



Western Australia

Mining Act 1978

**Incorporating the amendments proposed by
the *Mining Amendment Bill (No. 2) 2021***

Note:

Pt. III, IIIA, Pt. IV Div. 1, 2A and 3-7, Pt. IVA, VI, VII, VIII and
First-Third Sch. have been omitted as they are not amended by this Bill.

Mining Act 1978

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Consultation Draft

Western Australia

Mining Act 1978

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

Consultation Draft

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*¹ 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 to the agreement is authorised or required to carry out any mining operations pursuant to the agreement.
- (2) Notwithstanding anything in the Second Schedule Division 1, a party to an agreement referred to in subsection (1) —
 - (a) who is the holder of an existing mining tenement under that agreement may continue, subject to that agreement, to exercise the rights conferred by that mining tenement; or

- (b) to whom an existing right of occupancy has been granted under section 276 of the repealed Act or that agreement, or under both section 276 of the repealed Act and that agreement, as the case requires, may continue, subject to that agreement, to exercise that right of occupancy,

as though the repealed Act had not been repealed.

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

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

6. Operation of this Act

- (1) This Act shall be read and construed subject to the *Environmental Protection Act 1986*, to the intent that if a provision of this Act is inconsistent with a provision of that Act, the first-mentioned provision shall, to the extent of the inconsistency, be deemed to be inoperative.
- (1a) Notwithstanding subsection (1) and section 5 of the *Environmental Protection Act 1986*, in the case of an application for a mining lease accompanied by the documentation referred to in section 74(1)(ca)(ii) —
- (a) only the applicant can refer a proposal to which the application relates under section 38(1) of that Act; and
- (b) section 38(5) of that Act does not apply to such a proposal.
- (1b) In subsection (1a) —
- proposal** has the meaning given to that term in section 3(1) of the *Environmental Protection Act 1986*.
- (1c) Subsection (1a) does not apply to an application for a mining lease made pursuant to a Government agreement as defined in section 2 of the *Government Agreements Act 1979*.
- (1d) If a mining lease is granted on an application referred to in subsection (1a), nothing in that subsection affects the application of section 38 of the *Environmental Protection Act 1986* to —

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- (a) a programme of work lodged by the holder of the mining lease in compliance with the condition referred to in section 82(1)(ca); or
 - (b) a mining proposal lodged by the holder of the mining lease in compliance with the condition referred to in section 82A.
- (2) Notwithstanding anything in this Act —
- (a) a local government is not required to hold a mining tenement to —
 - (i) exercise the power given to it by section 3.27 of, and clause 3 of Schedule 3.2 to, the *Local Government Act 1995*; or
 - (ii) remove from local government property (as defined in that Act), rock, stone, clay, sand or gravel for use in the construction of local government facilities;
 - and
 - (b) if a local government leases local government property to another person, that person is not required to hold a mining tenement to remove from that land, rock, stone, clay, sand or gravel for use in the construction of local government facilities, unless the Minister requires that person to hold a tenement.
- (3) Whenever a provision of the *Contaminated Sites Act 2003* is inconsistent with a provision of this Act or a mining tenement, the provision of the *Contaminated Sites Act 2003* prevails.
- (4) The operation of this Act is subject to the *Alumina Refinery (Mitchell Plateau) Agreement Act 1971* sections 5B and 5C.
- [Section 6 amended: No. 100 of 1985 s. 4; No. 77 of 1986 s. 8; No. 14 of 1996 s. 4; No. 39 of 2004 s. 26; No. 12 of 2010 s. 4; No. 31 of 2015 s. 9.]

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

8. Terms used

- (1) In this Act, unless the contrary intention appears —
- agricultural** used in relation to the purposes for which land is occupied, includes cropping or pasturing purposes;
- burial ground** means an area of land reserved or demarcated exclusively for the purpose of burials;

commencing date means the date of the coming into operation of the provisions of this Act referred to in section 2(2);

Commonwealth land means —

- (a) land in respect of which the Commonwealth holds a freehold or leasehold interest; or
- (b) land that is otherwise vested in or held by the Commonwealth or vested in or held by an officer or person on behalf of the Commonwealth;

Corporations Act means the *Corporations Act 2001* of the Commonwealth;

Crown land means all land except —

- (a) land that has been reserved for or dedicated to any public purpose other than —
 - (i) land reserved for mining or commons;
 - (ii) land reserved and designated for public utility for any purpose under the *Land Administration Act 1997*;
- (b) land that has been lawfully granted or contracted to be granted in fee simple by or on behalf of the Crown;
- (c) land that is subject to any lease granted by or on behalf of the Crown other than —
 - (i) a pastoral lease within the meaning of the *Land Administration Act 1997*, or a lease otherwise granted for grazing purposes only; or
 - (ii) a lease for timber purposes; or
 - (iii) a lease of Crown land for the use and benefit of the Aboriginal inhabitants;
- (d) land that is a townsite within the meaning of the *Land Administration Act 1997*;

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

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

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

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

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

Director General of Mines means the person for the time being holding or acting in the office of chief executive officer of the Department;

Director, Geological Survey means the person for the time being holding or acting in the office of Director, Geological Survey in the Department;

expenditure conditions in relation to a mining tenement means the prescribed conditions applicable to a mining tenement that require the expenditure of money on or in connection with the mining tenement or the mining operations carried out thereon or proposed to be so carried out;

fossick means to search for, extract and remove rock, ore or minerals, other than gold or diamonds, in quantities not exceeding the prescribed amount and by means not prohibited under the regulations, as samples or specimens for the purpose of a mineral collection, lapidary work or a hobby interest;

geological sample includes a drill core;

ground disturbing equipment means —

- (a) mechanical drilling equipment; or
- (b) a backhoe, bulldozer, grader or scraper; or
- (c) any other machinery of a kind prescribed for the purposes of this definition;

identified mineral resource means a deposit of minerals identified in the prescribed manner;

LAA Minister means the Minister to whom the administration of the *Land Administration Act 1997* is for the time being committed by the Governor;

land includes water; and also includes —

- (a) the foreshore as defined in section 25(1)(a); and
- (b) the sea bed and subsoil between the mean low water springs level and the inner limits of the coastal waters of the State as defined in section 16(1) and (2) of the *Offshore Minerals Act 2003*;

land under cultivation means land being used for agricultural purposes and includes any land, whether cleared or uncleared,

used by a person for the grazing of stock in the ordinary course of management of the land of that person where the land so used for grazing forms the whole or a part of the land owned or occupied by that person;

lapidary work includes the selection, cutting, polishing, engraving and setting of rock or other minerals;

listed public company means a corporation that is a listed corporation within the meaning of that expression in the Corporations Act;

local government means the local government of the district in which the matter in relation to which the term is used, arose or is situated;

machinery includes all mechanical appliances of whatever kind used or intended to be used for any mining purpose;

marine management area, marine nature reserve and marine park have the meanings given to them by the *Conservation and Land Management Act 1984*;

mine, as a noun, means any place in, on or under which mining operations are carried on;

mine, as a verb, includes any manner or method of mining operations;

mineral field means a mineral field constituted under this Act or deemed so to be;

minerals means naturally occurring substances obtained or obtainable from any land by mining operations carried out on or under the surface of the land, but does not include —

- (a) soil; or
- (b) a substance the recovery of which is governed by the *Petroleum and Geothermal Energy Resources Act 1967* or the *Petroleum (Submerged Lands) Act 1982*; or
- (ba) without limiting paragraph (b), geothermal energy resources as defined in the *Petroleum and Geothermal Energy Resources Act 1967* section 5(1); or
- (c) a meteorite as defined in the *Museum Act 1969*; or
- (d) any of the following substances if it occurs on private land —
 - (i) limestone, rock or gravel; or
 - (ii) shale, other than oil shale; or
 - (iii) sand, other than mineral sand, silica sand or garnet sand; or

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- (iv) clay, other than kaolin, bentonite, attapulgite or montmorillonite;

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

mining includes fossicking, prospecting and exploring for minerals, and mining operations;

mining operations means any mode or method of working whereby the earth or any rock structure stone fluid or mineral bearing substance may be disturbed removed washed sifted crushed leached roasted distilled evaporated smelted combusted or refined or dealt with for the purpose of obtaining any mineral or processed mineral resource therefrom whether it has been previously disturbed or not and includes —

- (a) the removal of overburden by mechanical or other means and the stacking, deposit, storage and treatment of any substance considered to contain any mineral; and
- (b) operations by means of which salt or other evaporites may be harvested; and
- (c) operations by means of which mineral is recovered from the sea or a natural water supply; and
- (da) operations by means of which a processed mineral resource is produced and recovered; and
- (d) the doing of all acts incident or conducive to any such operation or purposes;

mining product means any material won from land by mining;

mining registrar means a mining registrar appointed in accordance with this Act or deemed so to be and includes a reference to the person holding, acting in, or performing the functions of a prescribed office or position in the Department;

mining tenement means a prospecting licence, exploration licence, retention licence, mining lease, general purpose lease or a miscellaneous licence granted or acquired under this Act or by virtue of the repealed Act; and includes the specified piece of land in respect of which the mining tenement is so granted or acquired;

occupier in relation to any land includes any person in actual occupation of the land under any lawful title granted by or derived from the owner of the land;

oil shale includes naturally occurring hydrocarbons that are or may be contained in rocks from which they cannot be recovered otherwise than by mining those rocks as oil shale;

owner in relation to any land means —

- (a) the registered proprietor thereof or in relation to land not being land under the *Transfer of Land Act 1893* the owner in fee simple or the person entitled to the equity of redemption thereof; or
- (b) the lessee or licensee from the Crown in respect thereof; or
- (c) the person who for the time being, has the lawful control and management thereof whether on trust or otherwise; or
- (d) the person who is entitled to receive the rent thereof;

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

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

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

processed mineral resource means a substance produced from a mineral that is under the surface of land without the mineral being removed from the land;

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public purpose means any of the purposes for which land may be reserved under Part 4 of the *Land Administration Act 1997*, and any purpose declared by the Governor pursuant to that Act, by notification in the *Government Gazette* to be a public purpose within the meaning of that Act;

register means the register kept under section 103F;

registration means registration under section 103C;

related has a meaning affected by subsection (4);

repealed Act means the *Mining Act 1904*²;

retention status has a meaning affected by subsection (5);

reversion licence application means a reversion licence application authorised by an order under section 120AA(2);

the warden or the mining registrar means the warden or the mining registrar of the mineral field or district thereof in which the subject matter in relation to which the term is used arose or is;

vehicle includes an aircraft, helicopter or air cushion vehicle;

warden means a warden of mines appointed in accordance with this Act;

warden's court means the warden's court constituted under this Act or deemed so to be for the mineral field or district thereof in which the subject matter in relation to which the term is used arose or is.

- (2) Notwithstanding anything in subsection (1), the Minister may, in the event of a dispute whether a particular substance is or is not oil shale, decide whether that substance is or is not oil shale for the purposes of this Act and the *Petroleum and Geothermal Energy Resources Act 1967* and his decision in the matter shall be final.
- (3) A reference in this Act to the owner and occupier of private land includes a reference to a person who is both the owner and occupier of private land and parts of speech in the plural number shall be construed accordingly.
- (4) For the purposes of this Act a person is related to —
- (a) an individual, if the person is —
 - (i) a spouse or de facto partner; or
 - (ii) a parent, grandparent or great-grandparent; or
 - (iii) a child, grandchild or great-grandchild; or

- (iv) a sibling,
of the individual, whether the relationship is a step relationship or a relationship established by, or traced through marriage or a de facto relationship, a written law or a natural relationship; and
 - (b) a body corporate, if the person is a related entity (as defined in section 9 of the Corporations Act) in relation to the body corporate.
- (5) For the purposes of this Act —
- (a) a prospecting licence has retention status if an approval under section 54 has effect in relation to the licence; and
 - (b) an exploration licence has retention status if an approval under section 69B has effect in relation to the licence.

[Section 8 amended: No. 69 of 1981 s. 6; No. 122 of 1982 s. 5; No. 100 of 1985 s. 5; No. 105 of 1986 s. 7; No. 22 of 1990 s. 4; No. 37 of 1993 s. 10(2), 12(2), 26 and 27; No. 14 of 1996 s. 4; No. 54 of 1996 s. 4; No. 5 of 1997 s. 40; No. 31 of 1997 s. 71(1) and 141; No. 10 of 2001 s. 130; No. 15 of 2002 s. 4; No. 12 of 2003 s. 4; No. 28 of 2003 s. 152; No. 39 of 2004 s. 20, 42, 47 and 87; No. 27 of 2005 s. 4; No. 35 of 2007 s. 100(2) and (3); No. 8 of 2010 s. 17; No. 12 of 2010 s. 14; (correction to reprint: Gazette 1 Jun 2012 p. 2282); No. 51 of 2012 s. 5; No. 44 of 2016 s. 20.]

8A. Rights in respect of oil shale or coal

- (1) Notwithstanding anything in section 8, a mining tenement (other than a coal mining lease) granted and in force under, or continued in force by, this Act in respect of land which is the subject of an exploration permit specified in the Schedule to the *Petroleum and Geothermal Energy Resources Act 1967* does not confer on the holder of that mining tenement any rights in respect of oil shale or coal.
- (2) If land referred to in subsection (1) ceases to be the subject of an exploration permit referred to in that subsection, the holder of the mining tenement referred to in that subsection may apply to the Minister for rights in respect of oil shale or coal or both in respect of that land.
- (3) On receiving an application made under subsection (2), the Minister may in writing confer on the applicant such rights in respect of oil shale or coal or both in respect of the land

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concerned as he thinks fit, in which case the mining tenement concerned shall be amended accordingly.

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

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

(1) Subject to this Act —

- (a) all gold, silver, and any other precious metal existing in its natural condition on or below the surface of any land whether alienated or not alienated from the Crown and if alienated whenever alienated, is the property of the Crown;
- (b) all other minerals existing in their natural condition on or below the surface of any land that was not alienated in fee simple from the Crown before 1 January 1899 are the property of the Crown.

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

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

9A. Effect of change of baseline

(1) If —

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

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

(2) In subsection (1) —

offshore area means an area that comes within paragraph (b) of the definition of ***land*** in section 8(1).

- (3) If —
- (a) a mining lease takes effect immediately after an exploration licence expires; and
 - (b) the holder of the mining lease immediately after it takes effect was the holder of the exploration licence immediately before it expired,

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

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

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

- (5) If —
- (a) a mining lease takes effect immediately after a retention licence expires; and
 - (b) the retention licence took effect immediately after an exploration licence expired; and
 - (c) the holder of the mining lease immediately after it takes effect was the holder of the retention licence immediately before it expired; and
 - (d) the holder of the retention licence immediately after it took effect was the holder of the exploration licence immediately before it expired,

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

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

9B. Position on Earth's surface

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

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- (1A) [A datum may be prescribed for all or some of the purposes referred to in subsection \(1\), and different datums may be prescribed for different purposes.](#)
- (2) Regulations that prescribe a datum for the purposes referred to in subsection (1), or amend that datum or prescribe another datum to replace that datum, may make any transitional or savings provisions that are necessary or convenient to be made —
- (a) in relation to mining tenements granted or acquired before the regulations take effect; or
 - (b) in relation to applications for mining tenements pending when the regulations take effect; or
 - (c) for any other purpose.
- (3) Regulations referred to in subsection (2) may modify or otherwise affect the operation of this Act.

[Section 9B inserted: No. 54 of 2000 s. 5(2); amended: [Mining Amendment Bill \(No. 2\) 2021.](#)]

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 —
 - (a) by instrument in writing delegate any of his powers and functions (except this power of delegation) to —
 - (i) any officer of the Department; or
 - (ii) the person for the time being occupying a position in the Department,
being an officer named or a position specified in the instrument of delegation; and
 - (b) vary or revoke a delegation given by him.
- (2) Any delegation of a power or function under this section by the Minister ceases to have effect upon the appointment (other than

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in the capacity of an acting Minister) of another person to be the Minister for the purpose of this Act.

- (3) A power or function delegated by the Minister under this section —
- (a) shall, if exercised or performed, be exercised or performed in accordance with the instrument of delegation; and
 - (b) may, if the exercise of the powers or the performance of the functions is dependent upon the opinion, belief or state of mind of the Minister in relation to a matter — be exercised upon the opinion, belief or state of mind of the delegate in relation to that matter.

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

13. Wardens of mines, mining registrar

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

[(2), (3) deleted]

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

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

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

15. Prohibition from adjudicating in certain matters or from using certain information

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

- (a) the warden declares the nature of the interest to each of the parties to the matter; and
- (b) each of the parties consents to the warden so acting or adjudicating.

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

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

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

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

16. Power to proclaim mineral fields

- (1) The Governor may, by proclamation —
 - (a) constitute any part of the State, including any area that comes within paragraph (b) of the definition of **land** in section 8(1), to be a mineral field; or
 - (b) divide any mineral field into districts; or
 - (c) alter or amend the boundaries of a mineral field or district; or
 - (d) abolish a mineral field or district.
- (2) Any part of the State that was immediately before the commencing date a mineral field or district thereof or a goldfield or district thereof under the repealed Act, shall be deemed to be a mineral field or district thereof constituted under this Act and may be dealt with as provided in subsection (1).
- (3) No Crown land that is in a mineral field shall be leased, transferred in fee simple, or otherwise disposed of under the provisions of the *Land Administration Act 1997*, without the approval of the Minister.

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

17. Designated tenement contact

- (1) In this section —
give includes serve, ~~notify~~, send or any similar expression;

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

- (a) under which the Minister, a warden or any official of the Department is required or permitted to give information, a document, a notice or a notification~~a document or notice~~ to a person who holds, or has applied for, a mining tenement; and
 - (b) that is prescribed for the purpose of this section.
- (2) Despite anything else in this Act, a prescribed provision is to be taken to have been complied with if —
- (a) under the prescribed provision, information, a document, a notice or a notification~~a document or notice~~ is required or permitted to be given to a person who holds, or has applied for, a mining tenement; and
 - (b) the information, document, notice or notification~~document or notice~~ referred to in the provision is given to the designated tenement contact for that mining tenement or application.

[Section 17 inserted: No. 44 of 2016 s. 21; amended: Mining Amendment Bill (No. 2) 2021.]

[Parts III and IIIA omitted as they are not amended by the Mining Amendment Bill (No. 2) 2021.]

Part IV — Mining tenements

[\[Division 1 omitted as it is not amended by the Mining Amendment Bill \(No. 2\) 2021.\]](#)

Division 2 — Exploration licence

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

56C. Graticular sections

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

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(4A) Without limiting section 9B(1A), a datum must be prescribed by the regulations for the purposes of the determination of the position on the surface of the Earth of a graticular section or a block.

(4B) Despite subsection (1), the meridians of longitude defining the eastern and western boundaries of a graticular section, and the parallels of latitude defining the northern and southern boundaries of a graticular section, are taken to be at a distance from each other that is other than 1 minute if required as a result of the prescription of a datum under subsection (4A).

(5) In subsection (2) —
State includes any area that comes within paragraph (b) of the definition of *land* in section 8(1).

[Section 56C inserted: No. 22 of 1990 s. 15; amended: No. 12 of 2003 s. 9; Mining Amendment Bill (No. 2) 2021.]

57. Grant of exploration licence

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

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

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

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

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

(2b) Where —

- (a) an application is made for an exploration licence in respect of 3 or more blocks; and

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

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

- (d) a single graticular section; or
 - (e) a number of graticular sections each having a side in common with at least one other graticular section in that area.
- (2c) Where an application for an exploration licence is made with respect to one block, the land in respect of which the licence is granted may comprise part of the block if the rest of the block consists of land that is unavailable for exploration.
- (2d) Where an application for an exploration licence is made with respect to 2 or more blocks, the land in respect of which the licence is granted may include part of a block if the rest of the block consists of land that is unavailable for exploration.
- (2e) For the purposes of subsections (2c) and (2d) land is unavailable for exploration if —
- (a) ~~the that~~ land is, or was when the application for the exploration licence was made, the subject of a current mining tenement (other than a miscellaneous licence); or
 - (b) before the application for the exploration licence is granted, the Minister determines that the land is unavailable for exploration.
- (2ea) Where the application for the exploration licence is a reversion licence application, the reference in subsection (2e)(a) to a current mining tenement does not include a continuing licence as defined in section 120AA(1).
- (2f) Where the land in respect of which an exploration licence is granted comprises or includes part of a block —
- (a) the licence is deemed to be granted in respect of that block for the purposes of subsections (2), (2a) and (2b); and
 - (b) that block is deemed to be subject to the licence for the purposes of section 65; and

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- (c) the boundaries of the land the subject of the licence shall be deemed to be the same as the boundaries of the block for the purposes of section 67A.
- (2g) A person may be granted more than one exploration licence.
- (2h) Where the land in respect of which an exploration licence is granted comprises or includes part of a block, no other exploration licence shall be granted in respect of that block or any part of that block.
- (3) The mining registrar or the warden shall not recommend the grant of an exploration licence under this section unless he is satisfied that the applicant is able to effectively explore the land in respect of which the application has been made.
- (4) Where in any particular area extensive mining is being carried on, the Minister may, from time to time, by notice published in the *Government Gazette* declare that no application for an exploration licence shall be made or granted with respect to any land comprising the area or any land within such area as is specified in the notice.

[Section 57 amended: No. 69 of 1981 s. 17; No. 122 of 1982 s. 17; No. 100 of 1985 s. 38; No. 22 of 1990 s. 16; No. 37 of 1993 s. 7; No. 58 of 1994 s. 13 and 15(2) and (3); No. 15 of 2002 s. 10; No. 39 of 2004 s. 12; No. 27 of 2005 s. 7; [Mining Amendment Bill \(No. 2\) 2021.](#)]

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

- (1) The Minister may, by notice published in the *Gazette*, designate one or more areas of the State for the purposes of section 57(2aa).
- (2) The Minister may, by notice published in the *Gazette*, vary or cancel a designation under subsection (1).
- (3) A notice under this section comes into operation on the day on which the notice is published in the *Gazette* or such later day as is specified in the notice.
- (4) The variation or cancellation of a designation under subsection (2) does not affect the operation of any exploration licence granted before the variation or cancellation takes effect.
- (5) If —

- (a) an application for an exploration licence is made in respect of an area of land that is in an area of the State designated under subsection (1) (a *designated area*); and
- (b) before the application is determined the designation is varied or cancelled under subsection (2) with the result that the area of land to which the application relates ceases to be in a designated area,

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

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

58. Application for exploration licence

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

[(1a) deleted]

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- (2) An application referred to in subsection (1) must identify the block or blocks applied for by number in accordance with section 56C(4).
- (2a) On an application for an exploration licence or on an exploration licence being granted the land affected is not thereby required to be surveyed, but where a dispute arises with respect to the position of such land or the boundaries or any boundary thereof the warden or Minister may require a survey to be made of the boundaries or the boundary in order to settle the dispute.
- (2b) A survey required under subsection (2a) shall be —
- (a) arranged in accordance with the regulations; and
 - (b) paid for by such party or parties to the dispute as the warden or the Minister determines.
- (3) An applicant shall at the request of the mining registrar or warden furnish such further information in relation to his application, or such evidence in support thereof, as the mining registrar or warden may require but the mining registrar or warden shall not require information or evidence relating to assays or other results of any testing or sampling that the applicant may have carried out on the land the subject of his application.
- (4) Within the prescribed period the applicant shall serve such notice of the application as may be prescribed on the owner and occupier of the land to which the application relates and on such other persons as may be prescribed.

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

59. Determination of application for exploration licence

- (1) A person who wishes to object to the granting of an application for an exploration licence shall lodge a notice of objection within the prescribed time and in the prescribed manner.
- (2) Where no notice of objection is lodged within the prescribed time, or any notice of objection is withdrawn, the mining registrar shall, unless subsection (4)(b) applies, forward to the Minister a report which recommends the grant or refusal of the exploration licence and sets out the reasons for that recommendation.

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

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

60. Security relating to exploration licence

- (1) The applicant for an exploration licence shall lodge, in the prescribed manner and within the prescribed period, a security for compliance with the conditions to which the exploration

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licence, if granted, will from time to time be subject and with the provisions of this Part and the regulations.

- (1a) The Minister may require the holder of an exploration licence to lodge, in the prescribed manner and within such period as the Minister specifies in writing, an additional security for compliance with conditions imposed in relation to the licence under section 63AA.
- (2) A security referred to in subsection (1) or (1a) shall be in accordance with and subject to the provisions of section 126.
- (3) An exploration licence shall not be granted unless a security has been lodged by the applicant for the exploration licence in accordance with subsection (1).
- (4) Notwithstanding section 154(1), an applicant for an exploration licence who fails to comply with subsection (1) does not commit an offence against this Act.

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

61. Term of exploration licence

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

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

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

62. Expenditure conditions

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

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

63. Condition attached to exploration licence

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

- (a) will promptly report in writing to the Minister all minerals of economic interest discovered in, on or under the land the subject of the exploration licence; and
- (aa) will not use ground disturbing equipment when exploring for minerals on the land the subject of the exploration licence unless —
 - (i) the holder has lodged in the prescribed manner a programme of work in respect of that use; and
 - (ia) the holder has paid the prescribed assessment fee in respect of the programme of work; and

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- (ii) the programme of work has been approved in writing by the Minister or a prescribed official;
- and
- (b) will fill in or otherwise make safe to the satisfaction of a prescribed official all holes, pits, trenches and other disturbances to the surface of the land the subject of the exploration licence which are —
 - (i) made while exploring for minerals; and
 - (ii) in the opinion of the prescribed official, likely to endanger the safety of any person or animal;
- and
- (c) will take all necessary steps to prevent fire, damage to trees or other property and to prevent damage to any property or damage to livestock by the presence of dogs, the discharge of firearms, the use of vehicles or otherwise.

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

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

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

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

63A. When exploration licence liable to forfeiture

An exploration licence is liable to forfeiture if —

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

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

64. Consent to dealing in exploration licence

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

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

or

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

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

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

65. Surrender of certain areas subject to exploration licence

(1) In this section —

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

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

surrender day, in relation to a surrender, means —

- (a) if the surrender is lodged under subsection (3), the end day; or
- [(b) deleted]*
- (c) if the surrender is lodged in compliance with a requirement under subsection (4), the day on which the surrender is registered.

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

- (a) the term of the licence has been extended under section 61; or

- (b) an application under section 61 for the extension of the term of the licence has been made but has not been determined.
- (3) On or before the end day the holder of an exploration licence granted in respect of more than 10 blocks must lodge a surrender for registration in respect of —
 - (a) 40% of the number of the blocks that are subject to the licence; or
 - (b) if 40% of that number is not a whole number, the nearest whole number of the blocks.
- (3A) Subsection (3) does not apply to the holder of an exploration licence for which retention status has been approved under section 69B(1).
- (4) If the holder of an exploration licence fails to lodge a surrender in accordance with subsection (3), the Minister must, by notice in writing, require the holder to lodge the surrender for registration within a period specified in the notice.
 - (4a) A surrender under this section takes effect on the surrender day.
 - (4b) The blocks that remain subject to an exploration licence after a surrender under this section are to form not more than 6 discrete areas each consisting of —
 - (a) a single graticular section; or
 - (b) a number of graticular sections each having a side in common with at least one other graticular section in that area.
 - (4c) If, before the surrender day, the holder of an exploration licence —
 - (a) is granted a mining lease or general purpose lease in respect of a part of the land the subject of the exploration licence (the *granted land*); or
 - (b) surrenders a part of the land the subject of the exploration licence (the *surrendered land*),then, in calculating the area of land that is required to be surrendered under this section, the area of granted land or surrendered land shall be taken into account as though it were an area of land surrendered in satisfaction of that requirement.
- (5) A surrender under this section shall be endorsed on the public plans of the Department —

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

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

66. Rights conferred by exploration licence

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

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

natural spring, lake, pool or stream situate in or flowing through such land or from any excavation previously made and used for mining purposes and subject to that Act to sink a well or bore on such land and take water therefrom and to use the water so taken for his domestic purposes and for any purpose in connection with exploring for minerals on the land.

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

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

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

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

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

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

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

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

68. Holder of exploration licence to keep geological records

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

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- (2) The holder of an exploration licence shall furnish the Minister with such information relating to the surveys and other operations conducted by the holder pursuant to the licence and such geological samples obtained in the course of those operations as the Minister may request.
- (3) The holder of an exploration licence shall at such times and in such manner as may be prescribed, file or cause to be filed a report of all work done on, and money expended in connection with, exploration in the area the subject of the licence during the period to which the report relates.
- (4) Notwithstanding section 154(1), a holder of an exploration licence who fails to comply with subsection (1), (2) or (3) does not commit an offence against this Act.

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

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

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

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

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

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

69A. Application for retention status

- (1) In this section —
exploration licence does not include an exploration licence that is a primary tenement for the purposes of Division 2A.
- (2) The holder of an exploration licence may apply to the Minister for approval of retention status under section 69B.
- (3) An application under subsection (2) —
 - (a) shall be in writing; and
 - (b) shall be made in the prescribed manner; and
 - (c) shall contain the prescribed information; and
 - (d) shall be accompanied by any map, statement or other information required by the regulations; and
 - (e) shall be accompanied by the prescribed application fee.
- (4) For the purposes of subsection (3)(d), but without limiting section 162(5), the regulations may require a statement or other information to be in the form of a statutory declaration.
- (5) If the holder of an exploration licence transfers the licence after making an application under subsection (2) in respect of the licence, the application continues in the name of the transferee of the licence as if the transferee had made it.

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

69B. Approval of retention status

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

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

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

69C. Consultation with other Ministers

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

consult and obtain the recommendations of the other Minister referred to in section 25(3B).

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

69D. Programme of work

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

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

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

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

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

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

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

70. Special prospecting licence on an exploration licence

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

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

- (1aa) If the primary tenement was granted as a result of a reversion licence application, a special prospecting licence may be marked out and applied for at any time after the date on which the primary tenement was granted.
- (1a) A special prospecting licence may only be applied for by, granted to or held by a natural person.
- (2) Unless subsection (5a) applies, an applicant for a special prospecting licence shall, within the prescribed period, give notice thereof to the holder of the primary tenement as if such

holder were the occupier of the land to which the application relates, and subsections (3) to (5) apply in respect of the application.

- (3) Where, after being served with notice of the application for the special prospecting licence, the holder of the primary tenement does not lodge an objection against the application the mining registrar may, subject to this Act, grant the application as provided in subsection (6).
- (4) Where such an objection is lodged by the holder of the primary tenement the warden shall obtain a report from the Director, Geological Survey in respect of the exploration carried on by the holder of the primary tenement on the land to which the application relates.
- (4a) A report prepared by the Director, Geological Survey for the purposes of subsection (4) is to be based solely on information contained in reports filed by or on behalf of the holder of the primary tenement under section 68(3) or 115A.
- (5) After hearing the objection of the holder of the primary tenement the warden may refuse the application for the special prospecting licence on the ground that prospecting for gold on the land to which the application relates would result in undue detriment to the exploration being carried on by the holder of the primary tenement or he may recommend the application to the Minister who may refuse the application or subject to this Act, grant it as provided in subsection (6), but where the warden refuses an application under this subsection, the applicant may within the time and in the manner prescribed appeal to the Minister against such refusal and the Minister may dismiss the appeal or uphold the appeal and grant the application as provided in subsection (6).
- (5a) If, at the time when an applicant for a special prospecting licence marked out the land to which his application relates, the grant of the application would have resulted in the number of special prospecting licences in respect of the primary tenement exceeding one for each 200 ha of the primary tenement, the applicant shall, within the prescribed period and in the prescribed manner, lodge the written consent of the holder of the primary tenement to the grant of the application.
- (5b) If written consent to the grant of an application is lodged in accordance with subsection (5a), the mining registrar may,

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subject to this Act, grant the application as provided for in subsection (6).

- (6) Subject to this section the mining registrar or Minister may grant the application on such terms and conditions as he thinks fit but a special prospecting licence granted pursuant to this section —
- (a) shall not exceed 10 ha in area; and
 - (b) shall authorise the holder to prospect only for gold; and
 - (c) shall not unless the Minister otherwise directs, prevent the holder of the primary tenement from exploring for minerals other than gold in or on the land the subject of the special prospecting licence and the primary tenement; and
 - (d) does not authorise the holder thereof to excavate, extract or remove during the period for which the tenement remains in force a total amount of earth, soil, rock, stone, fluid or mineral bearing substances in excess of 500 t, except in so far as the prior written approval of the Minister may otherwise permit; and
 - (e) does not authorise mining to be carried out in any portion of the land that is —
 - (i) below a depth specified in the terms and conditions of the special prospecting licence, and any depth so specified shall be less than 50 m below the lowest part of the natural surface of the land the subject of the special prospecting licence; or
 - (ii) if a depth is not so specified, 50 m or more below the lowest part of the natural surface of the land the subject of the special prospecting licence, except in so far as both the prior written consent of the holder of the primary tenement and the prior written approval of the Minister may otherwise permit.
- (6aa) A special prospecting licence may be granted for a period of 3 months or for any period which is a multiple of 3 months but which does not exceed 4 years.
- (6a) A special prospecting licence —
- (a) continues in force notwithstanding that the holder of the primary tenement may apply for and be granted a

retention licence, mining lease or general purpose lease in respect to the land; but

- (b) ceases (and the land in respect to which it was granted reverts to the primary tenement holder as an integral part of the tenement held by him) on the surrender, forfeiture or expiry of that special prospecting licence.

- (7) No legal or equitable interest in or affecting —

- (a) a special prospecting licence; or
- (b) a mining lease in respect of the land or any part thereof the subject of a special prospecting licence,

is capable of being created, affected or dealt with, whether directly or indirectly, except with the prior written consent of the holder of the primary tenement, and no person shall hold or have any beneficial, legal or equitable interest in —

- (c) more than 10 such special prospecting licences; or
- (d) more than one such mining lease.

- (7a) A reference in subsection (7) to a person includes a reference to any other person who would, for the purposes of the Corporations Act, be taken to be an associate of the first-mentioned person.

- (7b) A mining lease in respect of the land or any part thereof which is the subject of a special prospecting licence shall not be granted in respect of the primary tenement where the number of such leases granted in respect of that primary tenement exceeds one for each 200 ha of the primary tenement.

- (8) The holder of a special prospecting licence granted for a period of 4 years may make an application for a mining lease for gold in respect of the land or any part thereof which is the subject of the special prospecting licence, and on an application being made the Minister may, subject to subsection (7b), grant the application for a lease in respect to that portion of the land to which the special prospecting licence relates that is less than a depth of 50 m, or such greater depth as the Minister approves with the prior written consent of the holder of the primary tenement, below the lowest part of the natural surface of the land and on such terms and conditions as the Minister thinks fit, and thereupon the area of land in respect of which the mining lease is granted shall be excised from the primary tenement (whether or not the primary tenement has in the meantime been converted into a retention licence or a mining lease).

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

- (12) Subsections (9a) and (10) do not apply if —
- (a) the primary tenement is amalgamated with an exploration licence under section 67A(1); or
 - (b) prior to the surrender, forfeiture or expiry of the primary tenement the holder of the primary tenement applies for a retention licence, a mining lease or a general purpose lease and the licence or lease is subsequently granted in respect of any land the subject of the application for a special prospecting licence or the special prospecting licence, as the case requires; or
 - (c) prior to the surrender, forfeiture or expiry of the primary tenement the holder of the primary tenement makes a reversion licence application and a prospecting licence or an exploration licence is granted as a result of that application in respect of any land the subject of the application for a special prospecting licence or the special prospecting licence, as the case requires.

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

[\[Divisions 2A-7 omitted as they are not amended by the Mining Amendment Bill \(No. 2\) 2021.\]](#)

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

[\[Part IVA omitted as it is not amended by the Mining Amendment Bill \(No. 2\) 2021.\]](#)

Part V — General provisions relating to mining and mining tenements

104. Entry on land for purpose of marking out, surveying etc.

- (1) Subject to this Act, for the purpose of marking out any land and posting notices on any land in connection with an application for a mining tenement, any person or his servant or agent may —
 - (a) enter and re-enter from time to time on any land with such assistants as he thinks fit; and
 - (b) affix and set up on the land pegs, marks, posts, cairns of stones and poles, inspect and repair any peg, mark, post, cairn of stones or pole; and
 - (c) do all such things as may be necessary for the purpose of marking out the land, and posting notices thereon.
- (2) Subject to subsections (3) to (5), for the purposes of surveying any land in connection with a mining tenement, any surveyor authorised in that behalf may —
 - (a) enter and re-enter from time to time on any land, with such assistants as he thinks fit; and
 - (b) affix and set up on the land survey pegs, marks and poles; and
 - (c) do all such things as may be necessary for the purposes of the survey.
- (3) A person shall not enter on any private land for any purpose referred to in subsection (1) unless he does so pursuant to a permit issued under section 30.
- (4) A person shall not, for the purposes specified in subsection (1) or (2), enter on any Commonwealth land or land referred to in section 24 or 25 or a marine nature reserve or marine park except as provided in section 26.
- (5) In carrying out any marking out, posting of notices or survey of any land, every person entering on the land under this section shall ensure that no damage is done that with reasonable diligence could be avoided.

[Section 104 amended: No. 5 of 1997 s. 41(2); No. 51 of 2012 s. 31.]

105. Marking out of mining tenement

- (1) Except as provided in subsection (2), before~~Before~~ an application for a mining tenement other than an exploration licence, a retention licence or a miscellaneous licence is made, the land in relation to which the mining tenement is sought shall be marked out in the prescribed manner and in the prescribed shape, and for the purpose of any claim for compensation for loss or damage suffered or likely to be suffered resulting or arising therefrom under section 123, or for an order under section 124(2), the activities involved in the marking out shall be taken to be activities relating to prospecting and, as such, to constitute mining.
- (2) The holder of a prospecting licence, exploration licence or retention licence may make an application for the grant of a mining lease or general purpose lease in respect of any part of the land the subject of the licence without first marking out the land in relation to which the lease is sought if the holder includes with the application —
- (a) a statement of the grounds of the application; and
 - (b) evidence supporting the statement.
- (3) The statement must specify that, in the opinion of the holder of the licence, it is not possible for the land in relation to which the lease is sought to be accessed by or on behalf of the holder for the purpose of marking out as a result of 1 or more of the following —
- (a) any law;
 - (b) any order of a court, tribunal or person acting judicially;
 - (c) an act or omission of —
 - (i) a department of the Public Service; or
 - (ii) a State agency or instrumentality; or
 - (iii) a local government, regional local government or regional subsidiary; or
 - (iv) a body, whether incorporated or not, or the holder of an office, post or position, that is established or continued for a public purpose under a written law; or
 - (v) a brigade as defined in the *Fire Brigades Act 1942* section 4(1);

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- (d) any disaster or emergency, including a disaster or emergency caused by —
- (i) fire, storm, flood, lightning, landslide or earthquake; or
- (ii) the holder or any other person;
- (e) any revolution, insurrection, riot or other civil disturbance;
- (f) any vandalism, sabotage or other form of malicious damage of property;
- (g) any war (whether declared or undeclared) or military operation;
- (h) any strike, lock-out or other industrial dispute;
- (i) any other circumstance beyond the control of the holder of the licence.
- (4) If the holder of the licence makes an application in reliance on subsection (2), the holder must —
- (a) mark out the land in relation to which the lease is sought in the prescribed manner and in the prescribed shape —
- (i) as soon as practicable after it becomes possible for the land to be accessed; or
- (ii) if the mining registrar is not satisfied that the evidence provided under subsection (2)(b) demonstrates that it is not possible for the land to be accessed and specifies, in writing, a day by which the land must be marked out — by the end of the specified day; or
- (iii) if the mining registrar is satisfied that it has become possible for the land to be accessed and specifies, in writing, a day by which the land must be marked out — by the end of the specified day;
- and
- (b) as soon as practicable after the land is marked out, provide the mining registrar with evidence that the land has been marked out.
- (5) The activities involved in marking out under subsection (4)(a) are taken to be activities relating to prospecting and to constitute mining for the purpose of any claim under section 123 for compensation for loss or damage suffered, or likely to be suffered, resulting or arising from marking out —

(a) under subsection (4)(a); or

(b) for the purposes of an order under section 124(2).

~~—{(2)—deleted}~~

[Section 105 amended: No. 100 of 1985 s. 79; No. 105 of 1986 s. 16; No. 22 of 1990 s. 33; No. 37 of 1993 s. 10(2) and 16; No. 51 of 2012 s. 32; [Mining Amendment Bill \(No. 2\) 2021.](#)]

105A. Priorities between applicants for certain tenements

- (1) Subject to section 111A, where more than one application is received for a mining tenement (other than a miscellaneous licence) in respect of the same land or any part thereof, the applicant who first complies with the initial requirement in relation to his application has, subject to this Act, the right in priority over every other applicant to have granted to him in respect of that land or part the mining tenement to which his application relates.
- (2) In subsection (3) *applicant* means an applicant for a prospecting licence, exploration licence, mining lease or general purpose lease.
- (3) Where in respect of any land the warden is satisfied that 2 or more applicants complied with the initial requirement in relation to their applications at the same time or within a prescribed period, priority shall, unless written agreement is concluded by the applicants and lodged in the prescribed manner and within the prescribed time, be determined by ballot conducted by the warden on a date to be determined by the warden and notified to the applicants.
- (3a) Each ballot under subsection (3) is to be conducted in public.
- (4) In this section a reference to compliance with the initial requirement in relation to an application is a reference —
 - (a) in the case of an application for an exploration licence, to lodging that application in the prescribed manner;
 - (b) in the case of an application for a prospecting licence, mining lease or general purpose lease —
 - (i) unless subparagraph (ia), (ii) or (iii) applies, to marking out the land concerned in the prescribed manner;

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- (ia) where the land concerned is land to which section 65(6) applies, lodging that application in the prescribed manner;
 - (ii) where the land concerned is wholly covered by the sea or the waters of any lake, pond, river or stream, to lodging that application in the prescribed manner;
 - (iii) where the land concerned is partly covered by the sea or the waters of any lake, pond, river or stream, to marking out in the prescribed manner so much of that land as is not so covered.
- (5) If the warden is satisfied that 2 or more applications for a mining tenement have been lodged by or on behalf of the same party for the purpose of affecting the result of a ballot to be conducted under subsection (3), the warden may exclude all but one of those applications from the ballot.
- (6) For the purposes of subsection (5) an application for a mining tenement is to be taken to have been lodged by or on behalf of a party if it is lodged by or on behalf of a person who is related to that party.

[Section 105A inserted: No. 69 of 1981 s. 24; amended: No. 100 of 1985 s. 80; No. 1 of 1986 s. 6; No. 22 of 1990 s. 34; No. 37 of 1993 s. 17 and 26; No. 58 of 1994 s. 42; No. 15 of 2002 s. 26; No. 39 of 2004 s. 67 and 95; No. 12 of 2010 s. 36.]

105B. Grant of tenement subject to survey

The grant of a mining tenement shall be deemed to have been made subject to a condition that the land applied for is found to have been available for the purposes of that grant after a survey has been made of the tenement.

[Section 105B inserted: No. 100 of 1985 s. 81.]

106. Offence of destroying marks or obstructing surveyor etc.

A person who —

- (a) without lawful authority removes, destroys or alters the position of, any peg, notice, survey peg, mark, post, cairn of stones or pole used for the purposes of any marking out or survey made or being made under section 104; or

- (b) wilfully damages, destroys or otherwise interferes with any peg, survey peg, mark, post, cairn of stones, pole erected or notice posted for the purposes of this Act; or
- (c) wilfully obstructs, hinders, or interferes with any person lawfully engaged in marking out or surveying any land under that section,

is guilty of an offence against this Act.

[Section 106 amended: No. 122 of 1982 s. 26; No. 100 of 1985 s. 82.]

107. Areas covered by water not required to be marked out

Notwithstanding anything to the contrary in this Act, if any area in respect of which an application for a mining tenement is to be made is wholly or partly covered by the sea or the waters of any lake, pond, river or stream, it shall not be necessary to mark out the area or part of the area so covered.

108. Rent payable for mining tenement

In respect of each mining tenement there shall be payable by the holder thereof at the times respectively prescribed, such rent as may be respectively prescribed.

109. Royalties

- (1) In the exercise of the power to make regulations under section 162, the Governor may by regulation —
 - (a) prescribe how, by whom, and at what rate, or differentiating rates, royalties shall be paid in respect of minerals or any class of minerals, obtained from land that is the subject of a mining lease or other mining tenement granted under this Act, or that is the subject of an application for the grant of a mining lease or other mining tenement under this Act; and
 - (b) exempt, subject to conditions or unconditionally, any person or class of persons from payment either generally, or in any class of case, or in any particular case, from payment of royalty so prescribed; and
 - (c) provide for penalties, including penalties for continuing offences, for contravention of the requirements of this Act in relation to royalties and the furnishing of information relevant to the assessment of royalties.

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- (2) Regulations made under section 162 may empower the Minister —
 - (a) to determine by what method a value shall be placed on a mineral or a class of minerals for the purpose of assessing the rate of royalty that shall be paid, and in so doing to take into account market factors, including pricing methods and merchandising practices; and
 - (b) to exercise a discretion as to the basis on which a rate of royalty shall be applied, taking into account particular circumstances.
- (3) For the purposes of this section, a reference to a mineral includes a reference to a material containing that mineral.
- (4) Notwithstanding section 160B or the provisions of any other Act, proceedings in respect of a failure to furnish information relevant to the assessment of royalties or to pay royalties under this Act may be brought within the period of 3 years after the royalty return was required to be submitted or the royalty required to be paid or, with the consent of the Minister, at any later time.

[Section 109 amended: No. 100 of 1985 s. 83; No. 58 of 1994 s. 43.]

109A. Verification of royalties payable

- (1) Where the Minister is of the opinion that any royalty has not been paid or that, having regard to any particulars that may be furnished by a person pursuant to a requirement of this Act or regulations in respect of any mining operations, any royalty was not properly assessed or was not properly calculated, notwithstanding that a certificate may have been furnished in accordance with subsection (2), the Minister may make an estimate of the royalty, taking into account the relevant regulations and such information as has been furnished or is otherwise available to the Minister, and thereafter, having given to the person who paid or may be required to pay the royalty notice —
 - (a) that the Minister proposes to exercise the power conferred by this subsection, particulars of the manner in which the proposed estimate is calculated being set out in the notice; and

- (b) that any submissions as to the proposal should be made to the Minister within a period specified in that notice, the Minister, on the expiry of that period and having considered any submissions made, may determine the amount of royalty that should have been or which is to be paid.
- (2) For the purpose of verifying any royalty, the Minister may, where a person who has paid or may be required to pay a royalty under this Act so requests, in respect of a period stated in the request, accept a certificate that the royalty appears to the person signing the certificate to have been properly assessed and calculated, being a certificate which —
- (a) is prepared at the cost of the person by whom the request is made and is signed by —
- (i) an auditor, being a person who is registered as an auditor, or taken to be registered as an auditor, under Part 9.2 of the Corporations Act; or
- (ii) some other competent independent assessor, being a person approved by the Minister;
- and
- (b) sets out the amount of the royalty paid or to be payable and, unless the Minister otherwise consents, sufficient detail of the methods of assessment and calculation, and of all weights, analyses, assays and other matters relevant to the certificate to enable the amount certified to be verified.
- (3) For the purpose of —
- (a) determining whether or not in relation to any mining operations any royalties are payable, the rates of payment, the method of valuation which is to be used in relation to a mineral or class of minerals, the basis on which a rate of royalty shall be applicable, the methods of assessment and calculation, and the amount payable; or
- (b) ascertaining information as to pricing or accounting methods and storage, transportation, processing or merchandising practices,
- an officer of the Department or a person authorised by the Minister may, at any reasonable time, without warrant other than this section exercise the powers conferred by subsection (4).

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- (4) For the purposes of subsection (3), the powers conferred are to —
- (a) enter upon any land where mining operations are carried out and into any premises situate there or any other premises elsewhere used for the purpose of preparing accounting or other records relating to the mining operations conducted on that land;
 - (b) enter upon any other land or into any premises where that officer or authorised person has reasonable cause to believe any mineral derived from the mining operations, or any accounting records relating to that mineral, to be, if —
 - (i) the officer or authorised person has reasonable cause to believe an offence against this Act or a breach of the conditions of any mining tenement has been, is being, or is about to be committed; or
 - (ii) the consent of the owner or occupier of that land or premises has been obtained;
 - (c) inspect and examine any mining operations and any accounting or other records in respect of those operations, and any mining product or mineral, in relation to which royalty is, or in his opinion may be, payable;
 - (d) take copies or extracts of accounting or other records relating to mining operations, or of other sources of information examined by or produced to him;
 - (e) require any person to produce, or to secure the production of to that officer or authorised person —
 - (i) forthwith; or
 - (ii) if by notice in writing a time and place for the production is specified, at the time and place specified,

such accounting or other records or other sources of information as are in the custody or control of the person of whom the requirement is made and which relate to a mining tenement, or to any mining operations, mineral product or holder of a mining tenement specified by the officer or authorised person, and are relevant for the purpose of determining whether any, or what amount of, royalty may be payable in relation to the mining operations,

for the purpose of seeking or obtaining the information that appears to the officer or person exercising that power to be necessary in relation to any question as to the royalties that may be payable.

- (5) A person who, without reasonable cause, refuses or fails —
- (a) to permit the entry upon any land or into any premises which an officer of the Department or other person authorised under subsection (3) reasonably believes to be necessary; or
 - (b) to permit inspection or examination, or the taking of copies or extracts of records or other sources of information, for the purposes of this section; or
 - (c) to produce, or secure the production of, to such an officer or authorised person the accounting or other records or sources of information that officer or authorised person reasonably believes to be necessary and requires to be produced; or
 - (d) to provide or secure the provision of any other information which such an officer or authorised person may reasonably require pursuant to this section; or
 - (e) to provide such an officer or authorised person with appropriate means and reasonable facilities and assistance for the effective exercise of the powers conferred by this section,

or who knowingly makes any false or misleading statement or otherwise furnishes or permits to be furnished false or misleading information, in relation to a matter to which this section applies, commits an offence against this Act.

Penalty: \$5 000.

- (6) Where a person who is the holder of, or an applicant for, a mining tenement is convicted in respect of that tenement of an offence contravening subsection (5) —
- (a) an estimate of the royalty that, taking into account the relevant regulations and such information as has been furnished or is otherwise available to the Minister, might but for the contravention have been assessed in respect of minerals obtained from the land to which the tenement or application relates may be made by or on behalf of the Minister; and

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- (b) that person may by notice in writing be required to pay to the Minister —
- (i) that estimated royalty; and
 - (ii) an amount by way of penalty determined by the Minister, being an amount not greater than 50% of that estimated royalty,
- within a time specified by the Minister; and
- (c) where in relation to an offence a requirement for payment of estimated royalty or a penalty, or both, was made of that person under paragraph (b) and is not complied with, the Minister may —
- (i) in the case of a mining tenement, forfeit that tenement as though it were a mining lease liable to forfeiture for a breach of the lessee's covenant to pay royalty, effect being given to section 97 as though for the purposes of that section the tenement were a lease of which the holder was the lessee; or
 - (ii) in the case of an application for a mining tenement, refuse that application, effect being given to section 111A as though the Minister were satisfied on reasonable grounds in the public interest that the application should not be granted.

[Section 109A inserted: No. 22 of 1990 s. 35; amended: No. 37 of 1993 s. 27; No. 10 of 2001 s. 136.]

110. Mining lease restricted to certain minerals

Notwithstanding anything to the contrary in this Act, the Minister may, having regard to the locality wherein the land the subject of an application for a mining lease is, and if the Minister considers it is in the public interest to do so, grant the applicant a mining lease that authorises the holder thereof to mine on or under or both, and remove from the land the subject of the mining lease, only such mineral as is specified in the lease.

[Section 110 amended: No. 57 of 1997 s. 89(4).]

111. Iron authorisations

- (1) Notwithstanding the provisions of sections 48, 66, 70J and 85 —
- (a) a prospecting licence does not authorise the holder thereof to prospect for iron on the land the subject of the prospecting licence;
 - (b) an exploration licence does not authorise the holder thereof to explore for iron on the land the subject of the exploration licence;
 - (ba) a retention licence does not authorise the holder thereof to explore for iron on the land the subject of the retention licence;
 - (c) a mining lease does not authorise the holder thereof to work and mine the land in respect of which the lease was granted for iron,

unless the Minister, by instrument in writing under his hand, authorises such holder so to do and endorses the prospecting licence, exploration licence, retention licence or mining lease, as the case requires, accordingly.

- (2) A reference to a licence or lease in subsection (1) does not include a reference to a licence or lease granted on an application made on or after the commencement of the *Licensing Provisions Amendment Act 2016* section 23.

[Section 111 amended: No. 37 of 1993 s. 10(2); No. 54 of 1996 s. 23; No. 44 of 2016 s. 23.]

111A. Minister may terminate or summarily refuse certain applications

- (1) The Minister may —
- (a) by notice served on the mining registrar or the warden, as the case requires, terminate an application for a mining tenement before the mining registrar or the warden has determined, or made a recommendation in respect of, the application; or
 - (b) refuse an application for a mining tenement,

if in respect of the whole or any part of the land to which the application relates —

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- (c) the Minister is satisfied on reasonable grounds in the public interest that —
 - (i) the land should not be disturbed; or
 - (ii) the application should not be granted;or
 - (d) a person who in relation to the land was formerly the lessee of a mining lease the term of which has expired, or is a person deriving title through such a former lessee, has subsequently made a late renewal application and the Minister, being satisfied that the requirements of that expired mining lease and of this Act in relation to that lease had been substantially observed (other than as to the timing of an application for renewal) and that the person has continued to observe those requirements as if the term of the lease had not expired, determines that the renewal application should be approved and grants that renewal.
- (2) In subsection (1)(d) *late renewal application* means an application made in the manner prescribed for the purposes of section 78 (except that it was not made during the final year of the term of the lease) for the renewal of the lease with effect from the expiry of the term of the lease.
 - (3) Notwithstanding anything in this Act, an application to which a notice referred to in subsection (1)(a) applies ceases to have any effect for the purposes of this Act when that notice is served.
 - (4) The powers conferred by subsection (1) are in addition to any other powers of the Minister under this Act.

[Section 111A inserted: No. 58 of 1994 s. 44.]

112. Reservation in favour of Crown on prospecting licence or exploration licence to take rock etc.

- (1) Subject to subsection (2), every prospecting licence and exploration licence is subject to a reservation in favour of the Crown and any person authorised thereby of the right to enter thereon and remove therefrom any rock, stone, clay, sand or gravel for use for any public purpose or for use in any prescribed work or undertaking.

- (2) A prospecting licence or exploration licence granted —
- (a) wholly in respect of private land is not subject to the reservation referred to in subsection (1); or
 - (b) partly in respect of any private land and partly in respect of land other than private land is not subject to the reservation referred to in subsection (1) in relation to that private land; or
 - (c) wholly in respect of Commonwealth land is not subject to the reservation referred to in subsection (1); or
 - (d) partly in respect of any Commonwealth land and partly in respect of land other than Commonwealth land is not subject to the reservation referred to in subsection (1) in relation to that Commonwealth land.

[Section 112 amended: No. 69 of 1981 s. 26; No. 51 of 2012 s. 33.]

113. Repossession of land on expiry, surrender or forfeiture of mining tenement

When a mining tenement expires or is surrendered or forfeited, the owner of the land to which the mining tenement related may take possession of the land forthwith, subject to any estate or interest held by any other person other than under that mining tenement.

114. Removal of mining plant on expiry, surrender or forfeiture of mining tenement

- (1) In this section —

mining plant means any building, plant, machinery, equipment, tools or any other property of any kind whether affixed to land or not so affixed;

prescribed period means a period of 3 months after a mining tenement expires or is surrendered or forfeited or such longer period thereafter as the Minister from time to time or in any particular case determines and is hereby authorised to determine.

- (2) When a mining tenement expires or is surrendered in whole or in part or forfeited —
- (a) the person who was the holder of the mining tenement immediately prior to such expiry, surrender or forfeiture; or
 - (b) any other person,

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who is entitled to any mining plant lawfully erected or brought onto the land or the part of the land to which the mining tenement related by a former holder thereof or any predecessor in title, may, within the prescribed period, remove any such mining plant.

- (3) Where any such mining plant is not so removed within the prescribed period, the Minister may, at any time thereafter, call upon such holder or other person as is referred to in subsection (2) to show cause, within such period as the Minister may determine, why any mining plant that has not been so removed should not be sold and removed.
- (4) Where such holder or person does not, within the period determined by the Minister, show cause to the satisfaction of the Minister why any such mining plant should not be sold and removed, the Minister may direct the mining plant to be sold by public auction and be removed.
- (5) The proceeds of the sale of any mining plant pursuant to subsection (4), after deducting the cost of and incidental to the sale or the sale and the removal of the mining plant, shall be paid to such holder of the mining tenement or other person as is referred to in subsection (2), of whose claim thereto the Minister has had notice in writing prior to the payment of the proceeds.
- (6) The Minister shall determine whether or not any mining plant shall be allowed to remain on the land that was the subject of the mining tenement and if so, the period for which it may so remain and the amount of rent that shall be paid for the use and occupation of the land on which the mining plant is allowed to remain and to whom the rent shall be due and payable.
- (7) Where —
 - (a) a mining tenement expires or is surrendered in whole or in part or forfeited; and
 - (b) at the time of that expiry, surrender or forfeiture, the person (in this subsection called the *former holder*) who was the holder of the mining tenement immediately before its expiry, surrender or forfeiture leaves any tailings or other mining product upon the land or part of the land that was the subject of the mining tenement,

the tailings or other mining product become or becomes the property of the Crown —

- (c) at the expiration of the prescribed period, if the former holder does not —
 - (i) remove; or
 - (ii) *bona fide* treat and continue to treat, the tailings or other mining product within that period; or
 - (d) at the expiration of a period of 3 months from the time when, in the opinion of the Minister, treatment of the tailings or other mining product is discontinued, if the former holder, having commenced treatment of the tailings or other mining product within the prescribed period, discontinues that treatment after the expiration of the prescribed period.
- (8) The Minister shall determine the amount of rent that shall be paid for the use and occupation of the land on which the tailings or other mining product are allowed to remain and the land used in relation to the treatment of the tailings or other mining product and to whom the rent shall be due and payable.
- (9) Nothing in this section affects any valid agreement made by the holder of a mining tenement with the owner or occupier of any land to which the tenement relates in respect of mining plant or tailings or other mining product left on such land after the prescribed period, and this section shall be construed subject to such an agreement.
- (10) Notwithstanding the foregoing provisions of this section, no timber or other material used and applied in the construction or support of any shaft, drive, gallery, adit, terrace, race, dam or other mining work shall be removed without the consent in writing of the Minister.

[Section 114 amended: No. 37 of 1993 s. 18.]

114A. Rights conferred under mining tenement exercisable in respect of mining product belonging to Crown

Where a provision of this Act confers on the holder of a mining tenement (other than a miscellaneous licence) rights in respect of land that is the subject of that mining tenement, the holder of the mining tenement may exercise those rights in respect of any

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tailings or other mining product left upon that land or any part of that land if —

- (a) at the time the mining tenement was granted, the tailings or other mining product were or was the property of the Crown; or
- (b) during the term of the mining tenement the tailings or other mining product become or becomes the property of the Crown,

by virtue of section 114(7) or clause 7(5) of the Second Schedule.

[Section 114A inserted: No. 37 of 1993 s. 19(1).]

114B. Continuation of liability after expiry, surrender or forfeiture of mining tenement

The expiry, surrender or forfeiture of a mining tenement does not affect the liability of the person who was the holder of the mining tenement immediately before its expiry, surrender or forfeiture —

- (a) to pay any rent, fee, royalty, penalty, or other money on any other account, payable on or before the date of expiry, surrender or forfeiture under or in relation to the mining tenement; or
- (b) to comply with any obligation imposed on or before that date under or in relation to the mining tenement; or
- (c) for any act done or default made on or before that date under or in relation to the mining tenement.

[Section 114B inserted: No. 39 of 2004 s. 96.]

114C. Right to enter land to carry out remedial work after expiry, surrender or forfeiture of mining tenement

- (1) In this section —

former holder, in relation to a mining tenement, means the person who was the holder of the mining tenement immediately before its expiry, surrender or forfeiture;

remedial work means work necessary for compliance by the former holder of a mining tenement with an obligation referred to in section 114B(b).

- (2) Where a mining tenement expires or is surrendered or forfeited, the former holder of the mining tenement may enter and re-enter the land that was the subject of the mining tenement with such agents, employees, vehicles, machinery and equipment as may be necessary or expedient for the purpose of carrying out remedial work on that land.

[Section 114C inserted: No. 39 of 2004 s. 96.]

115. Power to enter on land for surveys

- (1) When and as often as the Director, Geological Survey or any other officer of the Department or any person working in conjunction with that Department and acting under the Director's instructions considers it necessary to enter upon any land for the purpose of making any aerial, geological, geophysical or geochemical surveys of the land and drilling thereon in the course of his official duties he may —
- (a) enter and re-enter on the land, with such assistants as he considers necessary for the purpose of making the survey thereon; and
 - (b) extract and remove from the land any geological specimens or samples that in his opinion are necessary to the survey; and
 - (c) affix to or set up on the land such pegs, marks, poles or other equipment as may be required for the purposes of the survey; and
 - (d) do all such things as he considers necessary for the purposes of the survey or for any inspection or alteration of it.
- (2) Before a person enters on any land pursuant to this section, he shall if practicable, give reasonable notice to the owner and occupier of the land of his intention to do so, and shall, if required by the owner or occupier of the land, produce the authority under which he claims to enter or to have entered the land.
- (3) In relation to the exercise of a power under this section —
- (a) the owner and occupier of the land are entitled to compensation according to their respective interests, for any damage caused by a survey under this section; and
 - (b) in default of agreement as to the amount of compensation to be paid, the amount shall be assessed and settled by the warden's court under Part VII.

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- (4) A person who —
- (a) wilfully obstructs, hinders, or interferes with any person lawfully engaged in connection with a survey that is being made under this section; or
 - (b) without lawful authority removes, destroys or alters the position of, any peg, mark, pole or other equipment used for the purposes of any such survey; or
 - (c) wilfully damages or destroys or otherwise interferes with any peg, mark, pole or other equipment so used,
- is guilty of an offence against this Act.

[Section 115 amended: No. 100 of 1985 s. 84; No. 39 of 2004 s. 85.]

115A. Mineral exploration reports

- (1) In this section —
- guidelines** means guidelines published under the regulations;
- mineral exploration report** means a report containing records of the progress and results of —
- (a) programmes involving the application of one or more of the geological sciences;
 - (b) drilling programmes;
 - (c) activities involving the collection and assaying of soil, rock, groundwater and mineral samples,
- that have been carried out in search for minerals;
- operations report** means a report of the kind required under section 51, 68(3), 70H(1)(f) or 82(1)(e).
- (2) The holder of a mining tenement shall file a mineral exploration report, or cause a mineral exploration report to be filed —
- (a) in conjunction with an operations report in such circumstances as are set out in the guidelines; and
 - (b) whenever required to do so by the Minister by notice in writing.
- (3) A mineral exploration report is to be filed in the prescribed manner and is to be in the form required by the guidelines and is to contain information of the kind required by the guidelines.
- (4) The Minister may, under the guidelines, approve of arrangements for combined mineral exploration reports to be filed for 2 or more mining tenements and mineral exploration

reports can be filed under those arrangements despite the requirement of subsection (2)(a) for them to be filed in conjunction with operations reports.

- (5) The Minister may, under the guidelines, cancel arrangements referred to in subsection (4).

[Section 115A inserted: No. 58 of 1994 s. 45; amended: No. 12 of 2010 s. 37.]

115B. Verification of expenditure amounts in operations reports

- (1) In this section —

audit amount means the amount of expenditure shown in an audit statement;

audit statement means a statement containing details of expenditure during the period to which an operations report relates;

expenditure means expenditure on or in connection with mining on a mining tenement;

expenditure amount means the amount of expenditure during the period to which an operations report relates;

operations report has the meaning given to that term in section 115A(1).

- (2) For the purpose of verifying the expenditure amount shown in an operations report, the Minister may, by notice in writing, require the holder of a mining tenement to file an audit statement, or cause an audit statement to be filed, in the prescribed manner and within a period specified in the notice.
- (3) An audit statement is to be prepared and signed by —
- (a) a person registered as an auditor, or taken to be registered as an auditor, under Part 9.2 of the Corporations Act; or
 - (b) another suitably qualified person approved by the Minister for the purposes of this section.
- (4) If the audit amount differs from the expenditure amount shown in the operations report, the Minister may determine in writing that the audit amount is to be regarded as the expenditure amount for the purposes of this Act.

[Section 115B inserted: No. 39 of 2004 s. 97(1); amended: No. 12 of 2010 s. 38.]

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116. Instrument of licence or lease

- (1) The holder of a mining tenement granted pursuant to this Act is entitled, on payment of the prescribed fee, to receive an instrument of licence or lease as the case may be in such form as may be prescribed.
- (2) Except in the case of fraud, a mining tenement granted or renewed under this Act shall not be impeached or defeasible by reason or on account of any informality or irregularity in the application or in the proceedings previous to the grant or renewal of that tenement and no person dealing with a registered holder of a mining tenement shall be required or in any way concerned to inquire into or ascertain the circumstances under which the registered holder or any previous holder was registered, or to see to the application of any purchase or consideration money, or be affected by notice, actual or constructive, of any unregistered trust or interest any rule of law or equity to the contrary notwithstanding, and the knowledge that any such unregistered trust or interest is in existence shall not of itself be imputed as fraud.
- (3) In subsection (2) —
registered, in relation to a holder or previous holder of a mining tenement, means that the name of the holder or previous holder is or was entered in the register as the holder of the mining tenement.

[Section 116 amended: No. 100 of 1985 s. 85; No. 54 of 1996 s. 16; No. 51 of 2012 s. 34.]

117. Mining tenements protected

- (1) Subject to the provisions of sections 56A, 70 and 85B as regards the special prospecting licences and mining leases therein referred to, no Crown grant, transfer of Crown land in fee simple, or conveyance nor the grant of any mining tenement has the effect of revoking or injuriously affecting any existing mining tenement acquired and held under this or the repealed Act, whether or not any reservation or exception of that existing mining tenement is contained in the Crown grant, transfer of Crown land in fee simple, or conveyance or the grant of the mining tenement.
- (2) Each such Crown grant, transfer of Crown land in fee simple, or conveyance and each such grant of a mining tenement shall be

deemed to contain an express reservation of the rights to which the holder of the existing mining tenement is entitled.

[Section 117 amended: No. 100 of 1985 s. 86; No. 37 of 1993 s. 12(2); No. 31 of 1997 s. 71(17) and (18).]

118. Notice of application to be given to lessee of pastoral lease

Where any land comprised in an application for a mining tenement is held subject to a pastoral lease within the meaning of the *Land Administration Act 1997* or a lease otherwise granted by or on behalf of the Crown for grazing purposes only, the applicant shall within the prescribed period, post a copy of the application together with a map on which are clearly delineated the boundaries of the land in respect of which the mining tenement is sought by registered post or certified mail to the holder of that lease at his usual or last known place of abode or business.

[Section 118 amended: No. 122 of 1982 s. 27; No 100 of 1985 s. 87; No. 22 of 1990 s. 36; No. 37 of 1993 s. 20; No. 31 of 1997 s. 141.]

118A. Tenement holder may authorise mining by third party

- (1) In this section —
authorisation means an authorisation under subsection (2).
- (2) The holder of a prospecting licence, exploration licence or mining lease (the *relevant tenement*) may, by instrument in writing, authorise another person to carry out mining of a kind authorised by the relevant tenement on the land the subject of the relevant tenement.
- (3) An authorisation may be given subject to conditions specified in the authorisation.
- (4) Mining carried out under an authorisation is to be regarded for the purposes of this Act as mining carried out by the holder of the relevant tenement.
- (5) Expenditure on or in connection with mining carried out under an authorisation is to be regarded for the purposes of the prescribed expenditure conditions referred to in section 50, 62 or 82(1)(c) as expenditure by the holder of the relevant tenement.

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- (6) The giving of an authorisation does not affect the duties or obligations of the holder of the relevant tenement under this Act.

[Section 118A inserted: No. 39 of 2004 s. 98(1).]

119. Mining tenement may be sold, encumbered etc.

- (1) Subject to this Act a mining tenement may be sold, encumbered, transmitted, seized and sold to satisfy a judgment, or otherwise disposed of.
- (2) A legal or equitable interest in or affecting a mining tenement is not capable of being created, assigned, affected or dealt with, whether directly or indirectly, except by an instrument in writing signed by the person creating, assigning or otherwise dealing with the interest.

[Section 119 amended: No. 10 of 1982 s. 28; No. 37 of 1993 s. 27; No. 58 of 1994 s. 46; No. 59 of 2004 s. 116.]

119A. Mining tenement may be mortgaged

- (1) A mining tenement or share in a mining tenement may be mortgaged as security for the repayment of money advanced or agreed to be advanced or for the discharge of any liability.
- (2) If there are 2 or more mortgages affecting the same legal interest in a mining tenement, the mortgages take priority according to the time and date of their registration.
- (3) A mortgage —
- (a) has effect only as security for the repayment of the money intended to be secured by the mortgage and not as an assignment of the mining tenement; and
 - (b) may cover all buildings, improvements, machinery and appliances in or upon the land comprised in the mining tenement.
- (4) The regulations may provide that a mortgage is deemed to contain prescribed provisions unless the mortgage contains express provision to the contrary.

[Section 119A inserted: No. 54 of 1996 s. 17.]

120. Planning schemes to be considered but not to derogate from this Act

- (1) In considering any application for the grant of a mining tenement the Minister, warden or mining registrar, as the case requires, shall take into account the provisions of any planning scheme in force under the *Planning and Development Act 2005* affecting the use of the land concerned, but the provisions of any such scheme shall not operate to prohibit or affect the granting of a mining tenement or the carrying out of any mining operations authorised by this Act.
- (2) Without affecting subsection (1), where —
 - (a) an application has been made for a mining lease or a general purpose lease; and
 - (b) the local government or the Western Australian Planning Commission has, in writing, informed the Minister and the Minister for the time being administering the *Planning and Development Act 2005*, that the mining lease or general purpose lease would, if granted, authorise the carrying on of mining operations contrary to the provisions of a planning scheme referred to in subsection (1),

the Minister shall not dispose of the application until he has first consulted the Minister for the time being administering the *Planning and Development Act 2005* and obtained his recommendation thereon.

[Section 120 amended: No. 58 of 1994 s. 47; No. 14 of 1996 s. 4; No. 24 of 2000 s. 26(2); No. 38 of 2005 s. 15.]

120AA. Scheme for reversion licence applications

- (1) In this section —

continuing licence means a prospecting licence, exploration licence or retention licence that has effect in relation to land to which a reversion licence application applies;

lease application means an application for a mining lease under this Act including an application authorised by section 49(1), 67(1) or 70L(1).
- (2) The Governor, by order published in the *Gazette*, may establish a scheme authorising any person who, on or before a day specified in the order, has made a lease application or lease applications to make one or more applications for a prospecting

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licence or an exploration licence in respect of land the subject of the lease application or lease applications.

- (3) An order under subsection (2) may provide for and in relation to —
- (a) the making of reversion licence applications and related matters including marking out and advertising; and
 - (b) the operation and effect of a reversion licence application including its effect on —
 - (i) the lease application or lease applications to which it relates; and
 - (ii) any continuing licence held by the applicant; and
 - (c) priority as between reversion licence applications and other mining tenement applications; and
 - (d) the circumstances in which objections may be made to reversion licence applications; and
 - (e) the operation and effect of prospecting licences and exploration licences granted as a result of reversion licence applications; and
 - (f) the refund of rent paid in respect of a lease application or lease applications if a prospecting licence or an exploration licence is granted as a result of a reversion licence application; and
 - (g) any other matters of an incidental, supplementary, savings or transitional nature that are necessary or expedient for the purposes of the scheme referred to in subsection (2).
- (4) Without limiting subsection (3), an order under subsection (2) may provide for a reversion licence application to include land that is not the subject of the relevant lease application or lease applications.
- (5) An order under subsection (2) has effect for the period specified in the order.
- (6) The Governor, by order published in the *Gazette*, may amend or revoke an order under subsection (2).
- (7) Section 42 of the *Interpretation Act 1984* applies to an order under this section as if it were a regulation.

- (8) An order under subsection (2) has effect despite any other provision of this Act.
- (9) Despite sections 18, 23 and 27, a reversion licence application may be made in respect of land that is the subject of a mining tenement if the mining tenement is a continuing licence held by the applicant.
- (10) Section 40(1)(b) or (c) of the *Mining Amendment Act 1990* does not apply if the land that has become available from an existing licence, as defined in section 40(3) of that Act, has been included in a reversion licence application and a prospecting licence is granted in respect of that application.

*[Section 120AA inserted: No. 39 of 2004 s. 99; amended:
No. 27 of 2005 s. 11]*

[\[Part VI-VIII omitted as it is not amended by the Mining Amendment Bill \(No. 2\) 2021.\]](#)

Part IX — Miscellaneous and regulations

152. Police to assist warden

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

153. Minor capable of being sued and of suing

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

154. General penalty

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

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

155. Offence of mining without authority

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

Penalty:

- (a) for an individual — a fine of \$150 000 and, if the offence is a continuing one, a further fine of \$15 000

for each day or part of a day during which the offence has continued;

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

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

155A. Aerial survey work

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

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

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156. Offences

- (1) A person who —
- (a) takes or removes from the mining tenement of any other person any mineral or other mining product without the authority of that other person; or
 - (b) assaults, obstructs, resists or insults —
 - (i) any warden or any officer of the Department; or
 - (ii) any other person duly authorised under this Act to perform any act or duty, in the course of performance of that act or duty,or who when required to do so by him fails to give to any such warden, officer or person information as to his name, address, or authorisation for being on any land or who gives false or misleading information; or
 - (c) when lawfully evicted or removed under this Act from any mining tenement, re-enters the mining tenement or retakes possession thereof; or
 - (d) prevents, resists or obstructs the taking or diverting of any water or the doing of any other act by any person acting in pursuance of an order of the warden's court,
- commits an offence against this Act.
- (2) Subsection (1)(a) does not apply to a person who removes a mineral in the exercise of the authorisation conferred by section 40D(1)(c).

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

157. Obstruction of persons authorised to mine under this Act

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

Penalty: \$10 000.

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

158. Power to require information as to right to mine

- (1) Where there is reason to suspect that a person is mining on land without authority under this Act a member of the Police Force or a person authorised in that behalf by the Director General of Mines may —
- (a) require the person to produce any document or other evidence relating to the entitlement of that person to mine on that land; and
 - (b) require the person to give an explanation concerning the mining on that land.
- (2) A person who —
- (a) upon request made under subsection (1) refuses or fails to comply with the request; or
 - (b) obstructs or hinders the person making the request; or
 - (c) knowingly misleads or deceives the person making the request,
- commits an offence.
Penalty: \$10 000.
- (3) Where a person who is authorised to make a request under subsection (1) is not satisfied with any evidence or explanation given to him in pursuance of a request made under that subsection he may orally or by notice in writing direct the person to whom the request is made to cease mining on the land referred to in the direction.
- (4) A person who refuses or neglects to comply with a request under subsection (3) commits an offence.
Penalty: \$10 000.
- (5) Where the person to whom a request is made under subsection (3) refuses or neglects to comply with the direction given under that subsection, the person giving the direction may use such force as is necessary to remove the person from the land and stop and remove any machinery being used for the purpose of mining on the land using such assistance as is necessary for that purpose.
- (6) A person who commits an offence under subsection (2) or (4) may be arrested without a warrant.

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

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159. Disputes between licensees and other persons

- (1) Where a dispute arises between a licensee or permittee under the *Petroleum and Geothermal Energy Resources Act 1967* and any person duly authorised to mine or search for minerals by virtue of a mining tenement or other authority under this Act or the repealed Act concerning any operations carried out or proposed to be carried out by the licensee or permittee or such person on any land within the boundaries of the area in respect of which the licence or permit was granted to the licensee or permittee, the licensee or the permittee or such person or both of them may refer the matter to the warden for inquiry and report, and the warden shall, as soon as practicable after such reference, inquire into the dispute and report thereon to the Minister.
- (2) Upon receipt of the warden's report the Minister may make such order and give such directions to the licensee or the permittee or such person or to both of them as in the public interest and in the circumstances of the case may seem to him to be just and equitable and by such order may direct the payment by the licensee or the permittee or such person or both of them of any costs and expenses incidental to the conduct of the inquiry.
- (3) If the licensee or the permittee or such person fails or neglects to comply with any such order or directions, the Minister may cancel the licence, the permit or the mining tenement or other authority (if any) held by such person.
- (4) In this section —
 - (a) a reference to a licence or permit includes a reference to a drilling reservation or lease; and
 - (b) a reference to a licensee or permittee includes a reference to the registered holder of a drilling reservation or lease.

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

160. Saving of civil remedies

- (1) Subject to section 40G, nothing in this Act shall prejudice, abridge or take away any right of action that any person may have in respect of any act or omission of another unless that act or omission occurs in pursuance of any authority lawfully given under this Act.

- (2) The recovery of any penalty under this Act does not affect any such right of action as is referred to in subsection (1).

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

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

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

Table

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

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

160A. Immunity of Minister, wardens and officials

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

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

160B. Time limit for prosecution action

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

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

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

No appeal lies under this Act —

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

or

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

or

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

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

160D. Persons before whom affidavit may be sworn

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

- (a) any person who, under the *Oaths, Affidavits and Statutory Declarations Act 2005*, is an authorised witness for an affidavit; or
- (b) a warden; or
- [(c)-(e) *deleted*]
- (f) a prescribed official.

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

161. Evidentiary provisions

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

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

- (2) In any proceedings a document purporting to be a mining tenement shall be accepted as such in the absence of evidence to the contrary.

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

- (4) In any proceedings —

- (a) a document purporting to be a copy of a judgment, order or decision of a warden or a warden's court, or of a document filed or lodged in proceedings under this Act, and purporting to be certified by —

- (i) a warden; or
- (ii) a mining registrar; or
- (iii) a prescribed official,

to be such a copy, is admissible as a true copy of the judgment, order, decision or document; and

- (b) judicial notice is to be taken of the signature of a person referred to in paragraph (a)(i), (ii) or (iii) on a certificate under that paragraph.

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

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

In accordance with the *Personal Property Securities Act 2009* (Commonwealth) section 10 the definition of *licence* paragraph (d), the following rights, entitlements or authorities

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are declared not to be personal property for the purposes of that Act —

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

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

162B. Extension of prescribed period or time

- (1) If this Act provides for something to be done within a prescribed period or a prescribed time, the Minister or a warden may, in a particular case, extend the period or the time for doing the thing.
- (2) The power in subsection (1) may be exercised whether or not the prescribed period has ended or the prescribed time has passed.

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

162. Regulations

- (1) The Governor may make such regulations as are contemplated by this Act, or as he deems necessary or expedient for the purposes of this Act and any such regulations may confer upon a prescribed person or body specified in the regulations a discretionary authority.
- (2) Without limiting the generality of the powers conferred by subsection (1) those regulations may —
 - (a) prescribe and regulate the powers, functions and duties of wardens, mining registrars and of any officer or other person appointed under this Act or employed or acting in the administration of this Act;
 - (aa) authorise an inspector appointed under section 11 —
 - (i) to enter upon land where mining operations are carried out for the purpose of inspecting those mining operations;

-
- (ii) to require any person to provide the inspector with prescribed information relating to mining operations;
 - (iii) to give directions to the holder of a mining tenement requiring the holder to modify or cease mining operations in prescribed circumstances;
 - (ab) provide for an appeal to the Minister by the holder of a mining tenement against a direction referred to in paragraph (aa)(iii) requiring the holder to cease mining operations;
 - (b) prescribe and provide for the payment of fees under this Act and the purposes for which they are to be paid;
 - (ba) prescribe exemptions from the payment of fees for certain classes of applications under this Act;
 - (c) prescribe any forms for the purposes of this Act and prescribe the manner in which any of those forms are to be executed;
 - (ca) prescribe the manner in which fossicking may be carried out, or prohibit the carrying out of fossicking in prescribed areas or by prescribed means;
 - (cb) provide for any matter relating to permits under section 40E, including without limitation —
 - (i) the persons or class of persons to whom notice of the issue of permits is to be given; and
 - (ii) the operation, duration and surrender of permits; and
 - (iii) the maximum number of permits that may be in force at any time in respect of an exploration licence; and
 - (iv) the conditions that may be imposed on permits and the variation or cancellation of such conditions; and
 - (v) the powers of the Minister, in cases of breach of conditions referred to in section 40E(5) or (6) or in other prescribed circumstances —
 - (I) to impose on holders of permits monetary penalties not exceeding the prescribed amount; or
 - (II) to cancel permits; or

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(III) to disqualify holders of permits from again holding or applying for permits for such period not exceeding the prescribed period as the Minister thinks fit;

and

- (vi) the procedure to be followed before the exercise of a power referred to in subparagraph (v); and
- (vii) the recovery of penalties referred to in subparagraph (v)(I); and
- (viii) the prohibition of the use of hand tools of a prescribed kind; and
- (ix) the reporting of minerals recovered by the holders of permits; and
- (x) the issuing of guidelines in relation to the operation of the permit system;
- (d) prescribe the manner in which land is to be marked out for the purposes of making applications for mining tenements;
- (ea) provide for matters relating to the lodgment, in electronic form, of mining tenement documents;
- (eb) provide for the time at which a mining tenement document is to be taken to have been lodged;
- (ec) regulate matters in connection with designated tenement contacts for mining tenements and applications for mining tenements, including without limitation —
 - (i) to require a person who holds, or has applied for, a mining tenement to have a designated tenement contact for the mining tenement or application;
 - (ii) to provide the manner in which designated tenement contacts are to be nominated for mining tenements, or applications for mining tenements, by persons who hold, or have applied for, mining tenements;
 - (iii) to provide for matters relating to the provision, updating and accurate recording of particulars relating to designated tenement contacts;

(ed) provide for matters relating to the giving of information, a document, a notice or a notification required or permitted to be given under this Act (including the

- giving of the information or the document, notice or notification in electronic form);
- (ef) provide for the time at which information, a document, a notice or a notification is taken to have been given;
- (eg) prescribe the means of satisfying a requirement under this Act in relation to information, a document, a notice or a notification in writing if the information, document, notice or notification is given in electronic form;
- (e) prescribe the rent payable in respect of any mining tenement or class of mining tenement, and make provision for the exercise of a discretion by the Minister as to the basis upon which a rent shall be calculated;
- (f) prescribe the times at which rent and royalties shall be paid under this Act and the manner in which they are to be paid;
- (g) prescribe the manner in which, and the terms and conditions subject to which, mining tenements may be surrendered;
- (ga) prescribe grounds for extension for the purposes of section 45(1a) and 61(2);
- [(gb) *deleted*]
- (h) prescribe the expenditure conditions subject to which a mining tenement or any class of mining tenement shall be held, and the conditions on which exemption therefrom may be applied for, and granted;
- (i) prescribe the persons or class of persons on whom copies of applications for mining tenements or any other documents relating thereto are to be served;
- (j) provide for the compilation of mining statistics and for that purpose require holders of mining tenements to supply the Director General of Mines with such particulars as may be prescribed;
- (k) provide for the furnishing of returns, and the keeping and furnishing of records, for the purposes and by the persons specified in the regulations;
- (ka) provide for any matter relating to the surveying of mining tenements, including —
- (i) requiring that surveying to be carried out by a surveyor (in this paragraph referred to as the ***approved surveyor***) approved by the Minister or an officer of the Department in accordance with

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- any specified written law, any instructions given by an officer of the Department, a warden or the Minister or any direction published by the Department, or any 2 or all 3 of the foregoing;
- (ii) the course to be adopted by the approved surveyor if he finds that a mining tenement or application therefor is not marked out in the prescribed shape referred to in section 105;
 - (iii) the hearing by the warden of disputes arising during the course of that surveying concerning the positions of pegs or otherwise, or of objections to the survey of a mining tenement or of land the subject of an application for a mining tenement, and the determination by the Minister of those disputes or objections;
 - (iv) the correction of errors or omissions in that surveying and the completion of surveying that is uncompleted;
 - (v) the lodging of reports relating to surveys;
 - (vi) the entry on land by officers of the Department for the purpose of inspecting surveys;
 - (l) provide for any matter relating to any register to be kept by a warden, a mining registrar or other prescribed persons;
 - (m) provide for such information to be supplied to the Director General of Mines by holders of mining tenements in respect of boring operations for water or water obtained while boring for other purposes as may be prescribed;
 - (n) provide for the protection of land upon which mining operations are conducted and require the rehabilitation to the satisfaction of the Minister of land disturbed by the mining operations;
 - (o) prescribe the covenants and conditions that may be included in mining tenements and the exemption from the performance of those covenants or the operation of those conditions;
 - [(p) *deleted*]
 - (q) prescribe the mode of assigning, transferring, sub-letting, encumbrancing or otherwise dealing with mining tenements, the enforcement or discharge of any

- encumbrance thereon, the rights and obligations of an encumbrancer and an encumbrancee thereof or of an assignee, transferee or sub-lessee thereof; and the order of priority of 2 or more encumbrances;
- (qa) prescribe the mode of dealing with a mining tenement upon the death of the holder of the mining tenement or in other prescribed circumstances and provide for any related matter;
 - (r) regulate the practice and procedure in warden's courts, the sittings of those courts, the duties of the officers thereof; the fees and costs of the proceedings therein fixed by a costs determination (as defined in the *Legal Profession Act 2008* section 252) and of appeals therefrom and the allowances to witnesses in those courts;
 - (ra) without limiting paragraph (a), prescribe and regulate the powers, functions and duties of the warden in proceedings in respect of an application or objection under Part IV (*Part IV proceedings*), including powers to order costs and require security for costs;
 - (rb) prescribe and regulate the practice and procedure to be followed in Part IV proceedings;
 - (rca) provide for documents for use in Part IV proceedings to be lodged with or issued by the warden, or served, in electronic form;
 - (rc) prescribe a scale of costs for Part IV proceedings and provide for the taxation and recovery of costs in those proceedings;
 - (s) regulate matters in connection with partnerships in mining;
 - (t) provide for a refund of fees paid under this Act;
 - (u) regulate the way in which drill cores obtained from mining tenements are to be stored and dealt with and impose restrictions on the disposal or destruction of them;
 - (v) provide for the reporting of prescribed information as to aerial photography for mineral exploration and provide for the keeping of a register of such information;
 - (w) provide for the publication of guidelines in relation to mineral exploration reports referred to in section 115A;

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- (x) authorise and regulate the copying, storage, release, publication and dissemination of information contained in any application or report under this Act or any other information supplied to the Minister, a warden or any official of the Department under this Act;
 - (y) prescribe and regulate the responsibilities of the holders of mining tenements as to authorising, or obtaining authorisation for, the release of information contained in applications or reports under this Act.
- (2a) Subsection (2)(x) applies to information irrespective of when —
- (a) any application or report containing the information was made or given; or
 - (b) the information was supplied to the Minister, a warden or an official,
- as the case may be.
- (3A) In subsection (2) —
- mining tenement document*** means —
- (a) an application for a mining tenement; or
 - (b) an agreement, claim, notice of objection, security, or any other document, in respect of a mining tenement.
- (3) The regulations may prescribe a fine not exceeding \$10 000 for an offence against any regulation and if the offence is a continuing one, a fine not exceeding \$1 000 for each day or part thereof during which the offence has continued.
- (4) Regulations made under subsection (2)(ra) may apply the provisions of sections 142 and 146 with such modifications as are prescribed.
- (5) A regulation may require any matter or thing to be verified by statutory declaration.

[Section 162 amended: No. 52 of 1983 s. 6; No. 100 of 1985 s. 109; No. 105 of 1986 s. 26; No. 65 of 1987 s. 40; No. 22 of 1990 s. 38; No. 37 of 1993 s. 24 and 28(1); No. 58 of 1994 s. 51; No. 54 of 1996 s. 22; No. 49 of 2000 s. 86; No. 63 of 2000 s. 8; No. 15 of 2002 s. 28; No. 65 of 2003 s. 52; No. 39 of 2004 s. 84 and 100; No. 21 of 2008 s. 681; No. 12 of 2010 s. 42; No. 51 of 2012 s. 41; No. 44 of 2016 s. 24; [Mining Amendment Bill \(No. 2\) 2021.](#)]

163. Review of Act

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

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

[First to Third Schedules omitted as they are not amended by the Mining Amendment Bill (No. 2) 2021.]

Notes

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

Compilation table

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

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

Mining Act 1978**Notes**

Compilation table

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

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

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Compilation table

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

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

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Uncommenced provisions table

Short title	Number and year	Assent	Commencement
<i>Statutes (Repeals and Minor Amendments) Act 2014</i> s. 29	17 of 2014	2 Jul 2014	6 Sep 2014 (see s. 2(b) and <i>Gazette</i> 5 Sep 2014 p. 3213)
<i>Conservation and Land Management Amendment Act 2015</i> s. 77	28 of 2015	19 Oct 2015	7 May 2016 (see s. 2(b) and <i>Gazette</i> 6 May 2016 p. 1379-80)
<i>Alumina Refinery (Mitchell Plateau) Agreement (Termination) Act 2015</i> Pt. 3	31 of 2015	2 Nov 2015	3 Nov 2015 (see s. 2(b))
<i>Mining (Transitional Provisions) (Anomalies Prevention) Order 2016</i> published in <i>Gazette</i> 22 Jul 2016 p. 3134			22 Jul 2016 (see cl. 2)
<i>Licensing Provisions Amendment Act 2016</i> Pt. 5	44 of 2016	1 Dec 2016	8 Feb 2017 (see s. 2(b) and <i>Gazette</i> 7 Feb 2017 p. 1158)
Reprint 9: The Mining Act 1978 as at 10 Feb 2017 (includes amendments listed above)			
Mining Amendment Bill (No. 2) 2021	Current Draft Bill		

Uncommenced provisions table

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

Short title	Number and year	Assent	Commencement
<i>Native Title (State Provisions) Act 1999</i> s. 7.3	60 of 1999	10 Jan 2000	Operative on earliest of commencement of Pt. 2 (except s. 2.2), Pt. 3 (except s. 3.1) and Pt. 4
<i>Mining Legislation Amendment Act 2014</i> Pt. 2	4 of 2014	22 Apr 2014	To be proclaimed (see s. 2(b))
<i>Aquatic Resources Management Act 2016</i> s. 369	53 of 2016	29 Nov 2016	To be proclaimed (see s. 2(b))
<i>Environmental Protection Amendment Act 2020</i> s. 116	40 of 2020	19 Nov 2020	To be proclaimed (see s. 2(1)(e))

Other notes

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

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

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

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

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

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

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

Division 2 — Validation and pending applications

6. Validation of extension of term of certain exploration licences

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

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

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

7. Pending applications for extension of term

If —

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

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

Part 3 — Provisions relating to miscellaneous licences

8. Validation of grant of certain miscellaneous licences

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

- (a) the grant of the licence; and

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

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

9. Pending applications for miscellaneous licence

If —

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

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

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

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

40. Savings and transitional

- (1) Notwithstanding sections 15, 16, 17, 19 and 34 but subject to this section —
 - (a) the amendments to the principal Act effected by those sections do not have effect in relation to —
 - (i) any exploration licence in force before the commencement day;
 - (ii) any application for an exploration licence lodged with the Department before the commencement day; or
 - (iii) any exploration licence granted in respect of an application referred to in subparagraph (ii);
 - (b) where, after the commencement day —
 - (i) land becomes available from an existing licence; and
 - (ii) other land in the same block is the subject of an exploration licence granted in respect of an application lodged with the Department on or after the commencement day,the exploration licence referred to in subparagraph (ii) shall, by virtue, be amended to include the land that has become available from the existing licence;
 - (c) where, after section 52 of the *Mining Amendment Act 1994* commences —

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

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

5. Section 45 amended and savings

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

19. Section 114A inserted and validation

- (2) Any act or thing done before the commencement of the section by the holder of a mining tenement as defined in the principal Act is,

and is to be regarded as having always been, as valid, lawful and effective as it would have been if —

- (a) section 114A of the principal Act as inserted by subsection (1);
- (b) section 114(7) of the principal Act as amended by this Act; and
- (c) clause 7(5) of the Second Schedule to the principal Act as inserted by this Act,

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

28. Amendments relating to surveys and savings provision

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

29. Principal Act

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

30. Mining Amendment Act 1990 amended and transitional

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

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

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

21. Section 70 amended and saving

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

31. Section 85B amended and saving

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

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

- (1) Despite sections 2(2) and 30(3)(b) of the *Mining Amendment Act 1993*, section 65(1c)(b) and (c) of the *Mining Act 1978* as inserted by section 19(c) of the *Mining Amendment Act 1990* do

not have any effect, and are deemed to have never had any effect, in relation to the surrender of an existing licence under section 65 of the *Mining Act 1978* where that surrender took place before 1 July 1994.

- (2) In subsection (1) **existing licence** means an exploration licence referred to in section 40(1)(a)(i) or (iii) of the *Mining Amendment Act 1990*.

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

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

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

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

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

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

5. Section 45 amended and savings provision

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

6. Section 46 amended and transitional provision

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

11. Transitional provision

- (1) In this section —
commencement means the commencement of this Part;
old provisions means sections 56A, 70 and 85B of the *Mining Act 1978* as in force immediately before the commencement.

-
- (2) Despite the amendments made by this Part, the old provisions continue to apply to and in relation to an application for a special prospecting licence or a mining lease for gold under the *Mining Act 1978* that is pending immediately before the commencement.

15. Section 63 amended and transitional provision

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

19. Transitional and savings provisions

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

“

the Minister may, if satisfied that a ground for exemption exists, exempt

- (6) For the purposes of the application of section 65(1a) of the old provisions as modified by subsection (5) each of the following is a ground for exemption —
- (a) by reason of difficulties or delays —
 - (i) occasioned by law; or
 - (ii) arising from administrative, political, environmental or other requirements of governmental or other authorities, in the State or elsewhere; or
 - (iii) arising from a requirement to conduct an Aboriginal heritage survey on the land to which the application for exemption relates (the **relevant land**); or
 - (iv) in obtaining requisite consents or approvals for exploration or for the marking out of a mining lease or general purpose lease in relation to any part of the relevant land; or
 - (v) in gaining access to the relevant land because of unfavourable climatic conditions, the exploration programme, or the marking out and application appropriate to a mining lease or general purpose lease in relation to the relevant land, could not be undertaken or completed or is restricted in a manner that is, or subject to conditions that are, for the time being impracticable;
 - (b) work already carried out under the licence justifies further exploration.
- (7) Despite the amendments made by section 16, section 65(1c) of the old provisions continues to apply to and in relation to a relevant licence as if section 65(1c)(b) were replaced by the following paragraph —

“

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

”.

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

32. Section 82 amended and transitional provisions

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

35. Transitional provision

- (1) In this section —
commencement means the commencement of this Part;
old provisions means sections 74 and 75 of the *Mining Act 1978* as in force immediately before the commencement.

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- (2) Despite the amendments made by this Part, the old provisions continue to apply to and in relation to an application for a mining lease under the *Mining Act 1978* that is pending immediately before the commencement.

36. Section 70F replaced and transitional provision

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

39. Section 84A replaced and transitional provision

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

86. Transitional provision

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

90. Section 70H amended and transitional provision

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

98. Section 118A inserted and validation and transitional provisions

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

mining authorisation means an instrument in writing under which the holder of a prospecting licence, exploration licence or mining lease (as those terms are defined in the *Mining Act 1978*) purports to authorise another person to carry out mining of the kind authorised by the licence or lease on the land the subject of the licence or lease.

Part 12 — Transitional regulations

105. Further transitional provisions may be made

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

¹⁵ The proclamation for the commencement of Pt. 9 (*Gazette* 14 Jan 2005 p. 164) was revoked in *Gazette* 24 Mar 2005 p. 1002.

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- ¹⁶ The *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004* Pt. 5, the *State Administrative Tribunal Act 2004* s. 167 and 169, and the *State Administrative Tribunal Regulations 2004* r. 28 and 42 deal with certain transitional issues some of which may be relevant for this Act.