the  
17 application and the Minister may, before acting on the  
18 recommendation, require the warden to take such further  
19 evidence or rehear the application as the Minister directs.
- 20 (7) No exploration licence or mining lease shall be forfeited for  
21 non-compliance by the holder or lessee thereof with the  
22 expenditure conditions, if the holder or lessee satisfies the  
23 Minister that the non-compliance therewith has been occasioned  
24 by a strike.
- 25 (8) If the applicant fails to proceed with his forfeiture application,  
26 the warden may award the holder or lessee such sum for costs  
27 and expenses as he thinks fit.
- 28 (9) Where any penalty imposed by a warden as an alternative to  
29 forfeiture under subsection (4A) is not paid within the time  
30 specified by the warden, or within 30 days after the penalty is  
31 imposed where no other time is specified, the warden shall  
32 make a recommendation to the Minister as to whether or not the  
33 licence or lease should be forfeited.

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

4 **99. Proceedings by Minister on recommendation**

5 (1) The Minister, after receiving the recommendation of the warden  
6 as provided in section 98, may, as the Minister thinks fit —

- 7 (a) declare the exploration licence or the lease to which the  
8 recommendation relates, forfeited; or  
9 (b) impose a penalty not exceeding \$10 000 as an  
10 alternative to forfeiture; or  
11 (c) award the whole amount of the penalty or any part  
12 thereof to the applicant who applied for forfeiture; or  
13 (d) determine not to forfeit such licence or lease or impose  
14 any penalty.

15 (2) Where the Minister declares an exploration licence or lease  
16 forfeited under subsection (1) he shall forthwith give written  
17 notice thereof to the applicant and shall publish notice of the  
18 declaration in the *Government Gazette* and on the publication of  
19 the notice the licence or lease shall become forfeited.

20 (3) Where any penalty imposed as an alternative to forfeiture under  
21 subsection (1)(b) is not paid within the time specified by the  
22 Minister or within 30 days of the Minister imposing the penalty  
23 as an alternative to forfeiture if no time is specified by the  
24 Minister, the exploration licence or lease shall thereupon be  
25 forfeited and notice thereof shall be published in the  
26 *Government Gazette*, and the rights conferred on the applicant  
27 for forfeiture under section 100(2) shall apply as if the Minister  
28 had declared the licence or lease forfeited.

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



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

3 (1) Where an exploration licence or a mining lease that is the  
4 subject of an application for forfeiture under section 98 is  
5 surrendered (other than by way of a conditional surrender or a  
6 surrender under section 26A or 65) before the application is  
7 finally dealt with under section 98(4A) or 99(1), the applicant  
8 for forfeiture has, from the date on which the surrender is  
9 registered until the expiry of a period of 14 days after the date of  
10 being served with written notice of the surrender by an officer  
11 of the Department, a right in priority to any other person to  
12 mark out or apply for, or both, a mining tenement upon the  
13 whole or any part of the land that was the subject of the  
14 surrendered licence or lease.

15 (1a) Where —

16 (a) an exploration licence or a mining lease that is the  
17 subject of an application for forfeiture under section 98  
18 has continued in force under section 67(2) or 70C(6)  
19 pending the determination of an application referred to  
20 in section 67(2) or 70C(6), as the case requires (the  
21 *tenement application*); and

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

25 the applicant for forfeiture has, from the date on which the  
26 tenement application is withdrawn until the expiry of a period of  
27 14 days after the date of being served with written notice of the  
28 withdrawal by an officer of the Department, a right in priority to  
29 any other person to mark out or apply for, or both, a mining  
30 tenement upon the whole or any part of the land that was the  
31 subject of the licence or lease.

32 (2) Where an exploration licence or a mining lease is forfeited  
33 pursuant to section 99, the applicant for forfeiture has, for a  
34 period of 14 days after the date of the publication of the notice

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1 of forfeiture of the licence or lease in the *Government Gazette*, a  
2 right in priority to any other person to mark out or apply for, or  
3 both, a mining tenement upon the whole or any part of the land  
4 that was the subject of the forfeited licence or lease.

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

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

9 (1) An application under section 96 or 98 for the forfeiture of a  
10 mining tenement for breach of the prescribed expenditure  
11 conditions applicable thereto while the holder thereof is a  
12 company in respect of which a winding up order has been made  
13 or a provisional liquidator has been appointed under the  
14 Corporations Law shall not be an action or proceeding for the  
15 purposes of subsection (2) of section 471 of that Law (or any  
16 provision of that Law which replaces or is substituted for that  
17 subsection), and notwithstanding anything therein contained to  
18 the contrary, the application may be commenced and proceeded  
19 with without the leave of the Supreme Court, and the mining  
20 tenement is liable to forfeiture accordingly.

21 (2) The following matter is declared to be an excluded matter for  
22 the purposes of section 5F of the Corporations Act in relation to  
23 section 471B of that Act — an application under section 96  
24 or 98 for the forfeiture of a mining tenement for breach of the  
25 prescribed expenditure conditions applicable to the tenement  
26 while the holder of the tenement is a company in respect of  
27 which a winding up order has been made, or a provisional  
28 liquidator appointed, under the Corporations Act.

29 *[Section 101 amended: No. 10 of 1982 s. 28; No. 100 of 1985*  
30 *s. 75; No. 37 of 1993 s. 27; No. 10 of 2001 s. 135; No. 15 of*  
31 *2002 s. 23; No. 8 of 2009 s. 8.]*

1 **Division 7 — Exemption from expenditure conditions**

2 **102. Exemption from expenditure conditions**

3 (1) Subject to this Act, on an application (an *application for*  
4 *exemption*) made, as prescribed, by the holder of a mining  
5 tenement (other than a retention licence) or his authorised agent  
6 prior to the end of the year to which the proposed exemption  
7 relates, or within the prescribed period after the end of that year,  
8 the holder may be granted a certificate of exemption in the  
9 prescribed form totally or partially exempting the mining  
10 tenement to which the application relates from the prescribed  
11 expenditure conditions relating thereto, in an amount not  
12 exceeding the amount required to be expended —

13 (a) in respect to any mining tenement other than a mining  
14 lease, in any one year; and

15 (b) in respect to a mining lease, subject to subsection (7), in  
16 a period of 5 years.

17 (1a) An application for exemption may relate to more than one  
18 mining tenement.

19 (2) A certificate of exemption may be granted for any of the  
20 following reasons —

21 (a) that the title to the mining tenement is in dispute; or

22 (b) that time is required to evaluate work done on the  
23 mining tenement, to plan future exploration or mining or  
24 raise capital therefor; or

25 (c) that time is required to purchase and erect plant and  
26 machinery; or

27 (d) that the ground the subject of the mining tenement is for  
28 any sufficient reason unworkable; or

29 (e) that the ground the subject of the mining tenement  
30 contains a mineral deposit which is uneconomic but  
31 which may reasonably be expected to become economic  
32 in the future or that at the relevant time economic or

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- 1 marketing problems are such as not to make the mining  
2 operations viable; or
- 3 (f) that the ground the subject of the mining tenement  
4 contains mineral ore which is required to sustain the  
5 future operations of an existing or proposed mining  
6 operation; or
- 7 (g) that political, environmental or other difficulties in  
8 obtaining requisite approvals prevent mining or restrict  
9 it in a manner that is, or subject to conditions that are,  
10 for the time being impracticable; or
- 11 (h) that —
- 12 (i) the mining tenement is one of 2 or more mining  
13 tenements (***combined reporting tenements***) the  
14 subject of arrangements approved under  
15 section 115A(4) for the filing of combined  
16 mineral exploration reports; and
- 17 (ii) the aggregate exploration expenditure for the  
18 combined reporting tenements would have been  
19 such as to satisfy the expenditure requirements  
20 for the mining tenement concerned had that  
21 aggregate exploration expenditure been  
22 apportioned between the combined reporting  
23 tenements.
- 24 (2a) In subsection (2)(h) —
- 25 ***aggregate exploration expenditure*** means expenditure —
- 26 (a) on, or in connection with, exploration for minerals on  
27 the combined reporting tenements; and
- 28 (b) worked out in a manner specified in the regulations.
- 29 (3) Notwithstanding that the reasons given for the application for  
30 exemption are not amongst those set out in subsection (2), a  
31 certificate of exemption may also be granted for any other  
32 reason which may be prescribed or which in the opinion of the  
33 Minister is sufficient to justify such exemption.

- 1 (4) When consideration is given to an application for exemption  
2 regard shall be had to the current grounds upon which  
3 exemptions have been granted and to the work done and the  
4 money spent on the mining tenement by the holder thereof.
- 5 (5) An application for exemption —  
6 (a) where an objection to the application is lodged, shall be  
7 heard by the warden; but  
8 (b) otherwise, shall be forwarded to the Minister for  
9 determination by the Minister.
- 10 (6) The warden shall as soon as practicable after the hearing of the  
11 application transmit to the Minister for his consideration the  
12 notes of evidence and any maps or other documents referred to  
13 therein and his report recommending the granting or refusal of  
14 the application and setting out his reasons for that  
15 recommendation.
- 16 (7) Where the warden finds that the reasons given by the holder of  
17 the mining lease are sufficient to justify the granting of a  
18 certificate of exemption and so recommends, or if the Minister  
19 is satisfied whether or not a recommendation is made by the  
20 warden, the Minister may grant a certificate of exemption in an  
21 amount not exceeding the amount required to be expended in  
22 respect of the mining lease in the period of 5 years from the  
23 commencement of the year to which the application relates.
- 24 *[Section 102 amended: No. 69 of 1981 s. 23; No. 100 of 1985*  
25 *s. 76; No. 105 of 1986 s. 14; No. 22 of 1990 s. 32; No. 37 of*  
26 *1993 s. 10(2); No. 15 of 2002 s. 24; No. 39 of 2004 s. 66*  
27 *and 94.]*
- 28 **102A. Exemption from expenditure conditions in respect of certain**  
29 **holders of exploration licences**
- 30 (1) Notwithstanding anything in section 102, the Minister may, on  
31 payment of the prescribed fee and on the application in writing  
32 of the holder of an exploration licence who has been authorised

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1 by the Minister under section 111 to explore for iron on the land  
2 the subject of the exploration licence, grant that holder a  
3 certificate in the prescribed form totally or partially exempting  
4 the holder of that licence from the prescribed expenditure  
5 conditions relating to the exploration licence in an amount not  
6 exceeding the amount required to be expended in any one year.

7 (1a) An application referred to in subsection (1) may relate to more  
8 than one exploration licence.

9 (2) The refusal by the Minister of an application referred to in  
10 subsection (1) does not prevent the holder of the exploration  
11 licence concerned from making an application referred to in  
12 section 102(1) in respect of that exploration licence.

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

15 **103. Effect of exemption**

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

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

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

1 **Part IVAA — Conditions and approvals**

2 **Division 1 — Preliminary**

3 **103AA. Terms used**

4 In this Part —

5 *approvals statement* has the meaning given in  
6 section 103AO(1);

7 *closure outcomes* means —

8 (a) in relation to a mining development and closure plan —  
9 the outcomes, objectives or goals to be achieved at the  
10 completion of the decommissioning of any proposed  
11 mine and the rehabilitation of the land the subject of a  
12 mining lease or a miscellaneous licence to which the  
13 mining development and closure proposal relates; and

14 (b) in relation to a mine closure plan — the outcomes,  
15 objectives or goals to be achieved at the completion of  
16 the decommissioning of each mine and the rehabilitation  
17 of the land in respect of which a mining lease or  
18 miscellaneous licence is granted;

19 *licensed activity* means an activity authorised by the  
20 miscellaneous licence;

21 *low-impact activity* means an activity that is prescribed under  
22 section 103AB(a);

23 *mine closure plan* has the meaning given in section 103AQ;

24 *programme of work* means a programme of work required in  
25 order to comply with a condition referred to in  
26 section 103AF(3)(b) or (4), 103AG(2)(b) or (3), or 103AH(2)(b)  
27 or (4);

28 *relevant information* has the meaning given in  
29 section 103AN(6).

1 **Division 2 — Low-impact activities**

2 **103AB. Prescribed low-impact activities**

3 For the purposes of this Part, the regulations may prescribe —

4 (a) an activity done on land the subject of a mining  
5 tenement using machinery to disturb the surface of the  
6 land for the purposes of, or in preparation for, mining to  
7 be a low-impact activity; and

8 (b) the requirements for carrying out a low-impact activity.

9 **103AC. Areas excluded from low-impact activities**

10 (1) The Minister may, by notice in the *Gazette*, declare an area  
11 named or described in the notice as an excluded area for the  
12 purposes of this Part if the Minister is satisfied that it is not  
13 appropriate for a notice of a low-impact activity to be given in  
14 relation to the area.

15 (2) If an area is declared to be an excluded area, a notice of  
16 low-impact activity may not be given in relation to the area.

17 (3) The Minister may, by notice in the *Gazette*, cancel a notice  
18 made under subsection (1).

19 (4) The Minister must keep a register of notices made under  
20 subsection (1) and make the information on the register publicly  
21 available free of charge —

22 (a) by making the register available during normal office  
23 hours at a prescribed place for public inspection; and

24 (b) by making the register available on a website maintained  
25 by the Department.

26 **103AD. Condition relating to carrying out low-impact activities in**  
27 **accordance with prescribed requirements**

28 (1) Subject to subsection (2), it is a condition of every mining  
29 tenement that the holder of the mining tenement must not carry



1 out a low-impact activity on land the subject of the mining  
2 tenement otherwise than in accordance with the prescribed  
3 requirements for carrying out the low-impact activity.

4 (2) The holder of a mining tenement is not required to comply with  
5 subsection (1) in respect of the carrying out of a low-impact  
6 activity if —

7 (a) the low-impact activity is proposed in a programme of  
8 work relating to the mining tenement, and approved  
9 under section 103AJ(1); or

10 (b) the low impact activity is proposed in a mining  
11 development and closure proposal relating to the mining  
12 tenement and approved under section 103AN(1).

13 (3) Subsection (1) does not affect any obligation the holder of a  
14 mining tenement has to comply with a condition referred to in  
15 section 103AF(5), 103AG(5), 103AH(5), 103AK(4) or  
16 103AL(4) in relation to the carrying out of a low-impact  
17 activity.

18 **103AE. Giving notice of low-impact activity and notice of**  
19 **completion of low-impact activity**

20 (1) A notice of low-impact activity required in order to comply with  
21 a condition referred to in section 103AF(3)(a), 103AG(2)(a),  
22 103AH(2)(a), 103AK(2)(a) or 103AL(2)(a) must be in the  
23 approved form.

24 (2) The holder of a mining tenement who gives notice of a  
25 low-impact activity under this Part must, on completing the  
26 activity, give the Minister notice of the completion in the  
27 approved form.

28 (3) The regulations must specify —

29 (a) the manner in which a notice must be given under this  
30 section; and

31 (b) the period within which a notice of completion must be  
32 given under subsection (2).

**Division 3 — Programmes of work**

**103AF. Conditions attached to prospecting licences, exploration licences and retention licences**

(1) In this section —

*relevant licence* means —

(a) a prospecting licence; or

(b) an exploration licence; or

(c) a retention licence.

(2) This section applies to an activity done on land the subject of a relevant licence using machinery to disturb the surface of the land for the purposes of, or in preparation for, prospecting or exploring for minerals.

(3) It is a condition of every relevant licence that an activity that is a low-impact activity must not be done by the holder of the relevant licence on land the subject of the relevant licence until —

(a) the holder has given a notice of low-impact activity in respect of the activity; or

(b) the low-impact activity is proposed in a programme of work and approved under section 103AJ(1).

(4) It is a condition of every relevant licence that an activity that is not a low-impact activity must not be done by the holder of the relevant licence on land the subject of the relevant licence unless the activity is proposed in a programme of work and approved under section 103AJ(1).

(5) It is a condition of every relevant licence that, if an activity on land the subject of the relevant licence is proposed in a programme of work and approved under section 103AJ(1), the holder of the relevant licence must not do the activity on the land otherwise than in accordance with the approved programme of work for the activity.

1 **103AG. Conditions attached to mining leases**

2 (1) This section applies to an activity done on land the subject of a  
3 mining lease using machinery to disturb the surface of the land  
4 for the purposes of, or in preparation for, prospecting or  
5 exploring for minerals but does not apply to mining operations.

6 (2) It is a condition of every mining lease that an activity that is a  
7 low-impact activity must not be done by the lessee on land the  
8 subject of the mining lease until —

9 (a) the lessee has given a notice of low-impact activity in  
10 respect of the activity; or

11 (b) the low-impact activity is proposed in a programme of  
12 work and approved under section 103AJ(1).

13 (3) It is a condition of every mining lease that an activity that is not  
14 a low-impact activity must not be done by the lessee on land the  
15 subject of the mining lease unless the activity is proposed in a  
16 programme of work and approved under section 103AJ(1).

17 (4) A lessee of a mining lease is not required to comply with the  
18 condition referred to in subsection (2) or (3) in respect of an  
19 activity that is proposed in a mining development and closure  
20 proposal relating to the mining lease and approved under  
21 section 103AN(1).

22 (5) It is a condition of every mining lease that, if an activity on land  
23 the subject of the lease is proposed in a programme of work and  
24 approved under section 103AJ(1), the lessee must not do the  
25 activity on the land otherwise than in accordance with the  
26 approved programme of work for the activity.

27 (6) If a mining lease is granted or held pursuant to a Government  
28 agreement (as defined in the *Government Agreements Act 1979*  
29 section 2) in accordance with proposals approved, taken to be  
30 approved or determined under the agreement, this section does  
31 not apply to the mining lease unless the agreement otherwise  
32 provides.

1 **103AH. Conditions attached to miscellaneous licences**

2 (1) This section applies to an activity done on land the subject of a  
3 miscellaneous licence using machinery to disturb the surface of  
4 the land for the purposes of, or in preparation for, a licensed  
5 activity but does not apply to mining operations.

6 (2) It is a condition of every miscellaneous licence that a licensed  
7 activity that is a low-impact activity must not be done by the  
8 holder of the miscellaneous licence on land the subject of the  
9 miscellaneous licence until —

10 (a) the holder has given a notice of low-impact activity in  
11 respect of the activity; or

12 (b) the low-impact activity is proposed in a programme of  
13 work and approved under section 103AJ(1).

14 (3) It is a condition of every miscellaneous licence that a licensed  
15 activity that is not a low-impact activity must not be done by the  
16 holder of the miscellaneous licence on land the subject of the  
17 miscellaneous licence unless the licensed activity is proposed in  
18 a programme of work and approved under section 103AJ(1).

19 (4) A holder of a miscellaneous licence is not required to comply  
20 with a condition referred to in subsection (2) or (3) in respect of  
21 a licensed activity that is proposed in a mining development and  
22 closure proposal relating to the miscellaneous licence and  
23 approved under section 103AN(1).

24 (5) It is a condition of every miscellaneous licence that, if a  
25 licensed activity on land the subject of the miscellaneous licence  
26 is proposed in a programme of work and approved under  
27 section 103AJ(1), the holder of the miscellaneous licence must  
28 not do the activity on the land otherwise than in accordance with  
29 the approved programme of work for the activity.

30 (6) If a miscellaneous licence is granted or held pursuant to a  
31 Government agreement (as defined in the *Government*  
32 *Agreements Act 1979* section 2) in accordance with proposals  
33 approved, taken to be approved or determined under the

1 agreement, this section does not apply to the miscellaneous  
2 licence unless the agreement otherwise provides.

3 **103AI. Lodgment of programmes of work**

4 (1) In this section —

5 *relevant lodging party* means —

6 (a) in relation to a programme of work lodged for an  
7 activity on land the subject of a prospecting licence, an  
8 exploration licence or a retention licence— the holder of  
9 the licence, or a person authorised by the holder of the  
10 licence; or

11 (b) in relation to a programme of work lodged for an  
12 activity on land the subject of a mining lease — the  
13 lessee of the mining lease, or a person authorised by the  
14 lessee of the mining lease; or

15 (c) in relation to a programme of work lodged for a licensed  
16 activity on land the subject of a miscellaneous  
17 licence — the holder of the miscellaneous licence, or a  
18 person authorised by the holder of the miscellaneous  
19 licence.

20 (2) A programme of work required in order to comply with a  
21 condition referred to in section 103AF(3)(b) or (4),  
22 103AG(2)(b) or (3), 103AH(2)(b) or (3) must be lodged with  
23 the Minister by the relevant lodging party in the prescribed  
24 manner.

25 (3) The following requirements apply to a programme of work  
26 lodged under subsection (2) —

27 (a) it must be in the approved form;

28 (b) it must be accompanied by the prescribed assessment  
29 fee;

30 (c) it must include any information prescribed for the  
31 purposes of this section.

- 1 (4) Before the Minister has approved or refused to approve an  
2 activity proposed in a programme of work under  
3 section 103AJ(1) —  
4 (a) the Minister may request the relevant lodging party —  
5 (i) to lodge a substitute programme of work; or  
6 (ii) to provide such further information as the  
7 Minister may require for the purposes of making  
8 the decision;  
9 or  
10 (b) the relevant lodging party may, with the written  
11 permission of the Minister, lodge a substitute  
12 programme of work.  
13 (5) The activity proposed in a substitute programme of work must  
14 not be substantially different to the activity proposed in the  
15 programme of work it is intended to replace.  
16 (6) A relevant lodging party who has lodged a programme of work  
17 or a substitute programme of work may withdraw it, by written  
18 notice to the Minister, at any time before the application is  
19 approved or refused under section 103AJ(1).

20 **103AJ. Approval of activities in programmes of work**

- 21 (1) The Minister may approve, or refuse to approve, an activity in a  
22 programme of work or a substitute programme of work (if any).  
23 (2) The Minister must —  
24 (a) notify the holder of the mining tenement to which the  
25 programme of work relates in writing of the Minister's  
26 decision under subsection (1); and  
27 (b) if the decision is to refuse to approve the activity,  
28 include in the notification the reasons for the refusal.  
29 (3) An approval takes effect when notice of it is given to the holder  
30 of the mining tenement to which the programme of work relates.

1 Division 4 — Mining development and closure proposals

2 103AK. Conditions relating to mining operations on land subject of  
3 mining leases

4 (1) This section applies to the following activities done on land the  
5 subject of a mining lease —

6 (a) using machinery to disturb the surface of the land for the  
7 purposes of, or in preparation for, mining operations;

8 (b) carrying out mining operations.

9 (2) It is a condition of every mining lease that an activity that is a  
10 low-impact activity must not be done by the lessee on land the  
11 subject of the mining lease until —

12 (a) the lessee has given a notice of low-impact activity in  
13 respect of the activity; or

14 (b) the low-impact activity is proposed in a mining  
15 development and closure proposal and approved under  
16 section 103AN(1).

17 (3) It is a condition of every mining lease that an activity that is not  
18 a low-impact activity must not be done by the lessee on land the  
19 subject of the mining lease unless the activity is proposed in a  
20 mining development and closure proposal and approved under  
21 section 103AN(1).

22 (4) It is a condition of every mining lease that, if an activity on land  
23 the subject of the lease is proposed in a mining development and  
24 closure proposal and approved under section 103AN(1), the  
25 lessee must not do the activity on the land otherwise than in  
26 accordance with the approvals statement for the lease.

27 (5) If a mining lease is granted or held pursuant to a Government  
28 agreement (as defined in the *Government Agreements Act 1979*  
29 section 2) in accordance with proposals approved, taken to be  
30 approved or determined under the agreement, this section does  
31 not apply to the mining lease unless the agreement otherwise  
32 provides.

1 **103AL. Conditions relating to mining operations on land subject of**  
2 **miscellaneous licences**

3 (1) This section applies to the following licensed activities done on  
4 land the subject of a miscellaneous licence —

5 (a) using machinery to disturb the surface of the land for the  
6 purposes of, or in preparation for, mining operations;

7 (b) carrying out mining operations.

8 (2) It is a condition of every miscellaneous licence that a licensed  
9 activity that is a low-impact activity must not be done by the  
10 holder of the miscellaneous licence on land the subject of the  
11 miscellaneous licence until —

12 (a) the holder has given a notice of low-impact activity in  
13 respect of the activity; or

14 (b) the low-impact activity is proposed in a mining  
15 development and closure proposal and approved under  
16 section 103AN(1).

17 (3) It is a condition of every miscellaneous licence that a licensed  
18 activity that is not a low-impact activity must not be done by the  
19 holder of the miscellaneous licence on land the subject of the  
20 miscellaneous licence unless the licensed activity is proposed in  
21 a mining development and closure proposal and approved under  
22 section 103AN(1).

23 (4) It is a condition of every miscellaneous licence that, if a  
24 licensed activity on land the subject of the miscellaneous licence  
25 is proposed in a mining development and closure proposal and  
26 approved under section 103AN(1), the holder of the  
27 miscellaneous licence must not do the activity on the land  
28 otherwise than in accordance with the approvals statement for  
29 the miscellaneous licence.

30 (5) If a miscellaneous licence is granted or held pursuant to a  
31 Government agreement (as defined in the *Government*  
32 *Agreements Act 1979* section 2) in accordance with proposals  
33 approved, taken to be approved or determined under the



1 agreement, this section does not apply to the miscellaneous  
2 licence unless the agreement otherwise provides.

3 **103AM. Lodgment of mining development and closure proposal**

4 (1) In this section —

5 *relevant lodging party* means —

6 (a) in relation to a mining development and closure  
7 proposal lodged for an activity on land the subject of a  
8 mining lease — the lessee of the mining lease, or a  
9 person authorised by the lessee of the mining lease; or

10 (b) in relation to a mining development and closure  
11 proposal lodged for a licensed activity on land the  
12 subject of a miscellaneous licence — the holder of the  
13 miscellaneous licence, or a person authorised by the  
14 holder of the miscellaneous licence.

15 (2) A mining development and closure proposal required in order to  
16 comply with a condition referred to in section 103AK(2)(b) or  
17 (4) or 103AL(2)(b) or (4) must be lodged with the Minister by  
18 the relevant lodging party in the prescribed manner.

19 (3) The following requirements apply to a mining development and  
20 closure proposal lodged under subsection (2) —

21 (a) it must be in the approved form;

22 (b) it must be accompanied by the prescribed assessment  
23 fee;

24 (c) it must include detailed information regarding —

25 (i) the proposed mining operations to be carried out;  
26 and

27 (ii) the decommissioning of any proposed mine to  
28 which the mining development and closure  
29 proposal relates; and

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- 1 (iii) the rehabilitation of land the subject of the  
2 mining tenement to which the mining  
3 development and closure plan relates; and  
4 (iv) the closure outcomes;  
5 (d) it must include any other information prescribed for the  
6 purposes of this section.  
7 (4) Before the Minister has approved or refused to approve an  
8 activity proposed in a mining development and closure proposal  
9 under section 103AJ(1) —  
10 (a) the Minister may request the relevant lodging party —  
11 (i) to lodge a substitute mining development and  
12 closure proposal; or  
13 (ii) to provide such further information as the  
14 Minister may require for the purposes of making  
15 the decision;  
16 or  
17 (b) the relevant lodging party may, with the written  
18 permission of the Minister, lodge a substitute mining  
19 development and closure proposal.  
20 (5) The activity proposed in a substitute mining development and  
21 closure proposal must not be substantially different to the  
22 activity proposed in the mining development and closure  
23 proposal it is intended to replace.  
24 (6) A relevant lodging party who has lodged a mining development  
25 and closure proposal or a substitute mining development and  
26 closure proposal may withdraw it, by written notice to the  
27 Minister, at any time before the application is approved or  
28 refused under section 103AN(1).

1 **103AN. Approval of activities in mining development and closure**  
2 **proposals**

3 (1) The Minister may approve, or refuse to approve, an activity  
4 proposed in a mining development and closure proposal or a  
5 substitute mining development and closure proposal (if any).

6 (2) If the Minister approves an activity under subsection (1), the  
7 Minister must —

8 (a) record the approval on an approvals statement for the  
9 mining tenement to which the mining development and  
10 closure proposal relates; and

11 (b) give a copy of the approvals statement to the holder of  
12 the mining tenement to which the mining development  
13 and closure proposal relates.

14 (3) If the decision is to refuse to approve the activity, the Minister  
15 must notify the holder of the mining tenement to which the  
16 mining development and closure proposal relates in writing of  
17 the Minister's decision and include in the notification the  
18 reasons for the refusal.

19 (4) The Minister may attach conditions to an approval and those  
20 conditions must be recorded on the approvals statement.

21 (5) A condition recorded on an approvals statement has effect for  
22 all purposes as a condition to which the mining tenement is  
23 subject.

24 (6) The Minister may record information provided in a mining  
25 development and closure proposal that is relevant to the nature  
26 and extent of the activity in the proposal (the *relevant*  
27 *information*) on the approvals statement for the mining  
28 tenement to which the mining development and closure  
29 proposal relates.

1 **103AO. Approvals statements**

2 (1) An *approvals statement* is a document that, in relation to a  
3 mining lease or a miscellaneous licence, records the following  
4 information —

5 (a) an approval given to an activity on land the subject of  
6 the mining lease or the miscellaneous licence proposed  
7 in a mining development and closure proposal;

8 (b) any conditions attached to the approval;

9 (c) any relevant information;

10 (d) the closure outcomes included in a mining development  
11 and closure proposal relating to the mining lease or  
12 miscellaneous licence;

13 (e) in relation to a mine closure plan for the land the subject  
14 of the mining lease or the miscellaneous licence to  
15 which the approvals statement relates —

16 (i) the date by which the mine closure plan must be  
17 lodged; and

18 (ii) the closure outcomes provided in the most recent  
19 mine closure plan.

20 (2) An approvals statement must be —

21 (a) in writing; and

22 (b) signed by the Minister.

23 (3) An approvals statement takes effect when it is given to the  
24 holder of the mining lease or the miscellaneous licence to which  
25 it relates and remains in force until it is cancelled by the  
26 Minister.

27 (4) The Minister must make an approvals statement available for  
28 public inspection in accordance with the regulations.

1 **103AP. Cancellations and variations to be recorded on approvals**  
2 **statements**

3 (1) The Minister may, on the Minister's own initiative or by  
4 application in writing by the lessee of a mining lease or the  
5 holder of a miscellaneous licence to which an approvals  
6 statement relates —

7 (a) cancel an approval given to an activity under  
8 section 103AN(1); or

9 (b) cancel or vary a condition that is recorded on the  
10 approvals statement under section 103AN(4); or

11 (c) vary any relevant information that is recorded on the  
12 approvals statement under section 103AN(6).

13 (2) The Minister must —

14 (a) record a cancellation or a variation made under  
15 subsection (1) on the approvals statement to which the  
16 cancellation or variation relates; and

17 (b) give a copy of the amended approvals statement to the  
18 lessee of the mining lease or the holder of the  
19 miscellaneous licence to which the approvals statement  
20 relates.

21 (3) A cancellation or a variation made under subsection (1) takes  
22 effect on the day recorded on the amended approvals statement.

23 **Division 5 — Mine closure plans**

24 **103AQ. Contents of mine closure plan**

25 A *mine closure plan*, for the land the subject of a mining lease  
26 or a miscellaneous licence, is a planning and reporting  
27 document that provides for —

28 (a) the decommissioning of each mine on land the subject  
29 of the mining lease or the miscellaneous licence; and

- 1 (b) the rehabilitation of the land in respect of which a  
2 mining lease or miscellaneous licence is granted; and  
3 (c) the closure outcomes; and  
4 (d) any other information prescribed in the regulations.

5 **103AR. Conditions relating to mine closure plans**

- 6 (1) In this section —  
7 *relevant tenement* means —  
8 (a) a mining lease; or  
9 (b) a miscellaneous licence.  
10 (2) It is a condition of every relevant tenement that the holder of the  
11 relevant tenement must lodge a mine closure plan for the land  
12 the subject of the relevant tenement in compliance with  
13 section 103AS.

14 **103AS. Lodgment of mine closure plans**

- 15 (1) The lessee of a mining lease or the holder of a miscellaneous  
16 licence, or a person authorised by the lessee of the mining lease  
17 or the holder of the miscellaneous licence (as the case requires)  
18 must lodge a mine closure plan required in order to comply with  
19 the condition referred to in section 103AR(2) —  
20 (a) with the Minister in the prescribed manner; and  
21 (b) on or before the date recorded on the approvals  
22 statement for the mining lease or the miscellaneous  
23 licence, as the date required for lodgment of the mine  
24 closure plan.  
25 (2) A mine closure plan lodged under subsection (1) must be in the  
26 approved form.  
27 (3) The Minister may extend or vary the date recorded on the  
28 approvals statement by which a mine closure plan must be  
29 lodged.

1 (4) If the Minister extends or varies the date under subsection (3),  
2 the Minister must —

3 (a) give the lessee of the mining lease or the holder of the  
4 miscellaneous licence (as the case requires) written  
5 notice that the date has been extended or varied; and

6 (b) amend the date recorded on the approvals statement  
7 accordingly.

8 **Division 6 — Other conditions**

9 **103AT. Conditions for preventing, reducing or remediating injury**  
10 **to land and for other purposes**

11 (1) A condition may be imposed on a mining tenement for the  
12 following purposes —

13 (a) preventing, reducing or remediating injury to land the  
14 subject of the mining tenement or other land;

15 (b) preventing or reducing the impact of mining on the  
16 statutory or public purposes for which land to which  
17 section 24 or 24A applies is reserved or managed, or  
18 remediating such land.

19 (2) A condition may be imposed under subsection (1) —

20 (a) in the case of a prospecting licence or miscellaneous  
21 licence —

22 (i) by the mining registrar, or the warden, on the  
23 granting of the licence; or

24 (ii) by the Minister on the granting of the licence or  
25 at any subsequent time;

26 and

27 (b) in any other case, by the Minister on the granting of the  
28 mining tenement or at any subsequent time.

29 (3) A condition imposed under subsection (1) may be cancelled or  
30 varied by the Minister at any time.

1 (4) Whether or not a condition imposed under subsection (1) is  
2 endorsed on the mining tenement, on notice of the imposition of  
3 the condition being given in writing to the holder of the mining  
4 tenement, the condition has effect for all purposes as a condition  
5 to which the tenement is subject.

6 (5) Without limiting subsection (1), a condition may be imposed  
7 under that section for the purpose of preventing mining  
8 operations being carried out within such distance of the natural  
9 surface of the land the subject of a mining tenement as is  
10 specified in the condition.

11 **Division 7 — Securities**

12 **103AU. Security for compliance with conditions**

13 (1) The Minister may require the holder of a mining tenement to  
14 lodge a security for compliance with any conditions imposed  
15 under section 103AN(4) or 103AT(1).

16 (2) A security referred to in subsection (1) —

17 (a) must be lodged in the prescribed manner and within  
18 such period as the Minister specifies in writing; and

19 (b) is subject to the provisions of section 126.



1 **Part IVA — Registration of instruments and register**

2 *[Heading inserted: No. 54 of 1996 s. 15.]*

3 **103A. Terms used**

4 In this Part —

5 *authorised officer* means an officer of the Department  
6 authorised under section 103B;

7 *tax memorial* means a memorial affecting a mining tenement  
8 lodged under the *Taxation Administration Act 2003* Part 6  
9 Division 2 for registration under this Act;

10 *withdrawal of memorial* means a withdrawal of a tax memorial  
11 lodged under the *Taxation Administration Act 2003* section 81  
12 for registration under this Act.

13 *[Section 103A inserted: No. 54 of 1996 s. 15; amended: No. 31*  
14 *of 2008 s. 14.]*

15 **103B. Authorised officers**

16 (1) The Minister may in writing authorise officers of the  
17 Department for the purposes of this Part and section 122B.

18 (2) An authorisation under subsection (1) may be given to a  
19 specified officer or to officers of a specified class, or may be  
20 given to the holder or holders for the time being of a specified  
21 office or class of office.

22 *[Section 103B inserted: No. 54 of 1996 s. 15.]*

23 **103C. Registration**

24 (1) This section applies to the following instruments —

- 25 (a) a dealing;  
26 (b) a discharge of a mortgage of a legal interest in a mining  
27 tenement;  
28 (c) a withdrawal of an application for a mining tenement;

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- 1 (d) a surrender under section 26A, 65 or 95;
- 2 (e) a tax memorial;
- 3 (f) a withdrawal of memorial.
- 4 (2) An instrument to which this section applies is to be —
- 5 (a) lodged for registration in the prescribed manner and
- 6 prescribed form; and
- 7 (b) accompanied by the fee (if any) prescribed in respect of
- 8 the instrument.
- 9 (3) Only an instrument to which this section applies may be
- 10 registered.
- 11 (4) The registration of an instrument is to be effected by an
- 12 authorised officer.
- 13 (5) Subject to section 122D(1), an authorised officer is, unless
- 14 section 103D applies or the regulations otherwise provide, to
- 15 enter in the register the time and date of the lodgment of an
- 16 instrument as the time and date of registration.
- 17 (6A) If a tax memorial is registered a notice stating that the memorial
- 18 has been registered is to be sent by certified mail to the holder
- 19 of the mining tenement against which the memorial is
- 20 registered.
- 21 (6) Neither the Minister nor an authorised officer is concerned with
- 22 the effect any instrument lodged under this section may have at
- 23 law other than for the purposes of this Act.
- 24 (7) The acceptance of an instrument for registration does not give to
- 25 it any priority (other than in so far as registration may be taken
- 26 to be constructive notice), force, effect or validity that it would
- 27 not have had if this section had not been enacted.
- 28 (8) A dealing does not pass any legal estate or interest in a mining
- 29 tenement or in any way charge or encumber a mining tenement
- 30 until it is registered in accordance with this section.

1            *[Section 103C inserted: No. 54 of 1996 s. 15 (as amended:*  
2            *No. 39 of 2004 s. 103(a)); amended: No. 31 of 2008 s. 15.]*

3        **103D. Provisional lodgment**

4            (1) If an authorised officer is of the opinion that an instrument  
5            lodged for registration contains an error or defect, the authorised  
6            officer is —

- 7                    (a) if satisfied that the error or defect can be corrected, to  
8                    accept the instrument for provisional lodgment; or  
9                    (b) in any other case, to reject the instrument and endorse  
10                   the register accordingly.

11            (2) The regulations may provide for the effect to be given to an  
12            instrument accepted for provisional lodgment.

13            *[Section 103D inserted: No. 54 of 1996 s. 15.]*

14        **103EA. Memorial for unpaid tax**

15            (1) A tax memorial takes effect when it is registered and ceases to  
16            have effect when a withdrawal of the memorial is registered.

17            (2) While a tax memorial registered against a mining tenement is in  
18            effect no dealing affecting the mining tenement is to be lodged  
19            or registered without the consent of the Commissioner of State  
20            Revenue.

21            (3) If a tax memorial is registered and in effect against —

- 22                    (a) a mining tenement and the holder of that tenement is  
23                    granted a mining lease or general purpose lease (the  
24                    *later tenement*) under section 49, 67 or 70L in respect of  
25                    the land or a part of the land the subject of the tenement;  
26                    or  
27                    (b) a mining tenement and the holder of that tenement is  
28                    granted a retention licence (the *later tenement*) under  
29                    section 70B in respect of the land or a part of the land  
30                    the subject of the tenement; or

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1 (c) a special prospecting licence granted under section 56A,  
2 70 or 85B and the holder of that licence is granted a  
3 mining lease for gold (the *later tenement*) under  
4 section 56A(8), 70(8) or 85B(7) in respect of the land or  
5 a part of the land the subject of the licence,

6 the tax memorial is ~~to be~~ taken to have been also lodged against  
7 the later tenement and is to be registered accordingly.

8 (4) A tax memorial registered in accordance with subsection (3) is  
9 taken to have been registered immediately after the later  
10 tenement was granted.

11 *[Section 103EA inserted: No. 31 of 2008 s. 16.]*

12 **103E. Priority of dealings**

13 Dealings affecting the same mining tenement take priority  
14 according to the date and time of their registration.

15 *[Section 103E inserted: No. 54 of 1996 s. 15 (as amended:  
16 No. 39 of 2004 s. 103(b)).]*

17 **103F. Register**

18 (1) The Director General of Mines is to cause a register to be  
19 compiled and maintained.

20 (2) The register is to contain such particulars, relating to mining  
21 tenements and applications for mining tenements, as are  
22 prescribed.

23 (3) The register may be compiled and maintained in such form as  
24 the Director General of Mines determines.

25 (4) A person may, on payment of the prescribed fee, obtain at the  
26 Department at Perth or at the office of the mining registrar —

27 (a) a copy of an entry in the register relating to any mining  
28 tenement or application for a mining tenement; and

- 1           (b) subject to such requirements, if any, as are prescribed, a  
2           copy of a dealing or other instrument recorded in the  
3           register.

4           *[Section 103F inserted: No. 54 of 1996 s. 15.]*

5   **103G. Amendment of register**

- 6           (1) A person may apply in the prescribed manner and prescribed  
7           form for the amendment of particulars in the register relating to  
8           a mining tenement, or an application for a mining tenement, in  
9           which that person has an interest.
- 10          (2) If, on an application under subsection (1), an authorised officer  
11          is satisfied that there is reasonable cause for the amendment, the  
12          authorised officer may amend the particulars accordingly.
- 13          (3) An authorised officer may amend, add to and correct the register  
14          in such manner as is necessary to make the register an accurate  
15          record of the particulars it contains.

16          *[Section 103G inserted: No. 54 of 1996 s. 15.]*

17   **103H. Regulations relating to register**

18          The regulations may —

- 19          (a) prescribe the form a copy is to take for the purposes of  
20          section 103F(4)(a) or (b); and
- 21          (b) make provision for any other matter relating to the  
22          register.

23          *[Section 103H inserted: No. 54 of 1996 s. 15.]*

1 **Part V — General provisions relating to mining and**  
2 **mining tenements**

3 **104. Entry on land for purpose of marking out, surveying etc.**

4 (1) Subject to this Act, for the purpose of marking out any land and  
5 posting notices on any land in connection with an application  
6 for a mining tenement, any person or his servant or agent  
7 may —

- 8 (a) enter and re-enter from time to time on any land with  
9 such assistants as he thinks fit; and  
10 (b) affix and set up on the land pegs, marks, posts, cairns of  
11 stones and poles, inspect and repair any peg, mark, post,  
12 cairn of stones or pole; and  
13 (c) do all such things as may be necessary for the purpose  
14 of marking out the land, and posting notices thereon.

15 (2) Subject to subsections (3) to (5), for the purposes of surveying  
16 any land in connection with a mining tenement, any surveyor  
17 authorised in that behalf may —

- 18 (a) enter and re-enter from time to time on any land, with  
19 such assistants as he thinks fit; and  
20 (b) affix and set up on the land survey pegs, marks and  
21 poles; and  
22 (c) do all such things as may be necessary for the purposes  
23 of the survey.

24 (3) A person shall not enter on any private land for any purpose  
25 referred to in subsection (1) unless he does so pursuant to a  
26 permit issued under section 30.

27 (4) A person shall not, for the purposes specified in subsection (1)  
28 or (2), enter on any Commonwealth land or land referred to in  
29 section 24 or 25 or a marine nature reserve or marine park  
30 except as provided in section 26.

- 1 (5) In carrying out any marking out, posting of notices or survey of  
2 any land, every person entering on the land under this  
3 section shall ensure that no damage is done that with reasonable  
4 diligence could be avoided.

5 *[Section 104 amended: No. 5 of 1997 s. 41(2); No. 51 of 2012*  
6 *s. 31.]*

7 **105. Marking out of mining tenement**

- 8 (1) Before an application for a mining tenement other than an  
9 exploration licence, a retention licence or a miscellaneous  
10 licence is made, the land in relation to which the mining  
11 tenement is sought shall be marked out in the prescribed manner  
12 and in the prescribed shape, and for the purpose of any claim for  
13 compensation for loss or damage suffered or likely to be  
14 suffered resulting or arising therefrom under section 123, or for  
15 an order under section 124(2), the activities involved in the  
16 marking out shall be taken to be activities relating to  
17 prospecting and, as such, to constitute mining.

18 *[(2) deleted]*

19 *[Section 105 amended: No. 100 of 1985 s. 79; No. 105 of 1986*  
20 *s. 16; No. 22 of 1990 s. 33; No. 37 of 1993 s. 10(2) and 16;*  
21 *No. 51 of 2012 s. 32.]*

22 **105A. Priorities between applicants for certain tenements**

- 23 (1) Subject to section 111A, where more than one application is  
24 received for a mining tenement (other than a miscellaneous  
25 licence) in respect of the same land or any part thereof, the  
26 applicant who first complies with the initial requirement in  
27 relation to his application has, subject to this Act, the right in  
28 priority over every other applicant to have granted to him in  
29 respect of that land or part the mining tenement to which his  
30 application relates.

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- 1           (2) In subsection (3) *applicant* means an applicant for a prospecting  
2           licence, exploration licence, mining lease or general purpose  
3           lease.
- 4           (3) Where in respect of any land the warden is satisfied that 2 or  
5           more applicants complied with the initial requirement in relation  
6           to their applications at the same time or within a prescribed  
7           period, priority shall, unless written agreement is concluded by  
8           the applicants and lodged in the prescribed manner and within  
9           the prescribed time, be determined by ballot conducted by the  
10          warden on a date to be determined by the warden and notified to  
11          the applicants.
- 12          (3a) Each ballot under subsection (3) is to be conducted in public.
- 13          (4) In this section a reference to compliance with the initial  
14          requirement in relation to an application is a reference —
- 15               (a) in the case of an application for an exploration licence,  
16               to lodging that application in the prescribed manner;
- 17               (b) in the case of an application for a prospecting licence,  
18               mining lease or general purpose lease —
- 19                   (i) unless subparagraph (ia), (ii) or (iii) applies, to  
20                   marking out the land concerned in the prescribed  
21                   manner;
- 22                   (ia) where the land concerned is land to which  
23                   section 65(6) applies, lodging that application in  
24                   the prescribed manner;
- 25                   (ii) where the land concerned is wholly covered by  
26                   the sea or the waters of any lake, pond, river or  
27                   stream, to lodging that application in the  
28                   prescribed manner;
- 29                   (iii) where the land concerned is partly covered by  
30                   the sea or the waters of any lake, pond, river or  
31                   stream, to marking out in the prescribed manner  
32                   so much of that land as is not so covered.



- 1 (5) If the warden is satisfied that 2 or more applications for a  
2 mining tenement have been lodged by or on behalf of the same  
3 party for the purpose of affecting the result of a ballot to be  
4 conducted under subsection (3), the warden may exclude all but  
5 one of those applications from the ballot.
- 6 (6) For the purposes of subsection (5) an application for a mining  
7 tenement is ~~to be~~ taken to have been lodged by or on behalf of a  
8 party if it is lodged by or on behalf of a person who is related to  
9 that party.

10 *[Section 105A inserted: No. 69 of 1981 s. 24; amended: No. 100*  
11 *of 1985 s. 80; No. 1 of 1986 s. 6; No. 22 of 1990 s. 34; No. 37 of*  
12 *1993 s. 17 and 26; No. 58 of 1994 s. 42; No. 15 of 2002 s. 26;*  
13 *No. 39 of 2004 s. 67 and 95; No. 12 of 2010 s. 36.]*

14 **105B. Grant of tenement subject to survey**

15 The grant of a mining tenement shall be deemed to have been  
16 made subject to a condition that the land applied for is found to  
17 have been available for the purposes of that grant after a survey  
18 has been made of the tenement.

19 *[Section 105B inserted: No. 100 of 1985 s. 81.]*

20 **106. Offence of destroying marks or obstructing surveyor etc.**

21 A person who —

- 22 (a) without lawful authority removes, destroys or alters the  
23 position of, any peg, notice, survey peg, mark, post,  
24 cairn of stones or pole used for the purposes of any  
25 marking out or survey made or being made under  
26 section 104; or
- 27 (b) wilfully damages, destroys or otherwise interferes with  
28 any peg, survey peg, mark, post, cairn of stones, pole  
29 erected or notice posted for the purposes of this Act; or

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1 (c) wilfully obstructs, hinders, or interferes with any person  
2 lawfully engaged in marking out or surveying any land  
3 under that section,

4 is guilty of an offence against this Act.

5 *[Section 106 amended: No. 122 of 1982 s. 26; No. 100 of 1985*  
6 *s. 82.]*

7 **107. Areas covered by water not required to be marked out**

8 Notwithstanding anything to the contrary in this Act, if any area  
9 in respect of which an application for a mining tenement is to be  
10 made is wholly or partly covered by the sea or the waters of any  
11 lake, pond, river or stream, it shall not be necessary to mark out  
12 the area or part of the area so covered.

13 **108. Rent payable for mining tenement**

14 In respect of each mining tenement there shall be payable by the  
15 holder thereof at the times respectively prescribed, such rent as  
16 may be respectively prescribed.

17 **109. Royalties**

18 (1) In the exercise of the power to make regulations under  
19 section 162, the Governor may by regulation —

20 (a) prescribe how, by whom, and at what rate, or  
21 differentiating rates, royalties shall be paid in respect of  
22 minerals or any class of minerals, obtained from land  
23 that is the subject of a mining lease or other mining  
24 tenement granted under this Act, or that is the subject of  
25 an application for the grant of a mining lease or other  
26 mining tenement under this Act; and

27 (b) exempt, subject to conditions or unconditionally, any  
28 person or class of persons from payment either  
29 generally, or in any class of case, or in any particular  
30 case, from payment of royalty so prescribed; and

- 1 (c) provide for penalties, including penalties for continuing  
2 offences, for contravention of the requirements of this  
3 Act in relation to royalties and the furnishing of  
4 information relevant to the assessment of royalties.
- 5 (2) Regulations made under section 162 may empower the  
6 Minister —
- 7 (a) to determine by what method a value shall be placed on  
8 a mineral or a class of minerals for the purpose of  
9 assessing the rate of royalty that shall be paid, and in so  
10 doing to take into account market factors, including  
11 pricing methods and merchandising practices; and
- 12 (b) to exercise a discretion as to the basis on which a rate of  
13 royalty shall be applied, taking into account particular  
14 circumstances.
- 15 (3) For the purposes of this section, a reference to a mineral  
16 includes a reference to a material containing that mineral.
- 17 (4) Notwithstanding section 160B or the provisions of any other  
18 Act, proceedings in respect of a failure to furnish information  
19 relevant to the assessment of royalties or to pay royalties under  
20 this Act may be brought within the period of 3 years after the  
21 royalty return was required to be submitted or the royalty  
22 required to be paid or, with the consent of the Minister, at any  
23 later time.

24 *[Section 109 amended: No. 100 of 1985 s. 83; No. 58 of 1994*  
25 *s. 43.]*

26 **109A. Verification of royalties payable**

- 27 (1) Where the Minister is of the opinion that any royalty has not  
28 been paid or that, having regard to any particulars that may be  
29 furnished by a person pursuant to a requirement of this Act or  
30 regulations in respect of any mining operations, any royalty was  
31 not properly assessed or was not properly calculated,  
32 notwithstanding that a certificate may have been furnished in

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1 accordance with subsection (2), the Minister may make an  
2 estimate of the royalty, taking into account the relevant  
3 regulations and such information as has been furnished or is  
4 otherwise available to the Minister, and thereafter, having given  
5 to the person who paid or may be required to pay the royalty  
6 notice —

- 7 (a) that the Minister proposes to exercise the power  
8 conferred by this subsection, particulars of the manner  
9 in which the proposed estimate is calculated being set  
10 out in the notice; and  
11 (b) that any submissions as to the proposal should be made  
12 to the Minister within a period specified in that notice,

13 the Minister, on the expiry of that period and having considered  
14 any submissions made, may determine the amount of royalty  
15 that should have been or which is to be paid.

16 (2) For the purpose of verifying any royalty, the Minister may,  
17 where a person who has paid or may be required to pay a  
18 royalty under this Act so requests, in respect of a period stated  
19 in the request, accept a certificate that the royalty appears to the  
20 person signing the certificate to have been properly assessed and  
21 calculated, being a certificate which —

- 22 (a) is prepared at the cost of the person by whom the  
23 request is made and is signed by —  
24 (i) an auditor, being a person who is registered as an  
25 auditor, or taken to be registered as an auditor,  
26 under Part 9.2 of the Corporations Act; or  
27 (ii) some other competent independent assessor,  
28 being a person approved by the Minister;

29 and

30 (b) sets out the amount of the royalty paid or to be payable  
31 and, unless the Minister otherwise consents, sufficient  
32 detail of the methods of assessment and calculation, and  
33 of all weights, analyses, assays and other matters

- 1 relevant to the certificate to enable the amount certified  
2 to be verified.
- 3 (3) For the purpose of —
- 4 (a) determining whether or not in relation to any mining  
5 operations any royalties are payable, the rates of  
6 payment, the method of valuation which is to be used in  
7 relation to a mineral or class of minerals, the basis on  
8 which a rate of royalty shall be applicable, the methods  
9 of assessment and calculation, and the amount payable;  
10 or
- 11 (b) ascertaining information as to pricing or accounting  
12 methods and storage, transportation, processing or  
13 merchandising practices,
- 14 an officer of the Department or a person authorised by the  
15 Minister may, at any reasonable time, without warrant other  
16 than this section exercise the powers conferred by  
17 subsection (4).
- 18 (4) For the purposes of subsection (3), the powers conferred are  
19 to —
- 20 (a) enter upon any land where mining operations are carried  
21 out and into any premises situate there or any other  
22 premises elsewhere used for the purpose of preparing  
23 accounting or other records relating to the mining  
24 operations conducted on that land;
- 25 (b) enter upon any other land or into any premises where  
26 that officer or authorised person has reasonable cause to  
27 believe any mineral derived from the mining operations,  
28 or any accounting records relating to that mineral, to be,  
29 if —
- 30 (i) the officer or authorised person has reasonable  
31 cause to believe an offence against this Act or a  
32 breach of the conditions of any mining tenement

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- 1                                   has been, is being, or is about to be committed;  
2                                   or  
3                                   (ii) the consent of the owner or occupier of that land  
4                                   or premises has been obtained;  
5                                   (c) inspect and examine any mining operations and any  
6                                   accounting or other records in respect of those  
7                                   operations, and any mining product or mineral, in  
8                                   relation to which royalty is, or in his opinion may be,  
9                                   payable;  
10                                  (d) take copies or extracts of accounting or other records  
11                                  relating to mining operations, or of other sources of  
12                                  information examined by or produced to him;  
13                                  (e) require any person to produce, or to secure the  
14                                  production of to that officer or authorised person —  
15                                   (i) forthwith; or  
16                                   (ii) if by notice in writing a time and place for the  
17                                   production is specified, at the time and place  
18                                   specified,  
19                                  such accounting or other records or other sources of  
20                                  information as are in the custody or control of the person  
21                                  of whom the requirement is made and which relate to a  
22                                  mining tenement, or to any mining operations, mineral  
23                                  product or holder of a mining tenement specified by the  
24                                  officer or authorised person, and are relevant for the  
25                                  purpose of determining whether any, or what amount of,  
26                                  royalty may be payable in relation to the mining  
27                                  operations,  
28                                  for the purpose of seeking or obtaining the information that  
29                                  appears to the officer or person exercising that power to be  
30                                  necessary in relation to any question as to the royalties that may  
31                                  be payable.

- 1 (5) A person who, without reasonable cause, refuses or fails —
- 2 (a) to permit the entry upon any land or into any premises
- 3 which an officer of the Department or other person
- 4 authorised under subsection (3) reasonably believes to
- 5 be necessary; or
- 6 (b) to permit inspection or examination, or the taking of
- 7 copies or extracts of records or other sources of
- 8 information, for the purposes of this section; or
- 9 (c) to produce, or secure the production of, to such an
- 10 officer or authorised person the accounting or other
- 11 records or sources of information that officer or
- 12 authorised person reasonably believes to be necessary
- 13 and requires to be produced; or
- 14 (d) to provide or secure the provision of any other
- 15 information which such an officer or authorised person
- 16 may reasonably require pursuant to this section; or
- 17 (e) to provide such an officer or authorised person with
- 18 appropriate means and reasonable facilities and
- 19 assistance for the effective exercise of the powers
- 20 conferred by this section,
- 21 or who knowingly makes any false or misleading statement or
- 22 otherwise furnishes or permits to be furnished false or
- 23 misleading information, in relation to a matter to which this
- 24 section applies, commits an offence against this Act.
- 25 Penalty: \$5 000.
- 26 (6) Where a person who is the holder of, or an applicant for, a
- 27 mining tenement is convicted in respect of that tenement of an
- 28 offence contravening subsection (5) —
- 29 (a) an estimate of the royalty that, taking into account the
- 30 relevant regulations and such information as has been
- 31 furnished or is otherwise available to the Minister, might
- 32 but for the contravention have been assessed in respect
- 33 of minerals obtained from the land to which the

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- 1 tenement or application relates may be made by or on  
2 behalf of the Minister; and
- 3 (b) that person may by notice in writing be required to pay  
4 to the Minister —
- 5 (i) that estimated royalty; and  
6 (ii) an amount by way of penalty determined by the  
7 Minister, being an amount not greater than 50%  
8 of that estimated royalty,  
9 within a time specified by the Minister; and
- 10 (c) where in relation to an offence a requirement for  
11 payment of estimated royalty or a penalty, or both, was  
12 made of that person under paragraph (b) and is not  
13 complied with, the Minister may —
- 14 (i) in the case of a mining tenement, forfeit that  
15 tenement as though it were a mining lease liable  
16 to forfeiture for a breach of the lessee's covenant  
17 to pay royalty, effect being given to section 97 as  
18 though for the purposes of that section the  
19 tenement were a lease of which the holder was  
20 the lessee; or
- 21 (ii) in the case of an application for a mining  
22 tenement, refuse that application, effect being  
23 given to section 111A as though the Minister  
24 were satisfied on reasonable grounds in the  
25 public interest that the application should not be  
26 granted.

27 *[Section 109A inserted: No. 22 of 1990 s. 35; amended: No. 37*  
28 *of 1993 s. 27; No. 10 of 2001 s. 136.]*

29 **110. Mining lease restricted to certain minerals**

30 Notwithstanding anything to the contrary in this Act, the  
31 Minister may, having regard to the locality wherein the land the  
32 subject of an application for a mining lease is, and if the  
33 Minister considers it is in the public interest to do so, grant the



1 applicant a mining lease that authorises the holder thereof to  
2 mine on or under or both, and remove from the land the subject  
3 of the mining lease, only such mineral as is specified in the  
4 lease.

5 *[Section 110 amended: No. 57 of 1997 s. 89(4).]*

6 **111. Iron authorisations**

7 (1) Notwithstanding the provisions of sections 48, 66, 70J  
8 and 85 —

9 (a) a prospecting licence does not authorise the holder  
10 thereof to prospect for iron on the land the subject of the  
11 prospecting licence;

12 (b) an exploration licence does not authorise the holder  
13 thereof to explore for iron on the land the subject of the  
14 exploration licence;

15 (ba) a retention licence does not authorise the holder thereof  
16 to explore for iron on the land the subject of the  
17 retention licence;

18 (c) a mining lease does not authorise the holder thereof to  
19 work and mine the land in respect of which the lease  
20 was granted for iron,

21 unless the Minister, by instrument in writing under his hand,  
22 authorises such holder so to do and endorses the prospecting  
23 licence, exploration licence, retention licence or mining lease, as  
24 the case requires, accordingly.

25 (2) A reference to a licence or lease in subsection (1) does not  
26 include a reference to a licence or lease granted on an  
27 application made on or after the commencement of the  
28 *Licensing Provisions Amendment Act 2016* section 23.

29 *[Section 111 amended: No. 37 of 1993 s. 10(2); No. 54 of 1996*  
30 *s. 23; No. 44 of 2016 s. 23.]*

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- 1 **111A. Minister may terminate or summarily refuse certain**  
2 **applications**
- 3 (1) The Minister may —
- 4 (a) by notice served on the mining registrar or the warden,  
5 as the case requires, terminate an application for a  
6 mining tenement before the mining registrar or the  
7 warden has determined, or made a recommendation in  
8 respect of, the application; or
- 9 (b) refuse an application for a mining tenement,  
10 if in respect of the whole or any part of the land to which the  
11 application relates —
- 12 (c) the Minister is satisfied on reasonable grounds in the  
13 public interest that —
- 14 (i) the land should not be disturbed; or  
15 (ii) the application should not be granted;
- 16 or
- 17 (d) a person who in relation to the land was formerly the  
18 lessee of a mining lease the term of which has expired,  
19 or is a person deriving title through such a former lessee,  
20 has subsequently made a late renewal application and  
21 the Minister, being satisfied that the requirements of that  
22 expired mining lease and of this Act in relation to that  
23 lease had been substantially observed (other than as to  
24 the timing of an application for renewal) and that the  
25 person has continued to observe those requirements as if  
26 the term of the lease had not expired, determines that the  
27 renewal application should be approved and grants that  
28 renewal.
- 29 (2) In subsection (1)(d) *late renewal application* means an  
30 application made in the manner prescribed for the purposes of  
31 section 78 (except that it was not made during the final year of  
32 the term of the lease) for the renewal of the lease with effect  
33 from the expiry of the term of the lease.

1 (3) Notwithstanding anything in this Act, an application to which a  
2 notice referred to in subsection (1)(a) applies ceases to have any  
3 effect for the purposes of this Act when that notice is served.

4 (4) The powers conferred by subsection (1) are in addition to any  
5 other powers of the Minister under this Act.

6 *[Section 111A inserted: No. 58 of 1994 s. 44.]*

7 **112. Reservation in favour of Crown on prospecting licence or**  
8 **exploration licence to take rock etc.**

9 (1) Subject to subsection (2), every prospecting licence and  
10 exploration licence is subject to a reservation in favour of the  
11 Crown and any person authorised thereby of the right to enter  
12 thereon and remove therefrom any rock, stone, clay, sand or  
13 gravel for use for any public purpose or for use in any  
14 prescribed work or undertaking.

15 (2) A prospecting licence or exploration licence granted —

16 (a) wholly in respect of private land is not subject to the  
17 reservation referred to in subsection (1); or

18 (b) partly in respect of any private land and partly in respect  
19 of land other than private land is not subject to the  
20 reservation referred to in subsection (1) in relation to  
21 that private land; or

22 (c) wholly in respect of Commonwealth land is not subject  
23 to the reservation referred to in subsection (1); or

24 (d) partly in respect of any Commonwealth land and partly  
25 in respect of land other than Commonwealth land is not  
26 subject to the reservation referred to in subsection (1) in  
27 relation to that Commonwealth land.

28 *[Section 112 amended: No. 69 of 1981 s. 26; No. 51 of 2012*  
29 *s. 33.]*

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1 **113. Repossession of land on expiry, surrender or forfeiture of**  
2 **mining tenement**

3 When a mining tenement expires or is surrendered or forfeited,  
4 the owner of the land to which the mining tenement related may  
5 take possession of the land forthwith, subject to any estate or  
6 interest held by any other person other than under that mining  
7 tenement.

8 **114. Removal of mining plant on expiry, surrender or forfeiture**  
9 **of mining tenement**

10 (1) In this section —

11 *mining plant* means any building, plant, machinery, equipment,  
12 tools or any other property of any kind whether affixed to land  
13 or not so affixed;

14 *prescribed period* means a period of 3 months after a mining  
15 tenement expires or is surrendered or forfeited or such longer  
16 period thereafter as the Minister from time to time or in any  
17 particular case determines and is hereby authorised to  
18 determine.

19 (2) When a mining tenement expires or is surrendered in whole or  
20 in part or forfeited —

21 (a) the person who was the holder of the mining tenement  
22 immediately prior to such expiry, surrender or forfeiture;  
23 or

24 (b) any other person,

25 who is entitled to any mining plant lawfully erected or brought  
26 onto the land or the part of the land to which the mining  
27 tenement related by a former holder thereof or any predecessor  
28 in title, may, within the prescribed period, remove any such  
29 mining plant.

- 1 (3) Where any such mining plant is not so removed within the  
2 prescribed period, the Minister may, at any time thereafter, call  
3 upon such holder or other person as is referred to in  
4 subsection (2) to show cause, within such period as the Minister  
5 may determine, why any mining plant that has not been so  
6 removed should not be sold and removed.
- 7 (4) Where such holder or person does not, within the period  
8 determined by the Minister, show cause to the satisfaction of the  
9 Minister why any such mining plant should not be sold and  
10 removed, the Minister may direct the mining plant to be sold by  
11 public auction and be removed.
- 12 (5) The proceeds of the sale of any mining plant pursuant to  
13 subsection (4), after deducting the cost of and incidental to the  
14 sale or the sale and the removal of the mining plant, shall be  
15 paid to such holder of the mining tenement or other person as is  
16 referred to in subsection (2), of whose claim thereto the Minister  
17 has had notice in writing prior to the payment of the proceeds.
- 18 (6) The Minister shall determine whether or not any mining plant  
19 shall be allowed to remain on the land that was the subject of  
20 the mining tenement and if so, the period for which it may so  
21 remain and the amount of rent that shall be paid for the use and  
22 occupation of the land on which the mining plant is allowed to  
23 remain and to whom the rent shall be due and payable.
- 24 (7) Where —
- 25 (a) a mining tenement expires or is surrendered in whole or  
26 in part or forfeited; and
- 27 (b) at the time of that expiry, surrender or forfeiture, the  
28 person (in this subsection called the *former holder*) who  
29 was the holder of the mining tenement immediately  
30 before its expiry, surrender or forfeiture leaves any  
31 tailings or other mining product upon the land or part of  
32 the land that was the subject of the mining tenement,

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- 1 the tailings or other mining product become or becomes the  
2 property of the Crown —
- 3 (c) at the expiration of the prescribed period, if the former  
4 holder does not —
- 5 (i) remove; or  
6 (ii) *bona fide* treat and continue to treat,  
7 the tailings or other mining product within that period; or
- 8 (d) at the expiration of a period of 3 months from the time  
9 when, in the opinion of the Minister, treatment of the  
10 tailings or other mining product is discontinued, if the  
11 former holder, having commenced treatment of the  
12 tailings or other mining product within the prescribed  
13 period, discontinues that treatment after the expiration of  
14 the prescribed period.
- 15 (8) The Minister shall determine the amount of rent that shall be  
16 paid for the use and occupation of the land on which the tailings  
17 or other mining product are allowed to remain and the land used  
18 in relation to the treatment of the tailings or other mining  
19 product and to whom the rent shall be due and payable.
- 20 (9) Nothing in this section affects any valid agreement made by the  
21 holder of a mining tenement with the owner or occupier of any  
22 land to which the tenement relates in respect of mining plant or  
23 tailings or other mining product left on such land after the  
24 prescribed period, and this section shall be construed subject to  
25 such an agreement.
- 26 (10) Notwithstanding the foregoing provisions of this section, no  
27 timber or other material used and applied in the construction or  
28 support of any shaft, drive, gallery, adit, terrace, race, dam or  
29 other mining work shall be removed without the consent in  
30 writing of the Minister.

31 *[Section 114 amended: No. 37 of 1993 s. 18.]*

1 **114A. Rights conferred under mining tenement exercisable in**  
2 **respect of mining product belonging to Crown**

3 Where a provision of this Act confers on the holder of a mining  
4 tenement (other than a miscellaneous licence) rights in respect  
5 of land that is the subject of that mining tenement, the holder of  
6 the mining tenement may exercise those rights in respect of any  
7 tailings or other mining product left upon that land or any part  
8 of that land if —

- 9 (a) at the time the mining tenement was granted, the tailings  
10 or other mining product were or was the property of the  
11 Crown; or  
12 (b) during the term of the mining tenement the tailings or  
13 other mining product become or becomes the property  
14 of the Crown,

15 by virtue of section 114(7) or clause 7(5) of the Second  
16 Schedule.

17 *[Section 114A inserted: No. 37 of 1993 s. 19(1).]*

18 **114B. Continuation of liability after expiry, surrender or**  
19 **forfeiture of mining tenement**

20 The expiry, surrender or forfeiture of a mining tenement does  
21 not affect the liability of the person who was the holder of the  
22 mining tenement immediately before its expiry, surrender or  
23 forfeiture —

- 24 (a) to pay any rent, fee, royalty, penalty, or other money on  
25 any other account, payable on or before the date of  
26 expiry, surrender or forfeiture under or in relation to the  
27 mining tenement; or  
28 (b) to comply with any obligation imposed on or before that  
29 date under or in relation to the mining tenement; or  
30 (c) for any act done or default made on or before that date  
31 under or in relation to the mining tenement.

32 *[Section 114B inserted: No. 39 of 2004 s. 96.]*

**s. 114C**

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1 **114C. Right to enter land to carry out remedial work after expiry,**  
2 **surrender or forfeiture of mining tenement**

3 (1) In this section —

4 *former holder*, in relation to a mining tenement, means the  
5 person who was the holder of the mining tenement immediately  
6 before its expiry, surrender or forfeiture;

7 *remedial work* means work necessary for compliance by the  
8 former holder of a mining tenement with an obligation referred  
9 to in section 114B(b).

10 (2) Where a mining tenement expires or is surrendered or forfeited,  
11 the former holder of the mining tenement may enter and re-enter  
12 the land that was the subject of the mining tenement with such  
13 agents, employees, vehicles, machinery and equipment as may  
14 be necessary or expedient for the purpose of carrying out  
15 remedial work on that land.

16 [*Section 114C inserted: No. 39 of 2004 s. 96.*]

17 **115. Power to enter on land for surveys**

18 (1) When and as often as the Director, Geological Survey or any  
19 other officer of the Department or any person working in  
20 conjunction with that Department and acting under the  
21 Director's instructions considers it necessary to enter upon any  
22 land for the purpose of making any aerial, geological,  
23 geophysical or geochemical surveys of the land and drilling  
24 thereon in the course of his official duties he may —

25 (a) enter and re-enter on the land, with such assistants as he  
26 considers necessary for the purpose of making the  
27 survey thereon; and

28 (b) extract and remove from the land any geological  
29 specimens or samples that in his opinion are necessary  
30 to the survey; and



- 1 (c) affix to or set up on the land such pegs, marks, poles or  
2 other equipment as may be required for the purposes of  
3 the survey; and
- 4 (d) do all such things as he considers necessary for the  
5 purposes of the survey or for any inspection or alteration  
6 of it.
- 7 (2) Before a person enters on any land pursuant to this section, he  
8 shall if practicable, give reasonable notice to the owner and  
9 occupier of the land of his intention to do so, and shall, if  
10 required by the owner or occupier of the land, produce the  
11 authority under which he claims to enter or to have entered the  
12 land.
- 13 (3) In relation to the exercise of a power under this section —
- 14 (a) the owner and occupier of the land are entitled to  
15 compensation according to their respective interests, for  
16 any damage caused by a survey under this section; and
- 17 (b) in default of agreement as to the amount of  
18 compensation to be paid, the amount shall be assessed  
19 and settled by the warden's court under Part VII.
- 20 (4) A person who —
- 21 (a) wilfully obstructs, hinders, or interferes with any person  
22 lawfully engaged in connection with a survey that is  
23 being made under this section; or
- 24 (b) without lawful authority removes, destroys or alters the  
25 position of, any peg, mark, pole or other equipment used  
26 for the purposes of any such survey; or
- 27 (c) wilfully damages or destroys or otherwise interferes  
28 with any peg, mark, pole or other equipment so used,
- 29 is guilty of an offence against this Act.

30 *[Section 115 amended: No. 100 of 1985 s. 84; No. 39 of 2004*  
31 *s. 85.]*

**s. 115A**

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1 **115A. Mineral exploration reports**

2 (1) In this section —

3 *guidelines* means guidelines published under the regulations;

4 *mineral exploration report* means a report containing records of  
5 the progress and results of —

6 (a) programmes involving the application of one or more of  
7 the geological sciences;

8 (b) drilling programmes;

9 (c) activities involving the collection and assaying of soil,  
10 rock, groundwater and mineral samples,

11 that have been carried out in search for minerals;

12 *operations report* means a report of the kind required under  
13 section 51, 68(3), 70H(1)(f) or 82(1)(e).

14 (2) The holder of a mining tenement shall file a mineral exploration  
15 report, or cause a mineral exploration report to be filed —

16 (a) in conjunction with an operations report in such  
17 circumstances as are set out in the guidelines; and

18 (b) whenever required to do so by the Minister by notice in  
19 writing.

20 (3) A mineral exploration report is to be filed in the prescribed  
21 manner and is to be in the form required by the guidelines and is  
22 to contain information of the kind required by the guidelines.

23 (4) The Minister may, under the guidelines, approve of  
24 arrangements for combined mineral exploration reports to be  
25 filed for 2 or more mining tenements and mineral exploration  
26 reports can be filed under those arrangements despite the  
27 requirement of subsection (2)(a) for them to be filed in  
28 conjunction with operations reports.

- 1 (5) The Minister may, under the guidelines, cancel arrangements  
2 referred to in subsection (4).

3 *[Section 115A inserted: No. 58 of 1994 s. 45; amended: No. 12*  
4 *of 2010 s. 37.]*

5 **115B. Verification of expenditure amounts in operations reports**

- 6 (1) In this section —

7 *audit amount* means the amount of expenditure shown in an  
8 audit statement;

9 *audit statement* means a statement containing details of  
10 expenditure during the period to which an operations report  
11 relates;

12 *expenditure* means expenditure on or in connection with mining  
13 on a mining tenement;

14 *expenditure amount* means the amount of expenditure during  
15 the period to which an operations report relates;

16 *operations report* has the meaning given to that term in  
17 section 115A(1).

- 18 (2) For the purpose of verifying the expenditure amount shown in  
19 an operations report, the Minister may, by notice in writing,  
20 require the holder of a mining tenement to file an audit  
21 statement, or cause an audit statement to be filed, in the  
22 prescribed manner and within a period specified in the notice.

- 23 (3) An audit statement is to be prepared and signed by —

24 (a) a person registered as an auditor, or taken to be  
25 registered as an auditor, under Part 9.2 of the  
26 Corporations Act; or

27 (b) another suitably qualified person approved by the  
28 Minister for the purposes of this section.

- 29 (4) If the audit amount differs from the expenditure amount shown  
30 in the operations report, the Minister may determine in writing

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1 that the audit amount is to be regarded as the expenditure  
2 amount for the purposes of this Act.

3 *[Section 115B inserted: No. 39 of 2004 s. 97(1); amended:*  
4 *No. 12 of 2010 s. 38.]*

5 **116. Instrument of licence or lease**

6 (1) The holder of a mining tenement granted pursuant to this Act is  
7 entitled, on payment of the prescribed fee, to receive an  
8 instrument of licence or lease as the case may be in such form as  
9 may be prescribed.

10 (2) Except in the case of fraud, a mining tenement granted or  
11 renewed under this Act shall not be impeached or defeasible by  
12 reason or on account of any informality or irregularity in the  
13 application or in the proceedings previous to the grant or  
14 renewal of that tenement and no person dealing with a  
15 registered holder of a mining tenement shall be required or in  
16 any way concerned to inquire into or ascertain the  
17 circumstances under which the registered holder or any previous  
18 holder was registered, or to see to the application of any  
19 purchase or consideration money, or be affected by notice,  
20 actual or constructive, of any unregistered trust or interest any  
21 rule of law or equity to the contrary notwithstanding, and the  
22 knowledge that any such unregistered trust or interest is in  
23 existence shall not of itself be imputed as fraud.

24 (3) In subsection (2) —

25 **registered**, in relation to a holder or previous holder of a mining  
26 tenement, means that the name of the holder or previous holder  
27 is or was entered in the register as the holder of the mining  
28 tenement.

29 *[Section 116 amended: No. 100 of 1985 s. 85; No. 54 of 1996*  
30 *s. 16; No. 51 of 2012 s. 34.]*

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1 **117. Mining tenements protected**

2 (1) Subject to the provisions of sections 56A, 70 and 85B as regards  
3 the special prospecting licences and mining leases therein  
4 referred to, no Crown grant, transfer of Crown land in fee  
5 simple, or conveyance nor the grant of any mining tenement has  
6 the effect of revoking or injuriously affecting any existing  
7 mining tenement acquired and held under this or the repealed  
8 Act, whether or not any reservation or exception of that existing  
9 mining tenement is contained in the Crown grant, transfer of  
10 Crown land in fee simple, or conveyance or the grant of the  
11 mining tenement.

12 (2) Each such Crown grant, transfer of Crown land in fee simple, or  
13 conveyance and each such grant of a mining tenement shall be  
14 deemed to contain an express reservation of the rights to which  
15 the holder of the existing mining tenement is entitled.

16 *[Section 117 amended: No. 100 of 1985 s. 86; No. 37 of 1993*  
17 *s. 12(2); No. 31 of 1997 s. 71(17) and (18).]*

18 **118. Notice of application to be given to lessee of pastoral lease**

19 Where any land comprised in an application for a mining  
20 tenement is held subject to a pastoral lease within the meaning  
21 of the *Land Administration Act 1997* or a lease otherwise  
22 granted by or on behalf of the Crown for grazing purposes only,  
23 the applicant shall within the prescribed period, post a copy of  
24 the application together with a map on which are clearly  
25 delineated the boundaries of the land in respect of which the  
26 mining tenement is sought by registered post or certified mail to  
27 the holder of that lease at his usual or last known place of abode  
28 or business.

29 *[Section 118 amended: No. 122 of 1982 s. 27; No 100 of 1985*  
30 *s. 87; No. 22 of 1990 s. 36; No. 37 of 1993 s. 20; No. 31 of 1997*  
31 *s. 141.]*

**s. 118A**

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1 **118A. Tenement holder may authorise mining by third party**

2 (1) In this section —

3 *authorisation* means an authorisation under subsection (2).

4 (2) The holder of a prospecting licence, exploration licence or  
5 mining lease (the *relevant tenement*) may, by instrument in  
6 writing, authorise another person to carry out mining of a kind  
7 authorised by the relevant tenement on the land the subject of  
8 the relevant tenement.

9 (3) An authorisation may be given subject to conditions specified in  
10 the authorisation.

11 (4) Mining carried out under an authorisation is to be regarded for  
12 the purposes of this Act as mining carried out by the holder of  
13 the relevant tenement.

14 (5) Expenditure on or in connection with mining carried out under  
15 an authorisation is to be regarded for the purposes of the  
16 prescribed expenditure conditions referred to in section 50, 62  
17 or 82(1)(c) as expenditure by the holder of the relevant  
18 tenement.

19 (6) The giving of an authorisation does not affect the duties or  
20 obligations of the holder of the relevant tenement under  
21 this Act.

22 *[Section 118A inserted: No. 39 of 2004 s. 98(1).]*

23 **119. Mining tenement may be sold, encumbered etc.**

24 (1) Subject to this Act a mining tenement may be sold, encumbered,  
25 transmitted, seized and sold to satisfy a judgment, or otherwise  
26 disposed of.

27 (2) A legal or equitable interest in or affecting a mining tenement is  
28 not capable of being created, assigned, affected or dealt with,  
29 whether directly or indirectly, except by an instrument in

1 writing signed by the person creating, assigning or otherwise  
2 dealing with the interest.

3 *[Section 119 amended: No. 10 of 1982 s. 28; No. 37 of 1993*  
4 *s. 27; No. 58 of 1994 s. 46; No. 59 of 2004 s. 116.]*

5 **119A. Mining tenement may be mortgaged**

6 (1) A mining tenement or share in a mining tenement may be  
7 mortgaged as security for the repayment of money advanced or  
8 agreed to be advanced or for the discharge of any liability.

9 (2) If there are 2 or more mortgages affecting the same legal interest in  
10 a mining tenement, the mortgages take priority according to the  
11 time and date of their registration.

12 (3) A mortgage —

13 (a) has effect only as security for the repayment of the  
14 money intended to be secured by the mortgage and not  
15 as an assignment of the mining tenement; and

16 (b) may cover all buildings, improvements, machinery and  
17 appliances in or upon the land comprised in the mining  
18 tenement.

19 (4) The regulations may provide that a mortgage is deemed to contain  
20 prescribed provisions unless the mortgage contains express  
21 provision to the contrary.

22 *[Section 119A inserted: No. 54 of 1996 s. 17.]*

23 **120. Planning schemes to be considered but not to derogate from**  
24 **this Act**

25 (1) In considering any application for the grant of a mining tenement  
26 the Minister, warden or mining registrar, as the case requires, shall  
27 take into account the provisions of any planning scheme in force  
28 under the *Planning and Development Act 2005* affecting the use  
29 of the land concerned, but the provisions of any such scheme shall  
30 not operate to prohibit or affect the granting of a mining tenement  
31 or the carrying out of any mining operations authorised by this Act.

**s. 120AA**

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- 1 (2) Without affecting subsection (1), where —
- 2 (a) an application has been made for a mining lease or a
- 3 general purpose lease; and
- 4 (b) the local government or the Western Australian
- 5 Planning Commission has, in writing, informed the
- 6 Minister and the Minister for the time being
- 7 administering the *Planning and Development Act 2005*,
- 8 that the mining lease or general purpose lease would, if
- 9 granted, authorise the carrying on of mining operations
- 10 contrary to the provisions of a planning scheme referred
- 11 to in subsection (1),
- 12 the Minister shall not dispose of the application until he has first
- 13 consulted the Minister for the time being administering the
- 14 *Planning and Development Act 2005* and obtained his
- 15 recommendation thereon.

16 [*Section 120 amended: No. 58 of 1994 s. 47; No. 14 of 1996*

17 *s. 4; No. 24 of 2000 s. 26(2); No. 38 of 2005 s. 15.*]

18 **120AA. Scheme for reversion licence applications**

- 19 (1) In this section —
- 20 ***continuing licence*** means a prospecting licence, exploration
- 21 licence or retention licence that has effect in relation to land to
- 22 which a reversion licence application applies;
- 23 ***lease application*** means an application for a mining lease under
- 24 this Act including an application authorised by section 49(1),
- 25 67(1) or 70L(1).
- 26 (2) The Governor, by order published in the *Gazette*, may establish
- 27 a scheme authorising any person who, on or before a day
- 28 specified in the order, has made a lease application or lease
- 29 applications to make one or more applications for a prospecting
- 30 licence or an exploration licence in respect of land the subject of
- 31 the lease application or lease applications.



- 1 (3) An order under subsection (2) may provide for and in relation  
2 to —
- 3 (a) the making of reversion licence applications and related  
4 matters including marking out and advertising; and
- 5 (b) the operation and effect of a reversion licence  
6 application including its effect on —
- 7 (i) the lease application or lease applications to  
8 which it relates; and
- 9 (ii) any continuing licence held by the applicant;  
10 and
- 11 (c) priority as between reversion licence applications and  
12 other mining tenement applications; and
- 13 (d) the circumstances in which objections may be made to  
14 reversion licence applications; and
- 15 (e) the operation and effect of prospecting licences and  
16 exploration licences granted as a result of reversion  
17 licence applications; and
- 18 (f) the refund of rent paid in respect of a lease application  
19 or lease applications if a prospecting licence or an  
20 exploration licence is granted as a result of a reversion  
21 licence application; and
- 22 (g) any other matters of an incidental, supplementary,  
23 savings or transitional nature that are necessary or  
24 expedient for the purposes of the scheme referred to in  
25 subsection (2).
- 26 (4) Without limiting subsection (3), an order under subsection (2)  
27 may provide for a reversion licence application to include land  
28 that is not the subject of the relevant lease application or lease  
29 applications.
- 30 (5) An order under subsection (2) has effect for the period specified  
31 in the order.

**s. 120AA**

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- 1 (6) The Governor, by order published in the *Gazette*, may amend or  
2 revoke an order under subsection (2).
- 3 (7) Section 42 of the *Interpretation Act 1984* applies to an order  
4 under this section as if it were a regulation.
- 5 (8) An order under subsection (2) has effect despite any other  
6 provision of this Act.
- 7 (9) Despite sections 18, 23 and 27, a reversion licence application  
8 may be made in respect of land that is the subject of a mining  
9 tenement if the mining tenement is a continuing licence held by  
10 the applicant.
- 11 (10) Section 40(1)(b) or (c) of the *Mining Amendment Act 1990* does  
12 not apply if the land that has become available from an existing  
13 licence, as defined in section 40(3) of that Act, has been  
14 included in a reversion licence application and a prospecting  
15 licence is granted in respect of that application.

16 *[Section 120AA inserted: No. 39 of 2004 s. 99; amended:*  
17 *No. 27 of 2005 s. 11]*

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## Part VI — Caveats

[Heading inserted: No. 54 of 1996 s. 18.]

### 121. Terms used

In this Part, unless the contrary intention appears —

*absolute caveat* means a caveat referred to in section 122A(1)(a);

*caveat* means an absolute caveat, a consent caveat or a subject to claim caveat;

*consent caveat* means a caveat referred to in section 122A(2);

*subject to claim caveat* means a caveat referred to in section 122A(1)(b).

[Section 121 inserted: No. 54 of 1996 s. 18.]

### 122. Certain surrenders not affected by this Part

(1) A reference in this Part (other than this section) to a surrender does not include a surrender under section 26A or 65.

(2) Where —

(a) a surrender under section 26A or 65 is registered under section 103C; and

(b) the surrender affects a mining tenement or an interest in a mining tenement that is the subject of a caveat,

notification of the registration of the surrender is to be sent by or on behalf of the Minister in the prescribed manner to the person who lodged that caveat.

[Section 122 inserted: No. 54 of 1996 s. 18.]

**s. 122A**

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1     **122A. Lodgment of caveats**

- 2           (1) A person claiming an interest in a mining tenement may  
3           lodge —
- 4               (a) a caveat against the mining tenement forbidding the  
5               registration of a dealing or surrender affecting the  
6               mining tenement or interest; or
- 7               (b) a caveat against the mining tenement forbidding the  
8               registration of —
- 9                       (i) a dealing affecting the mining tenement or  
10                      interest unless the dealing expressly states that it  
11                      is to be subject to the interest claimed by the  
12                      caveator; or
- 13                     (ii) a surrender affecting the mining tenement or  
14                      interest.
- 15           (2) If —
- 16               (a) the holder of a mining tenement has entered into an  
17               agreement with another person relating to —
- 18                       (i) the sale of the holder’s interest in the mining  
19                      tenement; or
- 20                     (ii) any other matter connected with the holder’s  
21                      interest in the mining tenement;
- 22               and
- 23               (b) the agreement so provides,
- 24               either party to the agreement may lodge a caveat against the  
25               mining tenement forbidding the registration of a dealing or  
26               surrender affecting the mining tenement or interest together  
27               with a copy of the agreement.
- 28           (3) A caveat lodged under this section is to —
- 29               (a) be in the prescribed form; and
- 30               (ba) be lodged in the prescribed manner; and
- 31               (b) be accompanied by the prescribed fee; and

- 1 (c) state the full name and address of the caveator; and  
2 (d) be signed by the caveator or an agent of the caveator;  
3 and  
4 (e) give an address within the State for the service of  
5 notices and proceedings in relation to the caveat.
- 6 (4) If a caveat is lodged under this section —  
7 (a) a memorial or copy of the caveat is to be entered in the  
8 register; and  
9 (b) except in the case of a consent caveat lodged by the  
10 holder of a mining tenement, a notice stating that the  
11 caveat has been lodged is to be sent by certified mail to  
12 the holder of the mining tenement affected by the  
13 caveat.
- 14 (5) Subject to section 122B, a caveat lodged under this section has  
15 effect from the time of lodgment.
- 16 (6) Successive caveats shall not be lodged by, or on behalf of, the  
17 same person in respect of the same subject matter except with  
18 the consent of a warden.

19 *[Section 122A inserted: No. 54 of 1996 s. 18 (as amended:*  
20 *No. 39 of 2004 s. 104(a) and (b)); amended: No. 12 of 2010*  
21 *s. 39.]*

22 **122B. Provisional lodgment**

- 23 (1) If an authorised officer (as defined in section 103A) is of the  
24 opinion that a caveat lodged under section 122A contains an  
25 error or defect, the officer is —  
26 (a) if satisfied that the error or defect can be corrected, to  
27 accept the caveat for provisional lodgment; or  
28 (b) in any other case, to reject the caveat and endorse the  
29 register accordingly.

**s. 122C**

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1 (2) The regulations may provide for the effect to be given to a  
2 caveat accepted for provisional lodgment.

3 *[Section 122B inserted: No. 54 of 1996 s. 18.]*

4 **122C. Caveats deemed to be lodged against later tenements**

5 (1) If a caveat has been lodged against —

6 (a) a mining tenement and the holder of that tenement is  
7 granted a mining lease or general purpose lease (the  
8 *later tenement*) under section 49, 67 or 70L in respect of  
9 the land or a part of the land the subject of the tenement;  
10 or

11 (b) a mining tenement and the holder of that tenement is  
12 granted a retention licence (the *later tenement*) under  
13 section 70B in respect of the land or a part of the land  
14 the subject of the tenement; or

15 (c) a special prospecting licence granted under section 56A,  
16 70 or 85B and the holder of that licence is granted a  
17 mining lease for gold (the *later tenement*) under  
18 section 56A(8), 70(8) or 85B(7) in respect of the land or  
19 a part of the land the subject of the licence,

20 the caveat is ~~to be~~ taken to have been also lodged against the  
21 later tenement and a memorial to that effect is to be entered in  
22 the register.

23 (2) A caveat to which subsection (1) applies has effect, in relation  
24 to a later tenement, from the day on which the later tenement is  
25 granted.

26 *[Section 122C inserted: No. 54 of 1996 s. 18.]*

27 **122D. Effect of caveat**

28 (1) A dealing or surrender affecting the subject matter of a caveat  
29 shall not be registered under section 103C while the caveat  
30 remains in force, except with the consent of a warden.

- 1 (2) Subsection (1) does not apply to a dealing if —  
2 (a) the caveat concerned is a subject to claim caveat; and  
3 (b) the dealing is expressed to be subject to the interest  
4 claimed by the caveator.

5 *[Section 122D inserted: No. 54 of 1996 s. 18 (as amended:*  
6 *No. 39 of 2004 s. 104(c).]*

7 **122E. Duration of caveat**

- 8 (1) An absolute caveat or a subject to claim caveat ceases to have  
9 effect upon —  
10 (a) the direction of a warden for the removal of the caveat;  
11 or  
12 (b) the withdrawal of the caveat by the caveator or an agent  
13 of the caveator; or  
14 (c) the expiry of a period of 14 days after notification  
15 that —  
16 (i) in the case of an absolute caveat, application has  
17 been made for the registration of a dealing or  
18 surrender affecting the subject matter of the  
19 caveat; or  
20 (ii) in the case of a subject to claim caveat,  
21 application has been made for the registration of  
22 a dealing or surrender affecting the subject  
23 matter of the caveat that is not expressed to be  
24 subject to the interest claimed by the caveator,  
25 has been sent by or on behalf of the Minister by certified  
26 mail to the caveator at the address for service given in  
27 the caveat, unless within that period a warden otherwise  
28 directs.  
29 (2) A consent caveat ceases to have effect upon —  
30 (a) the direction of a warden for the removal of the caveat;  
31 or

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- 1 (b) the withdrawal of the caveat by consent of the parties to  
2 the agreement; or
- 3 (c) the expiry of the period of time, if any, specified in the  
4 agreement.
- 5 (3) If a caveat ceases to have effect under this section a memorial to  
6 that effect is to be entered in the register.
- 7 (4) In subsection (2) —  
8 **agreement** means the agreement referred to in section 122A(2).  
9 *[Section 122E inserted: No. 54 of 1996 s. 18 (as amended:  
10 No. 39 of 2004 s. 104(d)-(f)).]*



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## Part VII — Compensation

### 123. Compensation in respect of mining

- (1) On and after the coming into operation of the *Mining Amendment Act 1985*, in so far as the mineral is by virtue of section 9 the property of the Crown or the mining is authorised under this Act no compensation shall be payable in any case, and no claim lies for compensation, whether under this Act or otherwise —
- (a) in consideration of permitting entry on to any land for mining purposes; or
  - (b) in respect of the value of any mineral which is or may be in, on or under the surface of any land; or
  - (c) by reference to any rent, royalty or other amount assessed in respect of the mining of the mineral; or
  - (d) in relation to any loss or damage for which compensation can not be assessed according to common law principles in monetary terms.
- (2) Subject to this section and to sections 124 and 125, the owner and occupier of any land where mining takes place are entitled according to their respective interests to compensation for all loss and damage suffered or likely to be suffered by them resulting or arising from the mining, whether or not lawfully carried out in accordance with this Act, and a person mining thereon is liable to pay compensation in accordance with this Act for any such loss or damage, or likely loss or damage, resulting from any act or omission on his part or on the part of his agents, sub-contractors or employees or otherwise occasioned with his authority.
- (2a) A reference in subsection (2) to *mining* shall be construed as including a reference to marking out in connection with an application for a mining tenement.

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- 1 (3) The amount of compensation payable to the owner of private  
2 land or to an occupier of Crown land or private land may be  
3 determined by agreement, but in default of agreement —
- 4 (a) if the owner or occupier, respectively, and the person  
5 liable for payment of the compensation so consent, may  
6 be determined by the warden’s court, without requiring  
7 any formal proceedings to be taken, pursuant to a claim  
8 made in the prescribed manner; and
- 9 (b) in any other case, shall be determined by the warden’s  
10 court in formal proceedings, upon the application of the  
11 owner, the occupier or the person liable for the payment  
12 of the compensation.
- 13 (4) Subject to subsection (1) and subsection (7) and taking into  
14 account the matters referred to in section 124 and section 125,  
15 the amount payable under subsection (2) to which an owner or  
16 occupier may be found to be entitled may include compensation  
17 for —
- 18 (a) being deprived of the possession or use, or any  
19 particular use, of the natural surface of the land or any  
20 part of the land; and
- 21 (b) damage to the land or any part of the land; and
- 22 (c) severance of the land or any part of the land from other  
23 land of, or used by, that person; and
- 24 (d) any loss or restriction of a right of way or other  
25 easement or right; and
- 26 (e) the loss of, or damage to, improvements; and
- 27 (f) social disruption; and
- 28 (g) in the case of private land that is land under cultivation,  
29 any substantial loss of earnings, delay, loss of time,  
30 reasonable legal or other costs of negotiation, disruption  
31 to agricultural activities, disturbance of the balance of  
32 the agricultural holding, the failure on the part of a  
33 person concerned in the mining to observe the same

- 1 laws or requirements in relation to that land as regards  
2 the spread of weeds, pests, disease, fire or erosion, or as  
3 to soil conservation practices, as are observed by the  
4 owner or occupier of that land; and
- 5 (h) any reasonable expense properly arising from the need  
6 to reduce or control the damage resulting or arising from  
7 the mining,
- 8 and where the use for mining purposes of aircraft over or in the  
9 vicinity of any land (whether or not private land) occasions  
10 damage that damage shall be deemed to have been occasioned  
11 by an entry on the land thereby affected.
- 12 (5) If any private land or improvement thereon adjoining or in the  
13 vicinity of land where mining takes place is injured or  
14 depreciated in value by the mining or by reason of the  
15 occupation of any portion of the surface or enjoyment by the  
16 holder of a mining tenement or of any right of way, the owner  
17 and occupier of the private land or improvements thereon are  
18 entitled severally to compensation for all loss or damage thereby  
19 sustained and the amount of compensation shall be determined  
20 in the manner provided in this section.
- 21 (6) Where mining operations are carried out on or under any land  
22 the subject of a mining tenement and damage is thereby caused  
23 to the surface or part of the surface of any private land  
24 comprised within the boundaries of the land the subject of the  
25 mining tenement belonging to the same or another owner, or to  
26 any improvement on any such private land, not being damage  
27 already determined under this Part, the owner and occupier of  
28 the private land or improvement are entitled severally to  
29 compensation for all loss or damage thereby sustained, and the  
30 amount of the compensation shall be determined in the manner  
31 provided by this section.
- 32 (7) Subject to section 124, a person who holds any land —  
33 (a) which is leased to him for pastoral purposes under the  
34 *Land Administration Act 1997* or which he holds by

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- 1 virtue of a lease or concession otherwise granted by or  
2 on behalf of the Crown for grazing purposes only or  
3 which is Crown land leased for the use and benefit of  
4 the Aboriginal inhabitants; and
- 5 (b) in respect of which a mining tenement has been granted,  
6 (in this section called the *lessee*) is entitled to be compensated  
7 by the holder of that mining tenement for —
- 8 (c) subject to section 125, any damage to improvements on  
9 that land caused by the holder and for any loss —
- 10 (i) suffered by the lessee; and  
11 (ii) resulting from that damage;
- 12 and
- 13 (d) notwithstanding anything in section 125, any substantial  
14 loss of earnings —
- 15 (i) suffered by the lessee; and  
16 (ii) resulting or arising from mining by the holder.
- 17 (8) In an action in the warden’s court for compensation pursuant to  
18 this Act, if the warden’s court considers it impracticable or  
19 inexpedient to determine the amount of compensation to be paid  
20 in full satisfaction the warden’s court may on the application of  
21 a party to the claim for compensation or of its own motion give  
22 judgment or make a determination as to the compensation  
23 payable in respect of any specified period and in respect of the  
24 whole or part of the total claim for compensation.
- 25 (9) A determination made by the warden’s court under  
26 subsection (3) is, for the purposes of section 147(1), a final  
27 determination of the warden’s court.
- 28 *[Section 123 amended: No. 69 of 1981 s. 27; No. 100 of 1985*  
29 *s. 93; No. 105 of 1986 s. 17 and 18; No. 37 of 1993 s. 26;*  
30 *No. 54 of 1996 s. 23; No. 31 of 1997 s. 141; No. 39 of 2004*  
31 *s. 85; No. 12 of 2010 s. 12 and 40.]*

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- 1 **124. Matters to be considered by warden's court in relation to**  
2 **compensation**
- 3 (1) Without limiting or otherwise affecting the powers conferred on  
4 a warden's court by this Act, a warden's court when considering  
5 matters relating to compensation under this Act, shall take into  
6 consideration —
- 7 (a) any work that the person has carried out or undertakes to  
8 carry out to make good injury to the surface of the land  
9 or injury to anything on the surface of the land;
- 10 (b) the amount of any compensation that the owner and  
11 occupier or either of them have or has already received  
12 in respect of the loss or damage for which compensation  
13 is being assessed, and shall deduct the amount already  
14 so received from the amount that they would otherwise  
15 be entitled to for such loss or damage.
- 16 (2) Upon the hearing of a claim for compensation under  
17 section 123, an order may be made requiring the person by or on  
18 whose behalf the mining was authorised to restore, so far as is  
19 reasonably practicable, the surface of the land that was damaged  
20 thereby.
- 21 (3) Before an order is made under subsection (2) consideration shall  
22 be given to the following matters —
- 23 (a) the geographical location of the land to which the claim  
24 for compensation relates and its environment;
- 25 (b) the purpose for which such land was used before the  
26 mining operations commenced and the purpose for  
27 which such land is likely to be used after the mining  
28 operations have ceased;
- 29 (c) the cost to restore the surface of the land relative to the  
30 whole of the cost of and in relation to such mining  
31 operations and the profitability thereof;

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- 1 (d) the practicability of restoring the surface of the land  
2 after such mining operations have ceased.

3 *[Section 124 amended: No. 69 of 1981 s. 28; No. 100 of 1985*  
4 *s. 94; No. 39 of 2004 s. 85.]*

5 **125. Limitation on compensation**

6 Except where and then only to the extent agreed upon by the  
7 parties concerned or authorised by the warden's court,  
8 compensation is not payable under this Part to a person who is  
9 the *lessee* of any land for the purposes of section 123(7) —

- 10 (a) for deprivation of the possession of the surface or any  
11 part of the surface of the land;  
12 (b) for damage to the surface of the land;  
13 (c) where the lessee is deprived of the possession of the  
14 surface of any land, for severance of the land from any  
15 other land of the lessee;  
16 (d) for surface rights of way and easements.

17 *[Section 125 amended: No. 100 of 1985 s. 95; No. 105 of 1986*  
18 *s. 19.]*

19 **125A. Liability for payment of compensation to native title holders**

20 (1) If compensation is payable to native title holders for or in  
21 respect of the grant of a mining tenement, the person liable to  
22 pay the compensation is —

- 23 (a) if an amount is to be paid and held in trust, the applicant  
24 for the grant of, or the holder of, the mining tenement at  
25 the time the amount is required to be paid; or  
26 (b) otherwise, the applicant for the grant of, or the holder of,  
27 the mining tenement at the time a determination of  
28 compensation is made.

29 (2) If, at the relevant time, there is no holder of the mining  
30 tenement because the mining tenement has been surrendered or  
31 forfeited or has expired, a reference in subsection (1) to the

1 holder of the mining tenement is a reference to the holder of the  
2 mining tenement immediately before its surrender, forfeiture or  
3 expiry.

4 (3) In subsection (1) —  
5 **grant** includes extension or renewal;  
6 **native title holders** has the same meaning as in the *Native Title*  
7 *Act 1993* of the Commonwealth.

8 [*Section 125A inserted: No. 61 of 1998 s. 16.*]

9 **126. Securities**

10 (1) A security referred to in [section 26, 52\(1\), 60\(1\), 70F\(1\) or](#)  
11 [84A\(1\)](#) ~~section 26, 52, 60, 70F or 84A~~ —

12 (a) shall be for such amount —

13 (i) in the case of a security referred to in [section 26](#)  
14 [or 103AU\(1\)](#), ~~section 26, 52(1a), 60(1a), 70F(2)~~  
15 ~~or 84A(2)~~, as the Minister in a particular case  
16 approves (including any variation of that amount  
17 under subsection (1a)); or

18 (ii) in the case of a security referred to in  
19 section 52(1), 60(1), 70F(1) or 84A(1), as is  
20 prescribed;

21 and

22 (b) shall be in the prescribed form or such other form as the  
23 Minister in a particular case approves; and

24 (c) may, subject to the approval of the Minister, be by bond  
25 or such other method as the Minister allows, or be partly  
26 by bond and partly by such other method as the Minister  
27 allows.

28 (1a) The Minister may by instrument in writing vary an amount  
29 approved under subsection (1)(a)(i).

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- 1 (2) A security given in accordance with the prescribed form or a  
2 form approved by the Minister, although it is not sealed, binds  
3 the person subscribing it as if it were sealed.
- 4 (3) Whenever a security under this section is put in suit the  
5 production of the security, without further proof, entitles the  
6 Minister to judgment against the person appearing to have  
7 executed the security for the amount of his stated liability or for  
8 such lesser amount as is claimed, unless that person proves  
9 compliance with the conditions of the security or that the  
10 security was not executed by him or release or satisfaction.
- 11 (4) If it appears to the court before which the security is in suit that  
12 a non-compliance with a condition of a security under this  
13 section has occurred, the security shall not be deemed to have  
14 been discharged or invalidated, and the subscriber shall not be  
15 deemed to have been released or discharged from liability, by  
16 reason of —
- 17 (a) any extension of time or other concession; or  
18 (b) any consent to, or acquiescence in, a previous  
19 non-compliance with a condition; or  
20 (c) any failure to bring suit against the subscriber upon the  
21 occurrence of a previous non-compliance with the  
22 condition.
- 23 (5) If there are several subscribers to the security they are bound,  
24 unless the security otherwise provides, jointly and severally and  
25 for the full amount.
- 26 (6) A security given under this section shall not be enforced except  
27 with the written approval of the Minister.
- 28 (7) The Minister may discharge, in whole or in part, a security  
29 given under this section —
- 30 (a) on receipt of an application in writing by the person  
31 subscribing to the security accompanied by evidence  
32 satisfactory to the Minister showing cause why the  
33 security should be discharged; or



- 1           (b) on the Minister's own initiative, if the Minister  
2           considers it appropriate to do so.
- 3           (8) Without limiting the power of the Minister in subsection (7), a  
4           security given under this section for the purposes of  
5           section 52(1), 60(1), 70F(1) or 84A(1) that is not in suit is  
6           discharged by operation of this section on the expiry of one year  
7           after the surrender, forfeiture or expiry of the mining tenement  
8           in respect of which the security was given.
- 9           *[Section 126 amended: No. 100 of 1985 s. 96; No. 37 of 1993*  
10          *s. 10(2); No. 17 of 1999 s. 19; No. 39 of 2004 s. 41.]*

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1 **Part VIII — Administration of justice**

2 **127. Establishment of wardens' courts**

- 3 (1) The Governor may, by Order in Council —
- 4 (a) establish wardens' courts at such places in the State as
- 5 he thinks necessary;
- 6 (b) assign to any warden's court such mineral field or
- 7 district thereof, as he thinks fit;
- 8 (c) alter the place at which a warden's court is established;
- 9 (d) discontinue the holding of a warden's court at any place;
- 10 (e) cancel the assignment of a mineral field or district
- 11 thereof to a warden's court and assign it to another
- 12 warden's court.
- 13 (2) When the holding of a warden's court is discontinued, or any
- 14 mineral field or district thereof is no longer assigned to that
- 15 court, all proceedings pending in that court and all the records
- 16 thereof, or such of the proceedings and such of the records as
- 17 relate to the mineral field or district thereof, as the case requires,
- 18 shall be transferred to and be continued in such other warden's
- 19 court as the Governor by Order in Council directs.

20 *[Section 127 amended: No. 100 of 1985 s. 97; No. 59 of 2004*

21 *s. 116.]*

22 **128. Warden's court to be court of record**

23 Each warden's court shall be a court of record, and shall have an

24 official seal which shall be judicially noticed.

25 **129. Signing of process**

26 All summonses, judgment orders, warrants and other process

27 issued out of a warden's court shall be signed by the warden or

28 the mining registrar.

1 **130. Times for holding warden's court**

2 A warden's court may be held at such times as the warden, from  
3 time to time, appoints.

4 *[Section 130 amended: No. 39 of 2004 s. 68.]*

5 **131. Power of warden to act in absence of warden usually**  
6 **presiding**

7 Where the warden who usually presides in a warden's court is  
8 for any reason unable to do so, any other warden may act in his  
9 place and while so acting has all the powers, duties and  
10 authorities of the warden for whom he is acting.

11 *[Section 131 amended: No. 100 of 1985 s. 98; No. 39 of 2004*  
12 *s. 69.]*

13 **132. Jurisdiction of warden's court**

14 (1) A warden's court has jurisdiction to hear and determine all such  
15 actions, suits and other proceedings cognizable by any court of  
16 civil jurisdiction as arise in respect of —

- 17 (a) the area, dimensions, or boundaries of mining  
18 tenements;
- 19 (b) the title to, and ownership or possession of, mining  
20 tenements or mining products;
- 21 (c) water to be used for mining and any questions or  
22 disputes relating thereto;
- 23 (d) trespass or encroachment upon, or injuries to, mining  
24 tenements;
- 25 (e) specific performance of contracts relating to mining  
26 tenements or mining;
- 27 (f) transfers and other dispositions of, and charges upon,  
28 mining tenements;

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- 1 (g) trusts relating to mining tenements or mining;
- 2 (h) partnerships relating to mining tenements or mining, the  
3 existence, formation, and dissolution thereof, the taking  
4 of accounts connected therewith, the contribution of the  
5 partners as between themselves and the determination of  
6 all questions arising between the partners;
- 7 (i) contribution by or between persons holding joint or  
8 several interests in mining tenements towards rent or  
9 other expenses in relation thereto;
- 10 (j) encroachment or trespass upon, or injury to, land by  
11 reason of mining, whether the land is held under this Act  
12 or otherwise;
- 13 (k) encroachments upon, injuries to, and matters affecting  
14 roads, tramways, railroads or other property of whatever  
15 kind constructed, held or occupied under this Act;
- 16 (l) the partition, sale, disposal, or division of any mining  
17 property, or the proceeds thereof, held by 2 or more  
18 persons having conflicting interests therein,
- 19 and generally all rights claimed in, under or in relation to any  
20 mining tenement or purported mining tenement, or relating to  
21 any matter in respect of which jurisdiction is under any  
22 provision of this Act conferred upon the warden's court.
- 23 (2) Every warden's court has jurisdiction throughout the State,  
24 including any area that comes within paragraph (b) of the  
25 definition of *land* in section 8(1), but any action, suit or other  
26 proceeding within the jurisdiction of a warden's court in respect  
27 of, or in relation to, any mining tenement shall be brought in the  
28 warden's court for the mineral field or the district thereof  
29 assigned to the court and in which the mining tenement is.
- 30 (3) Where a warden's court is satisfied that any action, suit or other  
31 proceeding pending in the court has been erroneously brought  
32 before the court, or could more conveniently be dealt with in

- 1 another warden's court, the court may, notwithstanding  
2 subsection (2), order the mining registrar of the court —
- 3 (a) to transmit a copy of the record of the proceedings to the  
4 mining registrar of such other court; and
- 5 (b) to give notice thereof to the parties to the action, suit or  
6 proceeding.
- 7 (4) When the mining registrar receives a copy of the record  
8 transmitted to him pursuant to subsection (3) —
- 9 (a) he shall appoint a day for the hearing or further hearing  
10 or other consideration of the action, suit or proceeding  
11 so transmitted; and
- 12 (b) he shall give notice thereof to the parties thereto,
- 13 and the action, suit or proceeding shall be heard or considered  
14 accordingly.

15 *[Section 132 amended: No. 39 of 2004 s. 70 and 85; No. 12 of*  
16 *2003 s. 10.]*

17 **133. Offences to be dealt with by magistrate**

18 A court of summary jurisdiction dealing with an offence under  
19 this Act is to be constituted by a magistrate.

20 *[Section 133 inserted: No. 59 of 2004 s. 114.]*

21 **134. Powers of warden's court**

22 (1) A warden's court has power to make orders on all matters  
23 within its jurisdiction, for —

- 24 (a) the enforcement of contracts;  
25 (b) the awarding of damages or compensation;  
26 (c) the appointment of receivers;

27 *[(d) deleted]*

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- 1 (e) the determination of the area, extent, dimensions or  
2 boundaries of any mining tenement or as to the  
3 respective rights of the owner of the primary tenement  
4 and the special prospecting licence or mining lease for  
5 gold granted in relation to that tenement pursuant to  
6 section 56A, 70 or 85B;
- 7 (f) the declaration or enforcement of any trust relating to  
8 mining tenements or mining operations and the product  
9 thereof;
- 10 (g) the declaration of any partnership proved to exist  
11 between any persons, the taking of accounts relating  
12 thereto, the determination of contributions between the  
13 partners therein, and the settlement of all questions  
14 arising in relation thereto;
- 15 (h) the dissolution of mining partnerships and the division  
16 of the property thereof between the parties entitled  
17 thereto either by sale, partition or otherwise, as may be  
18 agreed between the parties or as the warden's court, in  
19 case of dispute, may order;
- 20 (i) the partition, sale, disposal, or division of any mining  
21 property, or the proceeds thereof, held by 2 or more  
22 persons having conflicting interests therein;
- 23 (j) the cessation or suspension by any party of any mining  
24 operations or works in connection therewith causing or  
25 likely to cause, injury to any other party,
- 26 and generally for the determination and settlement of all actions,  
27 claims, questions and disputes properly brought before the  
28 warden's court, and for the enforcement and carrying out of any  
29 order previously made, and for awarding or apportioning costs  
30 in any such proceedings.
- 31 (2) The costs of all proceedings in the warden's court under this Act  
32 shall be in the discretion of the court and the amount thereof  
33 may be determined by the court or taxed by the warden or the  
34 mining registrar, as the court may direct.

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- 1 (3) A warden's court at any stage of any proceedings pending  
2 therein may, of its own motion, or on the application of any  
3 party to those proceedings, order —
- 4 (a) the adding, joining, substituting, or striking out of any  
5 party in, to, for or from those proceedings;
- 6 (b) any person having the possession, custody, or control of  
7 any minerals or other chattels to which those  
8 proceedings relate, to deposit the minerals or chattels  
9 with such person at such time and place as is specified  
10 in the order pending any further order with respect  
11 thereto;
- 12 (c) the valuation, sale or other disposal of any such mineral  
13 or such chattels of any person;
- 14 (d) the appropriation and delivery of any such minerals or  
15 chattels or any portion or part thereof or proceeds  
16 thereof, to any person in or towards the satisfaction of  
17 any order made against the owner thereof for the  
18 payment of any sum of money;
- 19 (e) the seizure of any such minerals or chattels by any  
20 bailiff or other person specified in the order and the  
21 detention thereof pending any further order with respect  
22 thereto;
- 23 (f) the cessation or suspension at any time and from time to  
24 time of any mining operations or works, or the carrying  
25 on thereof under the direction or control of some person  
26 appointed by the warden's court, for such period as  
27 seems necessary to the court;
- 28 (g) that any person shall do, or refrain from doing, as the  
29 case may require, any such act or thing upon or in  
30 relation to any mining tenement or property the subject  
31 matter of any proceeding as the court thinks fit;

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- 1 (h) the measurement or survey of any land or mining  
2 tenement or part thereof, and the making of plans and  
3 drawings thereof by any person duly qualified for the  
4 particular purpose;
- 5 (i) the inspection of any land, mine or works by any  
6 specified person, and the taking of samples of any  
7 mineral or that a report thereon be made to the warden's  
8 court by any specified person;
- 9 (j) the taking of accounts by any specified person in  
10 relation to any mining partnership or to the respective  
11 shares or interests of any person interested in any  
12 mining property, mining tenement or mineral;
- 13 (k) the payment to any person or into court of any sum of  
14 money, or the giving of security therefor, for or towards  
15 the expenses of carrying out or giving effect to any such  
16 order, or for the payment of costs,
- 17 and any such order may be made upon such terms or conditions  
18 as to costs, compensation, security or otherwise, as the court  
19 thinks fit.
- 20 (4) Without affecting the exercise by the court of its other powers,  
21 the power conferred by subsection (3)(g) may be exercised by  
22 the court of its own motion or on the application of any person  
23 prior to the commencement of an action or other proceeding in  
24 the court, if the court is satisfied that the applicant has sufficient  
25 grounds for making the application.
- 26 (5) Subject to this Act and without affecting the jurisdiction of a  
27 warden's court, a warden's court has and may exercise in  
28 relation to all matters relating to any civil proceeding under this  
29 Act the like powers and authorities as are conferred upon the  
30 Supreme Court.
- 31 (6) In all respects, except as expressly provided by or under this  
32 Act, the practice and procedure of a warden's court as a court of



1 civil jurisdiction shall be the same as the practice and procedure  
2 of the Magistrates Court in like matters.

3 *[Section 134 amended: No. 100 of 1985 s. 99; No. 37 of 1993*  
4 *s. 12(2); No. 39 of 2004 s. 71 and 85; No. 59 of 2004 s. 116.]*

5 **135. Summary determination by warden by consent**

6 (1) Upon the request in writing of all parties to a dispute relating to  
7 a matter within the jurisdiction of a warden's court, the  
8 warden's court may hear and determine the question in dispute  
9 forthwith or at any time or place which it may appoint without  
10 requiring any formal proceedings to be taken.

11 (2) An order made by the warden's court in a case to which  
12 subsection (1) refers has the same force and effect as if made  
13 upon formal proceedings in the court, and the order is final and  
14 conclusive, and not subject to appeal.

15 (3) The warden's court shall keep a record, in a register kept for the  
16 purpose, of every matter determined under this section by it and  
17 of its decision thereon.

18 *[Section 135 amended: No. 100 of 1985 s. 100; No. 39 of 2004*  
19 *s. 72.]*

20 **136. Practice and procedure in warden's court**

21 (1) Subject to this Act the practice and procedure of a warden's  
22 court shall be governed by the rules of court made by the  
23 Governor and until provision is made by rules of court, or where  
24 no provision, or insufficient provision is made by this Act or the  
25 rules of court in relation to any act, matter or thing, the rules of  
26 court of the Magistrates Court, for the time being in force, so far  
27 as applicable, apply to the warden's court, but without limiting  
28 the jurisdiction conferred by this Act on a warden's court.

29 (2) The rules of court may provide in particular that the appropriate  
30 provisions of the *Magistrates Court (Civil Proceedings)*  
31 *Act 2004*, with such modifications as may be necessary or

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1 desirable and specified in the rules of court, apply in respect of  
2 judgments and orders of the warden's court.

3 (3) The rules of court may provide for documents to be lodged with  
4 or issued by a warden's court, or served, in an electronic form.

5 *[Section 136 amended: No. 105 of 1986 s. 21; No. 59 of 2004*  
6 *s. 116; No. 12 of 2010 s. 41.]*

7 **137. Records of evidence**

8 (1) A warden's court must ensure that evidence given in  
9 proceedings before it is recorded in the manner prescribed in the  
10 rules of court or the regulations.

11 *[(2), (3) deleted]*

12 (4) Any party to any proceedings in which evidence has been  
13 recorded in accordance with this section, is entitled to obtain a  
14 copy of that evidence in the prescribed form upon payment of  
15 the prescribed fee.

16 (5) Each order and decision of a warden's court, and in any  
17 contested proceeding the reasons for the order made or decision  
18 given, shall be reduced to writing, and signed by the warden  
19 presiding in the court that made the order or gave the decision.

20 (6) Any person may obtain a copy of the order or decision referred  
21 to in subsection (5) upon payment of the prescribed fee.

22 *[Section 137 amended: No. 100 of 1985 s. 101; No. 39 of 2004*  
23 *s. 73.]*

24 **138. Mode of trial**

25 (1) The hearing of all proceedings in a warden's court shall be in  
26 open court, at the time and place appointed therefor, and all  
27 evidence shall be taken on oath, for which purpose a warden,  
28 the mining registrar or other person acting as the clerk of the  
29 warden's court is empowered to administer an oath.

- 1 (2) Where a warden's court, for any reason cannot be held at the  
2 time and place so appointed, the warden or in his place the  
3 mining registrar, may adjourn it to such time and place as the  
4 warden or the mining registrar, as the case may be, appoints.
- 5 (3) A warden's court at any time may adjourn the hearing of any  
6 proceedings in such manner and upon such terms as to costs or  
7 otherwise, as the court thinks fit.
- 8 (4) A warden's court may, of its own motion, at any time during the  
9 hearing of any proceedings in the warden's court, call any  
10 expert witness to give evidence in relation to any technical  
11 matter arising in the course of those proceedings, but before  
12 doing so it shall give to each party to the proceedings reasonable  
13 notice of its intention so to do.

14 *[Section 138 amended: No. 39 of 2004 s. 74.]*

15 **139. Contempt of court**

- 16 (1) Where a person in or during the course of any proceedings in a  
17 warden's court insults or threatens the warden or any officer of  
18 the court, or interrupts or obstructs the proceedings of the court,  
19 or in any other manner is guilty of any contempt in the face of  
20 the court, the warden may direct any officer of the court, or any  
21 police officer to take such person into custody and to detain him  
22 until the rising of the court or until further order.
- 23 (2) At any time before the rising of the court the warden may direct  
24 such person to be brought before the court, and may impose  
25 upon him a fine not exceeding \$1 000 or a sentence of  
26 imprisonment not exceeding 14 days or both the fine and the  
27 imprisonment.
- 28 (3) When a person fails to pay any fine imposed under  
29 subsection (2) the warden may order that person to be  
30 imprisoned for a term not exceeding 14 days.
- 31 (4) At any time before or after the making of any order under this  
32 section, the warden may accept an apology from the offender

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1 and may discharge the order, if any, previously made and  
2 release the offender.

3 *[Section 139 amended: No. 22 of 1990 s. 38.]*

4 **140. Judgments, enforcement of**

5 (1) In this section —

6 *judgment* includes an order, direction or decision.

7 (2) A person to whom money is to be paid under a judgment of a  
8 warden's court may enforce it by lodging a copy of it, certified  
9 by the mining registrar, and an affidavit stating to what extent it  
10 has not been complied with, with a court of competent  
11 jurisdiction.

12 (3) If, or to the extent that, a judgment of a warden's court does not  
13 require the payment of money, a person entitled to the benefit of  
14 the judgment may enforce it by lodging a copy of it, certified by  
15 the mining registrar, and an affidavit stating to what extent it  
16 has not been complied with, with the Magistrates Court.

17 (4) A judgment that is lodged with another court under  
18 subsection (2) or (3) is ~~to be~~ taken to be a judgment of the other  
19 court and may be enforced accordingly.

20 (5) For the purposes of Part 5 Division 1 of the *Civil Judgments*  
21 *Enforcement Act 2004*, a judgment of a warden's court for the  
22 delivery by a person of possession of any mining tenement or  
23 minerals to another is ~~to be~~ taken to be a judgment requiring the  
24 person to give possession of real or personal property to the  
25 other person.

26 *[Section 140 inserted: No. 59 of 2004 s. 115.]*

27 **[141. Deleted: No. 59 of 2004 s. 115.]**

28 **142. Informality and amendment**

29 (1) No misnomer or inaccurate description of any person or place or  
30 any process or document in any proceedings in a warden's court

1 under this Act vitiates the process or document or the  
2 proceedings if the person or place is named or described therein  
3 so as to be commonly known.

4 (2) No proceedings in a warden's court under this Act shall be  
5 dismissed or vitiated by any informality, but a warden's court  
6 has power at any time to amend all defects and errors in such  
7 proceedings, whether there is anything in writing to amend or  
8 not.

9 (3) The power to amend as provided in subsection (2), may be  
10 exercised with or without an order as to costs being made.

11 (4) Upon due application in that behalf being made, all such  
12 amendments as may be necessary for determining in the existing  
13 proceedings the real question in issue between the parties  
14 thereto shall be allowed.

15 (5) Any amendments referred to in subsections (2) and (4) may be  
16 allowed upon such terms and conditions as to an adjournment of  
17 the proceedings or otherwise, as the warden's court determines.

18 *[Section 142 amended: No. 100 of 1985 s. 102; No. 39 of 2004*  
19 *s. 75.]*

20 **143. Grant of injunction affecting mining tenement to be notified**

21 Where a warden's court grants any injunction with respect to  
22 any mining tenement, the party to whom the injunction is  
23 granted shall notify forthwith the Director General of Mines of  
24 the fact that the injunction has been granted and of the  
25 particulars thereof, and on receipt of such notification an entry  
26 of the particulars shall be made in the register against the  
27 mining tenement to which the injunction relates.

28 *[Section 143 amended: No. 100 of 1985 s. 103; No. 105 of 1986*  
29 *s. 22; No. 54 of 1996 s. 19; No. 39 of 2004 s. 85.]*

30 *[144, 145. Deleted: No. 39 of 2004 s. 76.]*

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- 1 **146. Reservation of questions of law: hearing and determination**
- 2 (1) A warden's court may reserve, at any stage of any proceedings  
3 under this Act, any question of law for the opinion of the  
4 Supreme Court thereon.
- 5 (2) The question of law shall be submitted to the Supreme Court in  
6 the form of a special case stated by the warden's court and  
7 transmitted by the court to the Principal Registrar of the  
8 Supreme Court.
- 9 (3) The Principal Registrar of the Supreme Court shall set down the  
10 case for consideration by a judge, and shall forthwith notify the  
11 warden's court of the time and place appointed therefor.
- 12 (4) The warden's court shall give notice of the time when, and the  
13 place where the judge shall consider the case to each of the  
14 parties concerned who is entitled to be heard by the judge.
- 15 (5) The judge, at any stage of the matter, may —  
16 (a) remit the case to the warden's court for amendment; or  
17 (b) direct that the case be set down for argument before the  
18 Court of Appeal; or  
19 (c) proceed to hear and determine the question so  
20 submitted,  
21 and the Court of Appeal or judge, as the case may be, may give  
22 such direction or opinion as to the question so submitted, as the  
23 Court of Appeal or the judge thinks proper.
- 24 (6) Every such direction or opinion of the Court of Appeal or the  
25 judge, shall be transmitted by the Principal Registrar of the  
26 Supreme Court to the warden's court which shall act in  
27 accordance therewith.
- 28 (7) When reserving any question of law pursuant to this section or  
29 at any time before acting in accordance with the direction or  
30 opinion of the Court of Appeal or the judge as provided in this  
31 section, the warden's court, on the application of any party to

1 the proceedings in relation to which the question of law is to be  
2 or was so submitted, may make such order for —

- 3 (a) an injunction; or  
4 (b) the appointment of a receiver; or  
5 (c) the payment of money into court; or  
6 (d) giving security for damages and costs or otherwise,

7 as it thinks fit and on such terms or conditions as it thinks fit.

8 *[Section 146 amended: No. 100 of 1985 s. 104; No. 39 of 2004*  
9 *s. 77 and 85; No. 45 of 2004 s. 37.]*

10 **147. Appeal to Supreme Court**

11 (1) Except as provided in sections 135(2) and 151, any party  
12 aggrieved by any final judgment, determination or decision of a  
13 warden's court may appeal therefrom to the Supreme Court.

14 (2) Every appeal shall be commenced by notice in the prescribed  
15 form, filed in the warden's court within 21 days after the  
16 judgment, determination or decision appealed against was  
17 given.

18 (3) The notice of appeal shall be served within the period referred  
19 to in subsection (2) upon the respondent or his solicitor and  
20 shall set forth the grounds upon which the appeal is made.

21 *[(4), (5) deleted]*

22 (6) A notice of appeal filed under this section does not operate as a  
23 stay of proceedings, but the warden's court, on the application  
24 of any party to the proceedings, may make such order for the  
25 stay of proceedings, for an injunction or for the appointment of  
26 a receiver, and for the giving of security as it thinks necessary in  
27 the circumstances.

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1 (7) When an appeal is withdrawn or abandoned an order staying  
2 proceedings lapses.

3 *[Section 147 amended: No. 39 of 2004 s. 78 and 85.]*

4 **148. Procedure on appeal**

5 (1) Where the grounds of appeal include any matter of fact, the  
6 Supreme Court may order, or the parties to the appeal may  
7 agree, that the appeal shall be by way of rehearing before a  
8 judge.

9 (2) Except as provided in subsection (1), every appeal shall be  
10 heard and determined upon the proceedings in the warden's  
11 court.

12 (3) Upon the hearing of an appeal the notes, depositions, minutes of  
13 evidence, exhibits and other documents taken or filed in the  
14 warden's court or copies thereof certified to be correct by the  
15 warden or mining registrar, may be used by the Supreme Court  
16 or any party to the appeal.

17 (4) Upon notice in the prescribed form being filed in the warden's  
18 court pursuant to section 147(2), the warden's court shall cause  
19 a copy of the judgment, determination or decision appealed  
20 from together with the documents and things referred to in  
21 subsection (3) required by the appellant for the purpose of the  
22 appeal to be transmitted to the Principal Registrar of the  
23 Supreme Court not later than 21 days after —

24 (a) in the case of original documents or things, the date of  
25 being so requested in writing by the appellant; but

26 (b) in the case of a copy document required to be certified  
27 to be correct by the warden or mining registrar and not  
28 compiled at the time of such a request in writing by the  
29 appellant, the date on which the copy was so compiled  
30 and certified,

31 and shall cause the appellant to be notified of the date on which  
32 the request was complied with.



- 1 (5) The appellant shall, within 21 days after filing notice of appeal,  
2 apply to set down the appeal for hearing by filing in the Central  
3 Office of the Supreme Court at Perth —  
4 (a) a copy of the notice of appeal; and  
5 (b) a copy of any request made for the transmission of  
6 documents or things pursuant to this section.
- 7 (5a) Upon receipt by the Principal Registrar of the Supreme Court of  
8 a copy of the judgment, determination or decision appealed  
9 from, certified as correct by the warden, and of the documents  
10 or things and copies so requested, certified as correct by the  
11 mining registrar or the warden, the appeal shall be set down for  
12 hearing.
- 13 (6) The Principal Registrar of the Supreme Court shall notify  
14 forthwith the result of each appeal to the warden's court and the  
15 warden's court —  
16 (a) shall cause the result of the appeal to be recorded; and  
17 (b) shall give effect where necessary to any order or  
18 direction made or given by the appellate court thereon.

19 *[Section 148 amended: No. 100 of 1985 s. 105; No. 39 of 2004*  
20 *s. 79 and 85.]*

21 **149. Power of Supreme Court on appeal**

22 Upon the hearing of any appeal under this Act the Supreme  
23 Court —

- 24 (a) may allow for any reason that it thinks sufficient, an  
25 appellant on such terms as to costs, postponement, or  
26 otherwise as it thinks fit, to rely upon a ground of appeal  
27 not set forth in the notice of appeal; and  
28 (b) may confirm the order, determination or decision in  
29 respect of which the appeal is made and may dismiss the  
30 appeal; and

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- 1 (c) may reverse, modify or vary such order, determination,  
2 or decision and may make such order in lieu thereof as it  
3 may think just; and
- 4 (d) may direct any issue to be tried in such manner, and at  
5 such time and place as it may think fit; and
- 6 (e) may remit any case to the warden's court to be reheard;  
7 and
- 8 (f) may make any order or give any direction consequential  
9 upon or necessitated by the order that it may think  
10 necessary; and
- 11 (g) may make such order as to costs of the appeal or of the  
12 proceedings in the warden's court to which the appeal  
13 relates, as it thinks fit,
- 14 and may impose in respect of any order made pursuant to this  
15 section such terms and conditions as it thinks just.

16 **150. Withdrawal or failure to prosecute appeal**

17 Where an appellant withdraws his appeal or fails to prosecute it  
18 as provided by this Act, the respondent may apply to a judge on  
19 summons for the dismissal of the appeal and the judge —

- 20 (a) may dismiss the appeal; or  
21 (b) may, on the application of the appellant, permit him to  
22 prosecute the appeal within such period and on such  
23 terms and conditions as the judge thinks fit,

24 and in either case the judge may make an order for the payment  
25 by the appellant of the costs of and incidental to the summons.

26 **151. Limitation of right of appeal**

27 There shall be no right of appeal under this Part where at or  
28 before the hearing of any proceedings in the warden's court the  
29 parties thereto have agreed by a memorandum in writing lodged

1 in the warden's office, that the decision of the warden's court  
2 therein shall be final.

3 *[Section 151 amended: No. 58 of 1994 s. 49; No. 39 of 2004*  
4 *s. 80.]*

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1 **Part IX — Miscellaneous and regulations**

2 **152. Police to assist warden**

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

7 **153. Minor capable of being sued and of suing**

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

13 **154. General penalty**

14 (1) A person who acts in contravention of or fails to comply in any  
15 respect with any provision of this Act commits an offence  
16 against this Act.

17 (2) A person who commits an offence against this Act for which no  
18 penalty is provided elsewhere than in this section is liable to a  
19 fine of \$20 000 and if the offence is a continuing one, to a fine  
20 not exceeding \$2 000 for every day or part of a day during  
21 which the offence has continued.

22 (3) Where a body corporate is convicted of an offence against this  
23 Act, every director and every other officer of the body corporate  
24 concerned in the management thereof is guilty of the offence if  
25 it is proved that the act or omission that constituted the offence  
26 took place with his authority, permission or consent.

27 *[Section 154 amended: No. 100 of 1985 s. 106; No. 22 of 1990*  
28 *s. 38; No. 78 of 1995 s. 147; No. 15 of 2002 s. 28; No. 51 of*  
29 *2012 s. 35.]*

1 **155. Offence of mining without authority**

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

5 Penalty:

6 (a) for an individual — a fine of \$150 000 and, if the  
7 offence is a continuing one, a further fine of \$15 000  
8 for each day or part of a day during which the offence  
9 has continued;

10 (b) for a body corporate — a fine of \$300 000 and, if the  
11 offence is a continuing one, a further fine of \$30 000  
12 for each day or part of a day during which the offence  
13 has continued.

14 (2) Subsection (1) does not apply in respect of mining operations  
15 carried on on any private land with the consent of the owner of  
16 the land if he is the owner of the mineral being mined on the  
17 land.

18 (3) A person who is convicted of an offence under this section is  
19 not thereby relieved from any other obligation or liability that  
20 he may have incurred by reason of having carried on  
21 unauthorised mining.

22 (4) A person who owns minerals in their natural state may take  
23 proceedings in any court of competent jurisdiction for the  
24 recovery of those minerals or their value from any person who  
25 unlawfully takes, removes or mines the minerals.

26 (5) Where a person is convicted of an offence against subsection (1)  
27 the court may, in addition to imposing the penalty under this  
28 Act in relation to the offence, order the offender to rehabilitate  
29 the land to the satisfaction of the Minister within the time  
30 specified in the order.

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1 (6) A person who fails to carry out an order made under  
2 subsection (5) commits an offence and is liable to a penalty of  
3 \$500 and in addition the court may require the offender to pay  
4 the costs of rehabilitating the land to the satisfaction of the  
5 Minister.

6 (7) Any sum specified in an order under subsection (6) constitutes a  
7 debt due to the crown and may be recovered in any court of  
8 competent jurisdiction.

9 *[Section 155 amended: No. 100 of 1985 s. 107; No. 105 of 1986*  
10 *s. 23; No. 22 of 1990 s. 38; No. 78 of 1995 s. 147; No. 15 of*  
11 *2002 s. 28; No. 51 of 2012 s. 36.]*

12 **155A. Aerial survey work**

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

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

17 **156. Offences**

18 (1) A person who —

19 (a) takes or removes from the mining tenement of any other  
20 person any mineral or other mining product without the  
21 authority of that other person; or

22 (b) assaults, obstructs, resists or insults —

23 (i) any warden or any officer of the Department; or

24 (ii) any other person duly authorised under this Act  
25 to perform any act or duty, in the course of  
26 performance of that act or duty,

27 or who when required to do so by him fails to give to  
28 any such warden, officer or person information as to his  
29 name, address, or authorisation for being on any land or  
30 who gives false or misleading information; or

- 1 (c) when lawfully evicted or removed under this Act from  
2 any mining tenement, re-enters the mining tenement or  
3 retakes possession thereof; or  
4 (d) prevents, resists or obstructs the taking or diverting of  
5 any water or the doing of any other act by any person  
6 acting in pursuance of an order of the warden's court,  
7 commits an offence against this Act.

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

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

14 **157. Obstruction of persons authorised to mine under this Act**

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

18 Penalty: \$10 000.

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

21 **158. Power to require information as to right to mine**

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

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

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- 1 (2) A person who —  
2 (a) upon request made under subsection (1) refuses or fails  
3 to comply with the request; or  
4 (b) obstructs or hinders the person making the request; or  
5 (c) knowingly misleads or deceives the person making the  
6 request,  
7 commits an offence.  
8 Penalty: \$10 000.
- 9 (3) Where a person who is authorised to make a request under  
10 subsection (1) is not satisfied with any evidence or explanation  
11 given to him in pursuance of a request made under that  
12 subsection he may orally or by notice in writing direct the  
13 person to whom the request is made to cease mining on the land  
14 referred to in the direction.
- 15 (4) A person who refuses or neglects to comply with a request  
16 under subsection (3) commits an offence.  
17 Penalty: \$10 000.
- 18 (5) Where the person to whom a request is made under  
19 subsection (3) refuses or neglects to comply with the direction  
20 given under that subsection, the person giving the direction may  
21 use such force as is necessary to remove the person from the  
22 land and stop and remove any machinery being used for the  
23 purpose of mining on the land using such assistance as is  
24 necessary for that purpose.
- 25 (6) A person who commits an offence under subsection (2) or (4)  
26 may be arrested without a warrant.
- 27 *[Section 158 inserted: No. 105 of 1986 s. 24; amended: No. 22*  
28 *of 1990 s. 38.]*



1 **159. Disputes between licensees and other persons**

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

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

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

26 (4) In this section —

27 (a) a reference to a licence or permit includes a reference to  
28 a drilling reservation or lease; and

29 (b) a reference to a licensee or permittee includes a  
30 reference to the registered holder of a drilling  
31 reservation or lease.

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

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1 **160. Saving of civil remedies**

2 (1) Subject to section 40G, nothing in this Act shall prejudice,  
3 abridge or take away any right of action that any person may  
4 have in respect of any act or omission of another unless that act  
5 or omission occurs in pursuance of any authority lawfully given  
6 under this Act.

7 (2) The recovery of any penalty under this Act does not affect any  
8 such right of action as is referred to in subsection (1).

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

11 **160AA. Authority to perform certain functions of LAA Minister**  
12 **under this Act**

13 (1) A function that the LAA Minister has under a provision of this  
14 Act listed in the Table may be performed by a public service  
15 officer of the Department, as defined in the *Land Administration*  
16 *Act 1997* section 3(1), who is authorised in writing by the  
17 LAA Minister to do so.

18 (2) Nothing in this section limits the ability of the LAA Minister to  
19 otherwise perform a function through an officer or agent.

20 **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)	

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

1 **160A. Immunity of Minister, wardens and officials**

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

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

11 **160B. Time limit for prosecution action**

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

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

16 **160C. No right of appeal from certain decisions of warden, mining**  
17 **registrar or Minister**

18 No appeal lies under this Act —

19 (a) except as provided in Part IV, in respect of a decision,  
20 order or recommendation of a warden or mining  
21 registrar on —

22 (i) an application for a mining tenement; or

23 (ii) an application for forfeiture of a mining  
24 tenement; or

25 (iii) an application for exemption from expenditure or  
26 other conditions;

27 or

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- 1 (b) in respect of a decision or order of the Minister on —  
2 (i) an application for a mining tenement; or  
3 (ii) an application for forfeiture of a mining  
4 tenement; or  
5 (iii) an application for exemption from expenditure or  
6 other conditions;  
7 or  
8 (c) in respect of a determination of a warden or mining  
9 registrar if a provision of this Act provides that the  
10 determination is final and conclusive and not subject to  
11 appeal.

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

13 **160D. Persons before whom affidavit may be sworn**

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

- 16 (a) any person who, under the *Oaths, Affidavits and*  
17 *Statutory Declarations Act 2005*, is an authorised  
18 witness for an affidavit; or  
19 (b) a warden; or  
20 *[(c)-(e) deleted]*  
21 (f) a prescribed official.

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

24 **161. Evidentiary provisions**

- 25 (1) In any proceedings for an offence against this Act, an averment  
26 in the charge that any land referred to therein is land —  
27 (a) open for mining under this Act;  
28 (b) exempt from mining operations in pursuance of this Act;

- 1           (c) to which section 23, 24, 24A, 25, or 26 applies,  
2 shall be deemed to be proved in the absence of evidence to the  
3 contrary.
- 4       (2) In any proceedings a document purporting to be a mining  
5 tenement shall be accepted as such in the absence of evidence to  
6 the contrary.
- 7       (3) In any proceedings a document purporting to be certified by a  
8 person authorised for that purpose by the Director General of  
9 Mines as a correct copy of an extract from a register kept under  
10 this Act is, without proof of that person's signature, evidence of  
11 the matter contained in the document.
- 12       (4) In any proceedings —
- 13           (a) a document purporting to be a copy of a judgment, order  
14 or decision of a warden or a warden's court, or of a  
15 document filed or lodged in proceedings under this Act,  
16 and purporting to be certified by —
- 17               (i) a warden; or  
18               (ii) a mining registrar; or  
19               (iii) a prescribed official,  
20 to be such a copy, is admissible as a true copy of the  
21 judgment, order, decision or document; and
- 22           (b) judicial notice is to be taken of the signature of a person  
23 referred to in paragraph (a)(i), (ii) or (iii) on a certificate  
24 under that paragraph.

25           *[Section 161 amended: No. 122 of 1982 s. 29; No. 37 of 1993*  
26           *s. 23; No. 54 of 1996 s. 21; No. 5 of 1997 s. 41(2); No. 39 of*  
27           *2004 s. 83; No. 84 of 2004 s. 80.]*

28       **162A. Certain things are not personal property for purposes of**  
29       ***Personal Property Securities Act 2009* (Cwlth)**

30           In accordance with the *Personal Property Securities Act 2009*  
31           (Commonwealth) section 10 the definition of *licence*

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1 paragraph (d), the following rights, entitlements or authorities  
2 are declared not to be personal property for the purposes of that  
3 Act —

- 4 (a) a prospecting licence granted under section 40(1),  
5 56A(6) or 70(6);
- 6 (b) an exploration licence granted under section 57(1);
- 7 (c) a retention licence granted under section 70B(1);
- 8 (d) a mining lease granted under section 71;
- 9 (e) a general purpose lease granted under section 86(1);
- 10 (f) a miscellaneous licence granted under section 91(1).

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

12 **162B. Extension of prescribed period or time**

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

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

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

21 **162. Regulations**

22 (1) The Governor may make such regulations as are contemplated  
23 by this Act, or as ~~he deems~~ the Governor thinks necessary or  
24 expedient for the purposes of this Act and any such regulations  
25 may confer upon a prescribed person or body specified in the  
26 regulations a discretionary authority.

27 (2) Without limiting the generality of the powers conferred by  
28 subsection (1) those regulations may —

- 29 (a) prescribe and regulate the powers, functions and duties  
30 of wardens, mining registrars and of any officer or other

- 
- 1 person appointed under this Act or employed or acting  
2 in the administration of this Act;
- 3 (aa) authorise an inspector appointed under section 11 —
- 4 (i) to enter upon land where mining operations are  
5 carried out for the purpose of inspecting those  
6 mining operations;
- 7 (ii) to require any person to provide the inspector  
8 with prescribed information relating to mining  
9 operations;
- 10 (iii) to give directions to the holder of a mining  
11 tenement requiring the holder to modify or cease  
12 mining operations in prescribed circumstances;
- 13 (ab) provide for an appeal to the Minister by the holder of a  
14 mining tenement against a direction referred to in  
15 paragraph (aa)(iii) requiring the holder to cease mining  
16 operations;
- 17 (b) prescribe and provide for the payment of fees under this  
18 Act and the purposes for which they are to be paid;
- 19 (ba) prescribe exemptions from the payment of fees for  
20 certain classes of applications under this Act;
- 21 (c) prescribe any forms for the purposes of this Act and  
22 prescribe the manner in which any of those forms are to  
23 be executed;
- 24 (ca) prescribe the manner in which fossicking may be carried  
25 out, or prohibit the carrying out of fossicking in  
26 prescribed areas or by prescribed means;
- 27 (cb) provide for any matter relating to permits under  
28 section 40E, including without limitation —
- 29 (i) the persons or class of persons to whom notice of  
30 the issue of permits is to be given; and
- 31 (ii) the operation, duration and surrender of permits;  
32 and

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- 1 (iii) the maximum number of permits that may be in  
2 force at any time in respect of an exploration  
3 licence; and
- 4 (iv) the conditions that may be imposed on permits  
5 and the variation or cancellation of such  
6 conditions; and
- 7 (v) the powers of the Minister, in cases of breach of  
8 conditions referred to in section 40E(5) or (6) or  
9 in other prescribed circumstances —
- 10 (I) to impose on holders of permits  
11 monetary penalties not exceeding the  
12 prescribed amount; or
- 13 (II) to cancel permits; or
- 14 (III) to disqualify holders of permits from  
15 again holding or applying for permits  
16 for such period not exceeding the  
17 prescribed period as the Minister thinks  
18 fit;
- 19 and
- 20 (vi) the procedure to be followed before the exercise  
21 of a power referred to in subparagraph (v); and
- 22 (vii) the recovery of penalties referred to in  
23 subparagraph (v)(I); and
- 24 (viii) the prohibition of the use of hand tools of a  
25 prescribed kind; and
- 26 (ix) the reporting of minerals recovered by the  
27 holders of permits; and
- 28 (x) the issuing of guidelines in relation to the  
29 operation of the permit system;
- 30 (d) prescribe the manner in which land is to be marked out  
31 for the purposes of making applications for mining  
32 tenements;



- 1 (ea) provide for matters relating to the lodgment, in  
2 electronic form, of mining tenement documents;
- 3 (eb) provide for the time at which a mining tenement  
4 document is ~~to be~~ taken to have been lodged;
- 5 (ec) regulate matters in connection with designated tenement  
6 contacts for mining tenements and applications for  
7 mining tenements, including without limitation —
- 8 (i) to require a person who holds, or has applied for,  
9 a mining tenement to have a designated tenement  
10 contact for the mining tenement or application;
- 11 (ii) to provide the manner in which designated  
12 tenement contacts are to be nominated for  
13 mining tenements, or applications for mining  
14 tenements, by persons who hold, or have applied  
15 for, mining tenements;
- 16 (iii) to provide for matters relating to the provision,  
17 updating and accurate recording of particulars  
18 relating to designated tenement contacts;
- 19 (e) prescribe the rent payable in respect of any mining  
20 tenement or class of mining tenement, and make  
21 provision for the exercise of a discretion by the Minister  
22 as to the basis upon which a rent shall be calculated;
- 23 (f) prescribe the times at which rent and royalties shall be  
24 paid under this Act and the manner in which they are to  
25 be paid;
- 26 (g) prescribe the manner in which, and the terms and  
27 conditions subject to which, mining tenements may be  
28 surrendered;
- 29 (ga) prescribe grounds for extension for the purposes of  
30 section 45(1a) and 61(2);
- 31 [(gb) *deleted*]
- 32 (h) prescribe the expenditure conditions subject to which a  
33 mining tenement or any class of mining tenement shall

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- 1 be held, and the conditions on which exemption  
2 therefrom may be applied for, and granted;
- 3 (i) prescribe the persons or class of persons on whom  
4 copies of applications for mining tenements or any other  
5 documents relating thereto are to be served;
- 6 (j) provide for the compilation of mining statistics and for  
7 that purpose require holders of mining tenements to  
8 supply the Director General of Mines with such  
9 particulars as may be prescribed;
- 10 (k) provide for the furnishing of returns, and the keeping  
11 and furnishing of records, for the purposes and by the  
12 persons specified in the regulations;
- 13 (ka) provide for any matter relating to the surveying of  
14 mining tenements, including —
- 15 (i) requiring that surveying to be carried out by a  
16 surveyor (in this paragraph referred to as the  
17 **approved surveyor**) approved by the Minister or  
18 an officer of the Department in accordance with  
19 any specified written law, any instructions given  
20 by an officer of the Department, a warden or the  
21 Minister or any direction published by the  
22 Department, or any 2 or all 3 of the foregoing;
- 23 (ii) the course to be adopted by the approved  
24 surveyor if he finds that a mining tenement or  
25 application therefor is not marked out in the  
26 prescribed shape referred to in section 105;
- 27 (iii) the hearing by the warden of disputes arising  
28 during the course of that surveying concerning  
29 the positions of pegs or otherwise, or of  
30 objections to the survey of a mining tenement or  
31 of land the subject of an application for a mining  
32 tenement, and the determination by the Minister  
33 of those disputes or objections;

- 1 (iv) the correction of errors or omissions in that  
2 surveying and the completion of surveying that is  
3 uncompleted;
- 4 (v) the lodging of reports relating to surveys;
- 5 (vi) the entry on land by officers of the Department  
6 for the purpose of inspecting surveys;
- 7 (l) provide for any matter relating to any register to be kept  
8 by a warden, a mining registrar or other prescribed  
9 persons;
- 10 (m) provide for such information to be supplied to the  
11 Director General of Mines by holders of mining  
12 tenements in respect of boring operations for water or  
13 water obtained while boring for other purposes as may  
14 be prescribed;
- 15 (n) provide for the protection of land upon which mining  
16 operations are conducted and require the rehabilitation  
17 to the satisfaction of the Minister of land disturbed by  
18 the mining operations;
- 19 (o) prescribe the covenants and conditions that may be  
20 included in mining tenements and the exemption from  
21 the performance of those covenants or the operation of  
22 those conditions;
- 23 [(p) *deleted*]
- 24 (q) prescribe the mode of assigning, transferring,  
25 sub-letting, encumbrancing or otherwise dealing with  
26 mining tenements, the enforcement or discharge of any  
27 encumbrance thereon, the rights and obligations of an  
28 encumbrancer and an encumbrancee thereof or of an  
29 assignee, transferee or sub-lessee thereof; and the order  
30 of priority of 2 or more encumbrances;
- 31 (qa) prescribe the mode of dealing with a mining tenement  
32 upon the death of the holder of the mining tenement or  
33 in other prescribed circumstances and provide for any  
34 related matter;

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- 1 (r) regulate the practice and procedure in warden's courts,  
2 the sittings of those courts, the duties of the officers  
3 thereof; the fees and costs of the proceedings therein  
4 fixed by a costs determination (as defined in the *Legal*  
5 *Profession Act 2008* section 252) and of appeals  
6 therefrom and the allowances to witnesses in those  
7 courts;
- 8 (ra) without limiting paragraph (a), prescribe and regulate  
9 the powers, functions and duties of the warden in  
10 proceedings in respect of an application or objection  
11 under Part IV (***Part IV proceedings***), including powers  
12 to order costs and require security for costs;
- 13 (rb) prescribe and regulate the practice and procedure to be  
14 followed in Part IV proceedings;
- 15 (rca) provide for documents for use in Part IV proceedings to  
16 be lodged with or issued by the warden, or served, in  
17 electronic form;
- 18 (rc) prescribe a scale of costs for Part IV proceedings and  
19 provide for the taxation and recovery of costs in those  
20 proceedings;
- 21 (s) regulate matters in connection with partnerships in  
22 mining;
- 23 (t) provide for a refund of fees paid under this Act;
- 24 (u) regulate the way in which drill cores obtained from  
25 mining tenements are to be stored and dealt with and  
26 impose restrictions on the disposal or destruction of  
27 them;
- 28 (v) provide for the reporting of prescribed information as to  
29 aerial photography for mineral exploration and provide  
30 for the keeping of a register of such information;
- 31 (w) provide for the publication of guidelines in relation to  
32 mineral exploration reports referred to in section 115A;

- 1 (x) authorise and regulate the copying, storage, release,  
2 publication and dissemination of information contained  
3 in any application or report under this Act or any other  
4 information supplied to the Minister, a warden or any  
5 official of the Department under this Act;
- 6 (y) prescribe and regulate the responsibilities of the holders  
7 of mining tenements as to authorising, or obtaining  
8 authorisation for, the release of information contained in  
9 applications or reports under this Act.
- 10 (2a) Subsection (2)(x) applies to information irrespective of when —
- 11 (a) any application or report containing the information was  
12 made or given; or
- 13 (b) the information was supplied to the Minister, a warden  
14 or an official,
- 15 as the case may be.
- 16 (3A) In subsection (2) —
- 17 ***mining tenement document*** means —
- 18 (a) an application for a mining tenement; or
- 19 (b) an agreement, claim, notice of objection, security, or any  
20 other document, in respect of a mining tenement.
- 21 (3) The regulations may prescribe a fine not exceeding \$10 000 for  
22 an offence against any regulation and if the offence is a  
23 continuing one, a fine not exceeding \$1 000 for each day or part  
24 thereof during which the offence has continued.
- 25 (4) Regulations made under subsection (2)(ra) may apply the  
26 provisions of sections 142 and 146 with such modifications as  
27 are prescribed.
- 28 (5) A regulation may require any matter or thing to be verified by  
29 statutory declaration.

30 *[Section 162 amended: No. 52 of 1983 s. 6; No. 100 of 1985*  
31 *s. 109; No. 105 of 1986 s. 26; No. 65 of 1987 s. 40; No. 22 of*

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1                    1990 s. 38; No. 37 of 1993 s. 24 and 28(1); No. 58 of 1994  
2                    s. 51; No. 54 of 1996 s. 22; No. 49 of 2000 s. 86; No. 63 of 2000  
3                    s. 8; No. 15 of 2002 s. 28; No. 65 of 2003 s. 52; No. 39 of 2004  
4                    s. 84 and 100; No. 21 of 2008 s. 681; No. 12 of 2010 s. 42;  
5                    No. 51 of 2012 s. 41; No. 44 of 2016 s. 24.]

6   **163.    Review of Act**

7            (1)    The Minister is to carry out a review of the operation and  
8            effectiveness of this Act as amended by the *Mining Amendment*  
9            *Act 2004* within 6 months after the fifth anniversary of the day  
10           on which that Act received the Royal Assent.

11           (2)    The Minister is to prepare a report based on the review and, as  
12           soon as is practicable after the report is prepared, is to cause the  
13           report to be laid before each House of Parliament.

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

15            [First Schedule omitted under the Reprints Act 1984 s. 7(4)(e).]



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or exploration licence over the land or any portion thereof to which the authority or right relates.

- (4) Notwithstanding anything in this Act, the Minister shall, on receiving an application made under subclause (3) or (5) and on being satisfied that the applicant has complied with the terms and conditions referred to in subclause (3), grant that application on such terms and conditions as he thinks fit.
- (5) An application for the renewal of an authority to occupy or right of occupancy of any land —
- (a) to which subclause (1) refers; and
  - (b) which expired before the commencing date,

which application was pending immediately before the commencing date, shall be dealt with as if the repealed Act had not been repealed and the holder of any such authority to occupy or right of occupancy renewed as a result of that application may while that renewed authority or right is in force mark out in accordance with this Act the land the subject of that renewed authority or right, or apply to the Minister for a prospecting licence or exploration licence, or both so mark out and apply, in respect of the whole or part of the land to which that renewed authority or right relates.

- (6) Section 105A does not apply and never has applied to an application for a mining tenement under this Act in respect of any land —
- (a) which continues or continued to be temporarily reserved from occupation by virtue of subclause (1); and
  - (b) in respect of which no authority to occupy or right of occupancy is or was in force,

at the time when that application is or was made.

*[Clause 1 inserted: No. 69 of 1981 s. 29; amended: No. 122 of 1982 s. 30(a).]*

**2. Certain gold mining leases, coal mining leases and mineral leases to become mining leases**

- (1) Every gold mining lease, coal mining lease, or mineral lease granted under section 42, 48 or 61 or pursuant to section 153 of the repealed Act and in force immediately before the commencing date, shall be



deemed to be a mining lease granted under this Act, and shall, subject to this Act and, insofar as those terms and conditions and encumbrances are not inconsistent with this Act, subject to —

- (a) the terms and conditions on which it was granted under the repealed Act (other than a term or condition restricting the scope of the gold mining lease, coal mining lease or mineral lease concerned to certain minerals) and which were in force immediately before the commencing date; and
- (b) any encumbrances to which it was subject under the repealed Act and which were in force immediately before the commencing date,

remain in force for the unexpired period for which it was granted or renewed under the repealed Act, and shall then expire, and while any such lease is in force the holder thereof has the right in priority to any other person to mark out in accordance with this Act and/or apply for a mining tenement under and in accordance with this Act in respect of the land or any part thereof which is the subject of such lease.

- (2) Every gold mining lease, coal mining lease or mineral lease granted under the repealed Act by virtue of clause 8(1) as a result of an application referred to in that subclause shall be deemed to be a mining lease granted under this Act and shall, subject to this Act and, insofar as those terms and conditions and encumbrances are not inconsistent with this Act, subject to —

- (a) the terms and conditions under which it was so granted (other than a term or condition restricting the scope of that gold mining lease, coal mining lease or mineral lease to certain minerals); and
- (b) any encumbrances to which it is subject under the repealed Act,

remain in force for the period for which it was so granted under the repealed Act and shall then expire, and while it is in force the holder thereof has the right in priority to any other person to mark out in accordance with this Act and/or apply for a mining tenement under and in accordance with this Act in respect of the land or any part thereof which is the subject of that gold mining lease, coal mining lease or mineral lease.

- (3) The holder of 2 or more gold mining leases, coal mining leases or mineral leases which are contiguous or of any combination thereof, which are deemed by virtue of subclause (1) or (2) to be mining leases granted under this Act, has notwithstanding anything in that subclause the right under that subclause in priority to any other person to mark out in accordance with this Act and/or apply for one mining tenement under and in accordance with this Act in respect of all the land or any part thereof which is the subject of those gold mining leases, coal mining leases or mineral leases or of that combination, as the case requires.

*[Clause 2 inserted: No. 69 of 1981 s. 29; amended: No. 100 of 1985 s. 110(a); amended: Gazette 18 Dec 1981 p. 5274; 16 Jul 1982 p. 2829.]*

[2A. Deleted: Gazette 15 May 1987 p. 2161.]

**3. Rights conferred on holders of certain mineral claims and dredging claims**

- (1) A mineral claim or dredging claim granted under the repealed Act and in force immediately before the commencing date shall remain in force, subject to that Act and as though that Act had not been repealed, for a period of 2 years after that date, and shall then expire.
- (2) The holder of any such mineral claim or any such dredging claim as is referred to in subclause (1) may at any time while the claim is in force mark out as and/or make application under this Act for a prospecting licence or an exploration licence or a mining lease in respect of a single area that is constituted by all the land the subject of each mineral claim or mineral claims or dredging claim or dredging claims, and such licence or such lease shall, subject to this Act, be granted to him.
- (3) Notwithstanding anything in subclause (1), if an application for a prospecting licence, exploration licence or mining lease made under subclause (2) is pending immediately before the mineral claim or dredging claim held by the applicant expires under subclause (1), that mineral claim or dredging claim continues in force, subject to the repealed Act and as though that Act had not been repealed, until that application is finally disposed of under this Act.

*[Clause 3 inserted: No. 69 of 1981 s. 29; amended: No. 122 of 1982 s. 30(b).]*

**4. Rights conferred on holders of certain miners' homestead leases, residential leases, residence areas, business areas and garden areas**

Every miner's homestead lease, residential lease, residence area, business area or garden area granted under the repealed Act and in force immediately before the commencing date shall remain in force subject to that Act, and as though that Act had not been repealed, for a period of 5 years after that date and shall then expire, but if within that period an application is made therefor to the Minister for Mines and on the Minister for Mines being satisfied that the applicant is the due holder of a miner's homestead lease, residential lease, residence area, business area or garden area, as the case may be, and that such mining tenement is not at the date of the application liable to forfeiture under the repealed Act, and on the Minister for Mines issuing a certificate to that effect to the Minister for Lands, the Minister for Lands may grant under the *Land Act 1933* to the applicant a fee simple or lease of the whole or any portion of the land comprising the miner's homestead lease, residential lease, residence area, business area, or garden area, as the case may be, as the Minister for Lands determines and on such terms and conditions as he determines, but he shall not grant a fee simple of such land unless in his opinion the land is substantially developed and improved; and, to give full effect to the object of this clause and the powers hereby conferred, the *Land Act 1933* shall be read and construed with such modifications as are necessary and, without limiting the generality thereof, shall be read and construed with the following particular modifications —

- (a) the substitution for subsection (2) of section 45A of the following subsection —

“

- (2) Upon the Minister for Lands signifying approval pursuant to subsection (1) in respect of any such land the same may, subject to this section, be sold or leased.

”;

- (b) the deletion of the proviso to section 116;  
(c) the deletion of section 135;

- (d) a power to dispose of land under Division (1) of Part V of the *Land Act 1933* notwithstanding the land has not been declared open for selection under that Part.

*[Clause 4 inserted: No. 69 of 1981 s. 29; amended: No. 126 of 1987 s. 124.]*

**5. Continuation of mining tenements held by virtue of miners' rights**

A person holding a mining tenement immediately before the commencing date by virtue of the provisions of the repealed Act relating to miners' rights as then in force may continue to hold the mining tenement under and subject to this Schedule notwithstanding the repeal of those provisions.

*[Clause 5 inserted: No. 69 of 1981 s. 29.]*

**6. Temporary continuation of certain machinery areas, tailings areas, quarrying areas and water rights**

- (1) Every machinery area, tailings area, quarrying area or water right granted under the repealed Act and in force immediately before the commencing date shall remain in force, subject to that Act and as though that Act had not been repealed, for a period of 3 years after that date and shall then expire or shall expire on a date on which it would have expired under the repealed Act, whichever happens first.
- (2) The holder of —
- (a) a machinery area or tailings area in force by virtue of subclause (1) may, while the machinery area or tailings area is so in force, apply to the Minister for a general purpose lease in respect of all of the land to which the machinery area or tailings area relates; or
  - (b) a quarrying area in force by virtue of subclause (1) may, while the quarrying area is so in force, apply to the Minister for a mining lease in respect of all of the land to which the quarrying area relates; or
  - (c) a water right in force by virtue of subclause (1) may, while the water right is so in force, apply to the Minister for a miscellaneous licence in respect of all of the land to which the water right relates.

- (3) On receiving an application made under subclause (2), the Minister shall grant to the applicant on such terms and conditions as the Minister may determine the general purpose lease, mining lease or miscellaneous licence applied for or, after consultation with the applicant, such other mining tenement as is in the opinion of the Minister most appropriate.
- (4) Notwithstanding anything in subclause (1), if an application for a general purpose lease, mining lease or miscellaneous licence made under subclause (2) is pending immediately before the machinery area, tailings area, quarrying area or water right, as the case requires, held by the applicant expires under subclause (1), that machinery area, tailings area, quarrying area or water right continues in force, subject to the repealed Act and as though that Act had not been repealed, until that application is finally disposed of under this Act.

*[Clause 6 inserted: No. 69 of 1981 s. 29; amended: No. 122 of 1982 s. 30(c); No. 100 of 1985 s. 110(c).]*

**7. Continuation of certain licences**

- (1) A licence which was —
  - (a) granted under section 112 of the repealed Act, conferring the right to remove tailings or other mining material from, or to treat the same upon, any land; and
  - (b) in force immediately before the commencing date,remains in force, and may, subject to subclause (2), be renewed from time to time under the repealed Act as if that Act had not been repealed.
- (2) An application for the renewal under subclause (1) of a licence shall be made to the Minister and the Minister may —
  - (a) subject to paragraph (b), exercise in relation to that application the powers conferred on the Governor by the repealed Act in relation to applications for the renewal of licences; and
  - (b) in the case of such an application —
    - (i) which is made after the expiry of the licence to which that application relates; and

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- (ii) in respect of which the Minister considers that there are special circumstances justifying renewal,  
renew the licence to which that application relates with effect from the expiry of that licence.
- (3) An application for a licence or for the renewal of such a licence, which application was pending immediately before the commencing date, shall be disposed of, notwithstanding anything in subclause (2), as if the repealed Act had not been repealed.
- (4) Notwithstanding that any application for the renewal under the repealed Act as read with this clause of a licence under section 112 of that Act may have referred only to a licence to treat tailings, a licence so renewed which purported to grant by way of renewal under this clause any one or more of the following rights —
- (a) to treat tailings upon the land; or
  - (b) to remove, and treat, tailings from the land; or
  - (c) to treat any other mining material upon the land; or
  - (d) to remove, and treat, other mining material from the land,
- shall be taken to confer, and always to have conferred, a right of that kind according to its tenor.
- (5) Where a licence granted under section 112 of the repealed Act expires, any tailings or other mining material left upon the land or any part of the land in respect of which the licence was granted become or becomes the property of the Crown —
- (a) if an application for the renewal of the licence is not made within a period of 3 months from the expiry of the licence, at the expiration of that period; or
  - (b) if an application for the renewal of the licence is made within the period referred to in paragraph (a) but is subsequently refused by the Minister, at the expiration of a period of 3 months from that refusal.

*[Clause 7 inserted: No. 69 of 1981 s. 29; amended: No. 122 of 1982 s. 30(d); No. 37 of 1993 s. 25; amended: Gazette 20 Nov 1987 p. 4239.]*

**8. Disposal of pending applications for mining tenements**

(1) Where an application for a mining tenement under the repealed Act or the regulations made thereunder (not being an application in connection with section 276 of the repealed Act or an application for —

- (a) a miner's homestead lease; or
- (b) a residential lease; or
- (c) a residence area; or
- (d) a business area; or
- (e) a garden area),

is pending on the commencing date, that application shall be disposed of as if the repealed Act had not been repealed and the applicant may in respect of that application exercise all the powers, and shall in respect of that application perform all the duties, conferred or imposed on him by the repealed Act.

(2) Until an application referred to in subclause (1) has been finally disposed of, the land to which that application relates is not open for mining by any person other than the applicant.

(3) Subject to clause 2(2), when a mining tenement is granted under the repealed Act by virtue of subclause (1) as a result of an application referred to in that subclause —

- (a) the mining tenement is, subject to paragraph (b), deemed for the purposes of this Schedule to have been granted under the repealed Act;
- (b) the holder of the mining tenement under the repealed Act so deemed to have been granted is entitled, before that mining tenement expires or within a period of 2 years from the date referred to in paragraph (c) whichever is the sooner, to apply for, and subject to this Act to be granted, a mining tenement under this Act of the kind and in respect of the area for which he would have been entitled to apply under this Schedule had the mining tenement under the repealed Act so deemed to have been granted in fact been granted prior to the commencing date and been in force or existence immediately before the commencing date; but

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- (c) the date on which the grant under the repealed Act is deemed to have been made shall be the date on which the relevant certificate of registration is issued and the grant expires at the end of the period of 2 years from that date subject to subclause (4); and
- (d) regulation 55(15) of the regulations made under the repealed Act applies, with such modification as is necessary, to an application by the holder of a prospecting area granted under regulation 55(14) of those regulations and made under paragraph (b) of this subclause for a mining lease in respect of the land subject to that prospecting area as if that application were an application referred to in that regulation.
- (4) Notwithstanding anything in this clause, if an application under subclause (3)(b) is pending immediately before the expiry of the mining tenement held by the applicant or of the period of 2 years from the date on which that mining tenement was granted under that paragraph, as the case requires, that mining tenement continues in force, subject to the repealed Act and as though that Act had not been repealed, until that application is finally disposed of under this Act.
- (5) A person who —
- (a) has marked out a mining tenement under the repealed Act not more than 10 days; but
- (b) has not lodged an application for the mining tenement referred to in paragraph (a),
- before the commencing date is for the purposes of this Act deemed, if he lodges that application not more than 10 days after the commencing date, to have lodged that application immediately before the commencing date.
- (6) An application for a miner's homestead lease, a residential lease, a residence area, a business area or a garden area, which application was pending immediately before the commencing date, lapses on the commencing date and any fees paid in respect of that application shall be refunded to the applicant.

*[Clause 8 inserted: No. 69 of 1981 s. 29; amended: No. 122 of 1982 s. 30(e); No. 100 of 1985 s. 110(d); No. 105 of 1986 s. 27; amended: Gazette 18 Dec 1981 p. 5274.]*



**9. Rights of holders of certain prospecting areas**

- (1) A prospecting area that is in existence immediately before the commencing date shall continue in existence for the period for which it would have remained in force if the repealed Act had not been repealed, and shall then cease to be in force.
- (2) The holder of a prospecting area which continues in existence by virtue of subclause (1) may, before the expiry of the prospecting area, apply for a mining lease under this Act in respect of the land subject to that prospecting area.
- (3) Regulation 55(15) of the regulations made under the repealed Act applies with necessary modifications to an application made under subclause (2) as if that application were an application referred to in that regulation.

*[Clause 9 inserted: No. 69 of 1981 s. 29; amended: No. 105 of 1986 s. 28.]*

**10. Transitional provisions relating to mortgages**

- (1) Subject to subclause (2), if —
  - (a) a mining tenement (in this subclause and in subclause (2) referred to as the ***new mining tenement***) is granted under this Schedule or section 5(3) in place of one or more mining tenements (in this subclause and in subclause (2) referred to as the ***old mining tenement*** or the ***old mining tenements***, as the case requires) granted under the repealed Act or in accordance with an agreement referred to in section 5(3); and
  - (b) the old mining tenement or any interest therein was, immediately prior to its expiry, the subject of a mortgage or mortgages or the old mining tenements or any interests therein were, immediately prior to their expiry, the subject of the same mortgage or mortgages, as the case requires,

the new mining tenement shall be deemed to be the subject of the mortgage or mortgages referred to in paragraph (b) as if the new mining tenement had been referred to therein, and a memorandum of that mortgage or those mortgages shall be made and endorsed on the documents of title to the new mining tenement and noted in the appropriate registers of the Department of Mines<sup>4</sup> and there shall be

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endorsed on the original or originals of that mortgage or those mortgages the fact of it or their having been registered as an encumbrance or encumbrances against the new mining tenement.

- (2) If 2 or more mortgages were registered against the old mining tenement or the old mining tenements, as the case requires, the memorandum thereof shall be made and endorsed on the documents of title to the new mining tenement, and noted in the appropriate registers of the Department of Mines<sup>4</sup>, in the order in which they appeared so registered immediately before their expiry and they shall have priority accordingly.
- (3) The holder of a mining tenement under the repealed Act (in this subclause called the *old mining tenement*) who is empowered by this Schedule or by section 5(3) to apply for a mining tenement under this Act (in this subclause called the *new mining tenement*) in substitution for the old mining tenement shall, if the old mining tenement is the subject of an existing mortgage and that holder lodges an application for the new mining tenement, forthwith notify the mortgagee concerned of that lodging.
- (4) An application for a mining tenement under this Act in substitution for a mining tenement held by the applicant under the repealed Act, the holding of which second-mentioned mining tenement entitles the applicant to apply under this Schedule or section 5(3) for the first-mentioned mining tenement, shall be deemed for the purposes of Part VI of this Act to be an interest in a mining tenement.
- (5) An encumbrance, not being a mortgage, on a mineral claim or dredging claim —
  - (a) granted under the repealed Act, whether before or after the commencing date; and
  - (b) the holder of which is entitled to apply, and does apply, under this Schedule or section 5(3) for a mining tenement under this Act in substitution for that mineral claim or dredging claim,

lapses on the determination of that mineral claim or dredging claim, but the person who has the benefit of that encumbrance may apply for the registration of that encumbrance against the application for the mining tenement under this Act referred to in paragraph (b) and the

application for the registration of that encumbrance against that application shall be granted.

- (6) When the mining tenement referred to in subclause (5)(b) is granted, an encumbrance registered against the application for that mining tenement shall by virtue of this subclause be registered against that mining tenement without any further application by the person who has the benefit of that encumbrance.

*[Clause 10 inserted: No. 69 of 1981 s. 29.]*

**11. Officers**

A person holding office under the repealed Act immediately before the commencing date shall be deemed to have been appointed to the corresponding office under this Act, except that the Under Secretary shall cease to be a warden.

*[Clause 11 inserted: No. 69 of 1981 s. 29.]*

**12. Warden's courts and warden's offices**

Each warden's court and warden's office in existence immediately before the commencing date shall be continued under this Act as though it had been established thereunder and with the mineral field or district of a mineral field then assigned thereto, but where a goldfield or a district of a goldfield is assigned thereto at the time, that goldfield or that district shall be deemed to be a mineral field or district of a mineral field.

*[Clause 12 inserted: No. 69 of 1981 s. 29.]*

**13. Lodging of certain applications**

A person making an application for a mining tenement to the Minister under this Schedule or section 5(3) shall lodge that application in the manner provided under and in accordance with this Act in respect of an application for a mining tenement of that kind.

*[Clause 13 inserted: No. 69 of 1981 s. 29; amended: No. 37 of 1993 s. 26; No. 12 of 2010 s. 43; amended: Gazette 22 Jul 2016 p. 3134.]*

**13A. Consents to follow land**

In relation to any claim or other mining tenement or interest in land, of whatever kind, to which the repealed Act applied or to which that Act applies by virtue of clause 8 of this Schedule —

- (a) a consent to the grant of any mining tenement under the repealed Act (including any grant deemed to have been granted under that Act by virtue of clause 8 of this Schedule) or to the use or occupation for mining purposes of any private land, given for the purposes of that Act or this Act in respect of the land thereby affected, is deemed to follow that land and to confer such consent in relation to that land for the purposes of any application, proceeding or tenement under this Act made or arising, or being deemed to be made or to arise, out of or pursuant to the operation of this Schedule; and
- (b) where paragraph (a) applies in relation to consent given by any owner or occupier of the land, for the purposes of the operation of this Schedule no further or other consent as to the grant of a mining tenement under this Act in respect of the land or the use or occupation of the land for mining purposes is required to be obtained from that owner or occupier or from his successors in title to that land.

*[Clause 13A inserted: Gazette 15 May 1987 p. 2161-2.]*

**14. References to repealed Act**

A reference in any Act, regulation, rule, by-law, instrument or document to the repealed Act, or any provision thereof, shall, unless the contrary intention appears, be read and construed as a reference to this Act, or the corresponding provision, if any, of this Act.

*[Clause 14 inserted: No. 69 of 1981 s. 29.]*

**15. Prevention of anomalies during transitional period**

If any difficulty arises with respect to the foregoing transitional provisions in this Schedule the Governor may by Order in Council —

- (a) make such modifications in those provisions as may appear to him necessary for preventing anomalies during the period affected by the transition to the provisions of this Act from the provisions of the repealed Act; and



- (b) an application for deferral under subsection (3b) of that section was made in relation to the licence before commencement day but not determined before that day.

[Clause 17 inserted: No. 51 of 2012 s. 43.]

**18. Commonwealth land**

- (1) In this clause —

*commencement day* means the day the *Mining Amendment Act 2012* section 13 comes into operation;

*existing application* means an application for an exploration licence made but not determined before commencement day;

*transition period* means the period beginning on commencement day and ending 3 months after that day.

- (2) During the transition period —

- (a) a person who has made an existing application in respect of Commonwealth land has a right in priority to a person who has not made such an application to mark out or apply for a mining tenement in respect of the land the subject of the existing application; and

- (b) if more than one person has made an existing application in respect of the same Commonwealth land, priority is to be determined according to the date and time of the making of the existing applications.

[Clause 18 inserted: No. 51 of 2012 s. 43.]

**19. Time limit for prosecution action**

- (1) In this clause —

*commencement day* means the day on which the *Mining Amendment Act 2012* section 39 comes into operation.

- (2) Despite section 160B, a prosecution for an offence that is alleged to have been committed before commencement day must be commenced within one year after the day on which the offence is alleged to have been committed.

[Clause 19 inserted: No. 51 of 2012 s. 43.]

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[whatever name of consolidated Act is to be inserted here]**

**20. Term used: commencement day**

In this Division —

*commencement day* means the day of the coming into operation of  
the [insert name here] Act 2021 section X.

**21. Continuation of conditions for prevention or reduction of injury  
to land**

(1) In this clause —

*former provision* means —

(a) section 46A as in force immediately before commencement  
day; or

(b) section 63AA as in force immediately before commencement  
day; or

(c) section 70I as in force immediately before commencement  
day; or

(d) section 84 as in force immediately before commencement  
day.

(2) A condition that was, immediately before commencement day,  
imposed on the holder of a mining tenement under a former provision  
has effect, on and from commencement day, as if it were a condition  
imposed on the mining tenement under section 103AT(1) whether or  
not it is a condition of a kind that, on or after commencement day,  
could be imposed on the tenement under section 103AT(1).

**22. Continuation of securities**

(1) In this clause —

*former provision* means —

(a) section 52(1a) as in force immediately before commencement  
day; or

(b) section 60(1a) as in force immediately before commencement  
day; or

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(c) section 70F(2) as in force immediately before commencement day; or

(d) section 84A(2) as in force immediately before commencement day.

(2) A security that was, immediately before commencement day, required to be lodged by the holder of a mining tenement under a former provision is, on and from commencement day, taken to be a security required to be lodged by the holder of the mining tenement under section 103AU(1).

**23. Transitional provisions for programmes of work**

(1) In this clause —

*existing undetermined programme of work* means a programme of work that —

(a) was lodged before commencement day in accordance with a former provision; and

(b) was not, before commencement day, approved or refused to be approved as described in that former provision;

*former provision* means —

(a) section 46(aa) as in force immediately before commencement day; or

(b) section 63(aa) as in force immediately before commencement day; or

(c) section 70H(1)(aa) as in force immediately before commencement day; or

(d) section 82(1)(ca) as in force immediately before commencement day;

*previously approved programme of work* means a programme of work referred to in a former provision for which there was, immediately before commencement day, approval as described in that former provision.

(2) On and from commencement day —

(a) a previously approved programme of work is taken to be a programme of work lodged in accordance with section 103AI; and



(b) an activity proposed in a previously approved programme of work is taken to be approved under section 103AJ.

(3) On and from commencement day, an existing undetermined programme of work —

(a) is taken to be a programme of work lodged in accordance with section 103AI; and

(b) is to be dealt with by the Minister in accordance with Part IVAA Division 3.

**24. Transitional provisions for mining proposals**

(1) In this clause —

*existing undetermined mining proposal* means —

(a) a mining proposal that accompanied, under former section 74(1)(ca)(i), the application for a mining lease that was made, but not finally determined, before commencement day; or

(b) a mining proposal that was lodged before commencement day in accordance with former section 82A and was not, before commencement day, approved or refused to be approved as described in former section 82A; or

(c) a mining proposal that was lodged before commencement day in accordance with a condition under former section 84 and was not, before commencement day, approved or refused to be approved as described in the condition;

*former section 74(1)(ca)(i)* means section 74(1)(ca)(i) as in force immediately before commencement day;

*former section 82A* means section 82A as in force immediately before commencement day;

*former section 84* means section 84 as in force immediately before commencement day;

*previously approved mining proposal* means —

(a) a mining proposal that accompanied, under former section 74(1)(ca)(i), the application for a mining lease that was granted before commencement day; or

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(b) a mining proposal for which there was, immediately before commencement day, approval as described in former section 82A; or

(c) a mining proposal for which there was, immediately before commencement day, approval as described in a condition under former section 84;

*transition period* means the period beginning on commencement day and ending —

(a) 6 years after that day; or

(b) any longer period as the Minister approves or, in the case where the Minister does not approve a longer period, the Director General of Mines, approves.

(2) During the transition period —

(a) a previously approved mining proposal is taken to be a mining development and closure proposal lodged in accordance with section 103AM; and

(b) the mining operations proposed in a previously approved mining proposal are taken to be approved under section 103AN; and

(c) the mine closure plan contained in the previously approved mining proposal is taken to be a mine closure plan lodged in accordance with section 103AS.

(3) On and from commencement day —

(a) an existing undetermined mining proposal is taken to be a mining development and closure proposal lodged in accordance with section 103AM; and

(b) a mine closure plan contained in an existing undetermined mining proposal is taken to be information required under section 103AM(3)(c)(ii), (iii) and (iv) to be included in a mining development and closure plan lodged in accordance with section 103AM.

**Third Schedule — Private land not open for mining**

[s. 27]

*[Heading amended: No. 19 of 2010 s. 4.]*

East Locations 36, 41, 48, 51, 53, 55, 57, 59, 32, 35, 39, 40, 42, 44, 45, 50, 37,  
61, 62.

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